

Takeaway: Modern Challenges Collide with Traditional Policy, Legal, Compliance and Risk Functions

September 10, 2019 Roundtable Discussion

BRUSSELS: On the 10th September, 2019, Microsoft hosted the most recent installation in FiscalNote's series on the real world sustainability implications for the fields of public policy, legal, compliance and risk. Organized by Microsoft, FiscalNote, The Economist and Dentons, this was the first roundtable hosted in Brussels and one of the largest to date. 45 attendees joined the conversation, representing government and corporate affairs, outside counsel, in-house counsel, and executive search at more than 25 major corporations headquartered across Europe and the U.S.

Chaired by FiscalNote Chief Business Officer, David Curran, and Microsoft's Esa Kaunistola, the event kicked off with introductory remarks explaining how Microsoft has transformed itself from a software-based company to a cloud-computing leader over the last five years. Sustainability has been a foundational element of that transformation and growth strategy, with Microsoft committing to a 75% reduction in carbon emissions by 2030. This pledge was not driven by legislation. Instead, as most in the room agreed, putting sustainability at the center of a company's evolution made sense to not only position Microsoft as a leader in the industry but as a leader in listening to a client base that has become increasingly aware of the impact companies have on the environment.

Under Chatham House Rule, conversation moved to the group. Curran positioned that sustainability has become a new "super law" tying together civil society, policy, regulation and customer demands, and the implications of this for Government Affairs are significant:

Government Affairs is essentially "government risk mitigation." But generic risk can be numbing, so how do you build and position critical issues and prove team value? If something is a consistent risk, how do you stop processes from becoming numb to the danger?

A narrow bracket of stakeholders now dominate the conversation. How does Government Affairs operate when consumers and NGOs control the dialogue and there is a "limited microphone" for companies to actually get their message across?

Be a Change Agent

To attract the best talent while also protecting your reputation and customer base, it is essential to get ahead of the issues: know what is coming and have the right people in place. Be at the forefront of change, be proactive and you can more easily control the narrative.

When it comes to recruiting, companies need to avoid making unsubstantiated claims about their commitment to green initiatives or their ability to minimize environmental impact. This practice, known as greenwashing, is no longer an option as the latest generation entering the workforce is more sustainability-conscious than ever and committed to working for a company that aligns with their values. An Executive Search attendee pointed out that proof of real action and awareness on ESG issues is now standard across most industries for senior hires.

The room then identified the three categories of Government Affairs teams:

- 1) Progressive change agents. An active group who have a real commitment to change and to being an industry leader.
- 2) Majority. Sit in the middle, waiting to see which way the tide turns.
- 3) A final regressive group. Fighting a rearguard defensive action.

However, many in the group pointed out that it was difficult to be proactive when a number of actors and stakeholders are reluctant to positively engage with the industry.

NGOs

The manner of NGO engagement has changed radically in the last twenty years. Companies must vet and engage with NGOs while still keeping a hand on the microphone.

This point, more than any, created constructive division within the group. Contrasting experiences were shared. One attendee described an expensive exercise of NGO engagement, with a “council” formed between major civil society players and senior members from the company. The experience was entirely negative as the NGOs used the platform to make demands and refuse any offered concessions.

Two participants from different industries suggested it was a “lose-lose” situation if one engaged with NGOs too closely. From experience, either the most relevant NGOs wouldn’t engage or when they did, it wasn’t in a constructive manner. Indeed, NGOs are often single-issue entities, which can create challenges for companies managing a diverse portfolio of issues. How does one balance the intense pressure from a singularly-focused organization against the diverse set of issues of the broader business? How does one engage in this environment?

One contributor even suggested it was anti-democratic to let NGOs overly influence the conversations as it bypassed legislators and elected officials.

One participant opined that there had been a sea-change in how NGOs themselves acted with business. How do you get the right organizations in the room, and how do you ensure that the conversation is inclusive of NGO and company perspectives?

Internal Processes

Government Affairs needs to overhaul its processes and build stronger internal lines of communication to effectively “sell” issues - and their function’s value - to the enterprise.

It was argued that in order to secure the funding to proactively engage with issues, government affairs teams would need to find ways to show the relevance of the issue for the core business operations of their respective organisations.

One participant suggested a shift in the mindset and positioning of a Government Affairs professional to a role more similar to that of a salesperson. They reasoned that Public Affairs (PA) and Government Affairs (GA) are under-resourced and lose to sales and marketing in the battle for funding.

A lawyer in the room, who provides external-counsel to many Government Affairs teams, observed that the most effective PA/GA teams are the ones that position themselves closely to the Business Development (BD) organization and the Board, rather than legal and compliance. This trend of close alignment across teams can be seen in the M&A space, where diverse and cross-department teams are empowered to take a holistic look at M&A risk and opportunity through a lens of reputation and sustainability.

The other challenge is the bias that companies can have towards immediate issues versus the long-term outlook that Government Affairs professionals are typically trying to manage in conjunction. When you are focused on issues that are 5+ years away, companies often decide those issues aren’t priority because immediacy bias distracts us from the future and emphasizes what feels good to attack and accomplish now.

Economist Intelligence Input

To provide a counterpoint to the practical and process-focused insights of the wider room, The Economist Intelligence Unit (EIU) brought forward a number of trends that their data has seen rising to the top of the ESG agenda. In particular, companies may suddenly find themselves under scrutiny over a core part of their business from a rapidly rising “risk” that had been innocuous only months before. so it would benefit organizations to proactively identify potential risks in their supply chain before the media, investors, or consumers do.

The EUI expanded on a number of examples, such as plastics and AI. These issues are already being discussed in the public sphere and can put a lot of pressure on companies. On plastics, companies are trying to show that they take the issue seriously, but they are trying to point out the difficulties linked to banning or drastically cutting down single-use plastics. On AI, the EUI suggested that companies may want to be careful about exploring vacuums in data-relevant legislation to carry out activities that may soon come under scrutiny, as policy and legislation is being developed.

Reputational Risk

ESG and reputation are more closely intertwined than they have ever been.

One attendee shared an experience of turning a negative reputational situation into a positive one. Her company had been implicated and was found guilty of an episode of corruption. Rather than react defensively, the company used the opportunity to transform itself by placing ethical concerns at the heart of they operate. “We wouldn’t be the company we are today without that incident.” Beyond legal necessity, this pivot enabled the company to rebuild their reputation and business genuinely, and created a direct line of communication and expectation between the Government Affairs team and the Board.

Other participants expanded on this thread by arguing that having someone with responsibility for reputational risk at the board level was a growing trend and another avenue for Government Affairs individuals to impact the discussion and awareness of their issues at a company level.

Concluding Remark

Sustainability is a fast moving target that requires companies to reorientate internally with improved processes and avenues for communication between all departments (including government affairs, legal, compliance, reputation management) and the board.

A shift from reactivity to proactivity is desirable. To help achieve this, government affairs professionals should make efforts to become more vocal internally and become “sales people” for issues.