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# MANAGING REGULATORY AND COMPLIANCE CHALLENGES IN THE FOOD INDUSTRY

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MINI-ROUNDTABLE

# MANAGING REGULATORY AND COMPLIANCE CHALLENGES IN THE FOOD INDUSTRY



## PANEL EXPERTS

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**Nadine Küster** currently serves as general secretary of Germany, Austria and Switzerland for Danone, a leading multinational food company operating in 130 countries. Ms Küster's is a newly created role which supports all four of Danone's business divisions – fresh dairy, waters, early life nutrition and advanced medical nutrition – covering legal, regulatory affairs, compliance, communications and public affairs. She is a frequent speaker on the topics of global food law and regulatory affairs.

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**Sarah R. Foley** is senior manager, global ethics & compliance at The Hershey Company. Ms Foley is responsible for setting strategy and for overseeing and implementing the company's global ethics and anti-corruption compliance programme. She works collaboratively and strategically with executive leadership and business stakeholders across the organisation and focuses on assessing and mitigating risks to support the company's growth strategy and drive adherence with its compliance policies and domestic and international regulations.

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**Rebecca Chasen** is a Deloitte Risk and Financial Advisory partner and US advisory leader for the Travel, Hospitality & Leisure practice. She has more than 20 years' experience in risk and financial consulting, compliance and risk consulting, corporate investigations, and accounting and auditing. She is a speaker at compliance, accounting, internal audit and governance conferences. She is also the chairperson of the board of directors of the Victim Rights Law Centre and a member of the United Way Women's Leadership Council.

**R&C: How would you describe the regulatory and compliance challenges currently facing businesses in the food industry? How have their risks and obligations changed in recent years?**

**Küster:** From my perspective, the food industry is facing various regulatory and compliance challenges related to the composition of food and the marketing of food and traceability, from the sourcing of ingredients up to the consumer. For example, food trends like vegan, vegetarian and organic require new regulations to guarantee a fair level playing field for all food producers and to prevent consumers from being misled. Furthermore, regulations around front of pack labelling or country of origin increase transparency around food products. Among other things, communication restrictions for special food products, like baby food or food for special medical purposes, have recently been tightened in the EU and place new obligations on producers.

**Foley:** A primary compliance challenge in the food industry is the pace at which regulatory change occurs, whether it is privacy or data breaches and governance, recalls or the varying approach between local, federal and international regulators that requires in-house compliance professionals to be versed in regulations specific to all the locations in which a company operates. In addition, the number of

consumers seeking transparency with respect to a company's sourcing and supply chain activities has increased significantly. In part and as a result, this requirement to address consumers' evolving needs and expectations heightened the focus on corporate reputation, specifically on how the work is done and what compliance principles and expectations are in place for employees and a company's business partners. Finally, given the slow organic growth and stakeholder pressures for companies to increase value, consolidation within the food industry is occurring at a rapid pace.

**Chasen:** For starters, the US Food Safety Modernisation Act (FSMA) elevated the importance and rigour of compliance programmes. Second, broader regulatory pressures relating to consumer privacy continue to escalate. Third, unrelenting competition for guest sentiment, driven by loyalty programmes, while a privacy challenge, is a 'must-have' in the restaurant sector. Fourth, there are ethical and reputational dimensions to consumer data use to be managed. Finally, we are seeing enforcement actions and hearing much discussion about immigration and labour employment status and anti-human trafficking compliance relating to food service workers. This dimension of compliance risk is especially noteworthy among the community of food industry franchisors. A further challenge for the industry is the role that consumers are playing in driving regulatory changes as they demand increased

transparency into the ingredients in their food. This is resulting in the ongoing removal of artificial additives or the classification of chemicals as potentially harmful, whether ingested or coming into contact with food.

**R&C: Have you seen an uptick in regulatory enforcement activity and scrutiny of compliance transgressions? What kinds of penalties might food companies expect to face if they are found to be in breach?**

**Foley:** From a US perspective, there has not been an increase in enforcement activity with the current administration. Despite the slowed enforcement environment in the US, those companies that are headquartered there but operate internationally are required to ensure compliance with international regulations. Within the last year, we have seen two examples that have significantly impacted the way in which food companies operate and engage with employees and consumers respectively, namely the FSMA of 2011, which was effectuated in May 2017, and the EU General Data Protection Regulation (GDPR), which came into effect in May 2018. Furthermore, the utilisation by consumers of social media and other communication platforms changed the pace at which information related to a potential transgression

reaches the masses, as well as domestic and international regulators.

**Chasen:** We have seen an increase in pressure on regulatory bodies to do more. The current US administration's decisions relating to immigration and labour and employment have in fact led to

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*Rebecca Chasen,  
Deloitte Risk and Financial Advisory*

increased activity, which, in turn, leads to shifts in the risk landscape. Rules and regulations are changing, and restaurateurs need to be aware of that. In many cases, the consequences are often more reputational. That being said, the potential for costs related to investigations and settlement agreements is very real. Government agencies are also more inclined to levy penalties for non-compliance with regulations they are responsible for, as the US Consumer Product Safety Commission has done for non-compliance with the Poison Protection Packaging Act standards.

**Küster:** Recent food scandals put pressure on authorities to increase enforcement activities. We see that a collaborative and transparent way of working with authorities is of value for both sides. Penalties for breaching food regulations range from administrative fines to imprisonment, depending on the processes a company has in place, its track record as a producer and the level of breach.

**R&C: In your opinion what are some of the leading practices and considerations for the food industry as it manages the changing regulatory landscape, especially for those companies operating in multiple international territories?**

**Küster:** A regulatory monitoring process is the basis for staying on top of changing regulations. Being active in relevant industry associations to influence upcoming changes is also advisable. The right level of regulatory expertise and solid processes around product and artwork development and communication materials are also key to ensure regulatory compliance and avoid breaches of law and regulations. Often, new regulations are ambiguous related to wording and implementation for both industry and enforcement bodies. In such cases, an early dialogue or the development of interpretation guidelines between all players can provide clarity and reliability.





**Chasen:** Food companies need to understand what is happening in the supply chain and in stores. We have seen that many food companies are upping their game with respect to regulatory obligations discovery, risk and brand sensing. This helps them to identify issues early on and begin to manage non-compliance proactively. Emerging technologies based on natural language processing are helping to make this possible as well. It is also important to manage food industry expectations across borders, especially where food can be processed in areas where the risk of economically motivated adulteration is greater. Instilling a strong food safety culture that emphasises the importance of regulatory requirements is critical to ensuring compliance throughout the organisation and across cultural boundaries.

**Foley:** Leveraging new technologies and data analytics can help a company manage the evolving regulatory landscape. However, with the reliance on data to help identify trends and make better, more informed compliance decisions, companies need to incorporate privacy considerations with the utilisation of such data. Although risk cannot be eliminated completely, exposure for a company should be minimised to the extent possible as it relates to the increased utilisation of predictive analytics by protecting personally identifiable information (PII) that could be gathered through these efforts, as well as ensuring the company does not undertake efforts that could be construed as discriminatory in



nature because of the type of intelligence identified with the collection of this data. Given the increase of globalisation, sanctions are also a challenge that impact a company's operations and should be appropriately identified and managed. Unlike in previous years, and specific to the US administration's approach, sanctions programmes appear to be trending toward targeting specific prohibitions and restrictions, which require a sophisticated and risk-relevant compliance response.

**R&C: To what extent are businesses struggling to keep pace with the operational costs of compliance? How can technology help to enhance or upgrade existing systems?**

**Chasen:** There are a lot of things relative to compliance that are routine and not value creating. So instead of utilising scarce compliance resources, let a 'bot' handle them. In the current era, there are more options than ever for modernising compliance operations. Analytics, robotic process automation, natural language processing, machine learning and other methods all present options for trimming the cost of compliance over the long term. And the efficiencies gained through advanced analytics and technology can often offset labour costs or alleviate the need for additional labour.

**Foley:** In an environment where cost is often at the forefront, right-sizing a compliance programme to meet specific industry and operational hurdles is important to maintaining a programme that is sustainable. Leveraging compliance technologies that address regulatory matters and serve as an innovative compliance tool for business partners offers visibility for internal stakeholders to help drive efficiencies and meet strategic initiatives. One example is a third-party due diligence programme that offers a company information related to compliance and regulatory risks, but can also monitor certain commercial data, for example anticipated yearly sales, that delivers insights to the business on whether the initial expectations of that external partner are being met through the company's engagement. These types of efforts reflect an undeniable strategic opportunity for compliance departments to better connect with, and become an asset for, the operational and commercial teams.

**Küster:** The operational costs of compliance are often still seen as business blockers. In many cases, investment in compliance is only done when a company is facing enforcement activities. Experience shows that those costs are often much higher than investing in compliance from the very beginning and make it an integral part of your business. Technology can also help to make compliance processes more effective.



**R&C: What advice can you offer to food companies on developing an effective regulatory compliance programme which oversees key issues such as recalls and detentions, labelling and new food import safety requirements, for example?**

**Foley:** One of the fundamental components of an effective regulatory compliance programme is establishing and maintaining a crisis management team that includes cross-functional stakeholders whose roles are clearly defined. Examples of stakeholders who may be part of the crisis management team include representatives from legal, quality, food safety, corporate communications, sales and logistics. Additionally, there needs to be a horizontal understanding of the internal communication protocol should a significant regulatory situation arise. This includes a communication plan that addresses who takes the 'lead' in communicating to internal partners and leaders, as well as the frequency for which updates are shared. The procedures around how a company addresses a regulatory matter should also be formalised and reviewed frequently to ensure that the processes followed are relevant to the organisation's current operating model and roles of those individuals who would be asked to remediate such an issue.

Another foundational aspect of an effective regulatory programme includes horizon scanning to address emerging compliance matters, as well as issue monitoring. Staying ahead of potential regulatory changes allows compliance professionals to educate and collaborate with their business partners to provide

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*Nadine Küster,  
Danone*

effective recommendations for how a company should flex to comply with regulatory requirements.

**Küster:** Not every company is facing the same risks. A company's risk and regulatory landscape builds the basis for a good compliance programme. Therefore, a thorough risk assessment and the mapping of risks and applicable laws and regulations should be the starting point when building a compliance programme. After all, it is important to ensure the right level of resources to manage compliance. This includes human and financial resources. Third, solid and reliable

processes are crucial to manage, for example, recalls or labelling or food safety requirements. Further advice would be to use quiet times to get prepared for crisis. Especially in the case of a recall, implementing the right actions and taking the right decisions is highly important to guarantee consumer safety and business continuity. Crisis simulations or conducting mock recalls on a regular basis will help staff to master a real crisis situation.

**Chasen:** It all comes down to transparency. Companies have the opportunity to differentiate their brand based on increased transparency and build a reputation of responsibility to gain the trust of their target consumers. Organisations that lead and voluntarily adopt early can help set the standard and define the conversation. Whether it is caloric disclosure, organic or GMO labelling, farm-to-table traceability, sourcing from facilities with confirmed ethical animal treatment, or other matters, if a company makes transparency a hallmark of its brand, the market will respond favourably. An effective regulatory compliance programme should be a cross-functional initiative, involving product development, innovation, supply chain, operations, human resources or talent, finance, legal, public relations and engineering, among others. An effective programme is also more than a

'check-the-box' exercise, as it must align with the strategic and operational goals of the organisation.

**R&C: Do you believe businesses in the industry need to do more to meet compliance requirements and improve internal monitoring and response processes going forward?**

**“Technology and enhanced oversight are two considerations that a company may deem helpful when managing risks to its business.”**

*Sarah R. Foley,  
The Hershey Company*

**Chasen:** There are good compliance programmes out there, but overall, many food companies need to do more. This is probably even more relevant for organisations with significant franchise operations. What we are seeing is that some companies feel that they often cannot afford to be excellent in every core programme of compliance, so they select key risk areas to focus on and excel in. However, they need to be cognisant of areas that they are not prioritising to

make sure that they do not fall behind and catch the attention of regulators. Additionally, companies should also view compliance through the lens of growth. Compliance is not in opposition to brand growth; on the contrary, it often enables it. Leading organisations with a strong compliance culture also emphasise prevention, not just detection and monitoring.

**Küster:** It is difficult to say how other businesses are operating. But I believe the early involvement of regulatory and compliance experts is becoming more important. Nowadays, laws and regulations affect every step of your business. To ensure compliance from the very beginning, the development of a new product or a new communication strategy can guard against the unpleasant impact of non-compliance, such as administrative fines or product recall.

**Foley:** Companies can always do more from a compliance perspective, but perhaps what is of the utmost importance is establishing and maintaining a risk-appropriate compliance programme that addresses regulatory impacts based on its operating model and commercial initiatives. In addition, compliance professionals establishing solid relationships with other internal stakeholders, such as general managers, internal audit and controllers, helps create a strong governance framework and compliance culture within an organisation. Maintaining cross-functional relationships reinforces the fact that compliance is an important topic for everyone

at a company and strengthens expectations around appropriate behaviours and accountability.

**R&C: What processes and tools should the industry consider as it works to remain compliant with a multitude of regulatory requirements, and create a programme in which it can proactively manage risk?**

**Küster:** A regulatory monitoring process helps companies to stay on top of new or changing regulations. Processes to validate product composition, packaging materials and communication materials are also important. Tools and processes to ensure traceability of products and support the company in the event of a recall or any enforcement activity should be in place as well. Risk and regulations mapping should remain up to date all the time. Action plans should be in place to proactively mitigate top risks. Test processes on a regular basis to ensure they can be relied upon in crisis situations.

**Foley:** Technology and enhanced oversight are two considerations that a company may deem helpful when managing risks to its business. This combination can help integrate compliance within overall business processes, especially for newly-acquired entities that may introduce a new operating model or risk profile for the acquiring entity. The act of integrating compliance within business processes and initiatives is only one step, however. Being able to reflect on

what is working or not, because of these efforts, is equally important to ensure that value continues to be provided to the company. In addition, self-assessments and 'pulse checks' are important to help identify how regulatory and compliance risks are viewed by internal business stakeholders.

**Chasen:** There are a multitude of compliance technology options available and many of them can do some remarkable things. Right now, robotic process automation and natural language processing are being leveraged more in compliance functions. Technology combined with a focus on governance and compliance can help enable a business. Database and analytics capabilities have also become very sophisticated, and there are technologies that now help organisations to identify, organise and harmonise regulations across compliance areas and jurisdictions globally. This enables companies to implement the proper programmes, processes and controls to facilitate compliance in a manageable and cost-effective manner. Companies should be considering ways to leverage technology to do more in terms of compliance and elevating compliance within the organisation.

**R&C: Given that effective monitoring of compliance in the field is a longstanding challenge in the sector, how are compliance functions innovating in order**

**to have 'eyes in the sky' more consistently and effectively in the field?**

**Foley:** Innovation within the compliance field is imperative to staying relevant, and extending relationships beyond the compliance and legal departments is key to maintaining an effective compliance programme. Some examples include engaging with finance, human resources and trade compliance, among others, across a company's various locations, to provide 'boots on the ground' that help a compliance function identify 'red flags' and promptly identify changes in the regulatory landscape for that country or region. Empowering internal business partners to act as 'compliance champions' can also help companies to highlight expectations around operating with integrity.

**Chasen:** For a long time, probably too long, compliance has been a back office, corporate function that did not really get its hands dirty in the field. That is changing. Smart food companies are realising that the bulk of their risk is not in the boardrooms of headquarters, but in the field. Embedding compliance into operations is something companies should be doing now, and it is where the future is headed. This will not only enable a more confident compliance posture for the food industry, it can also help to bring forth operational excellence. Instilling the virtues of compliance in the field, where frontline workers have

a key role in ensuring compliance, is essential. If done correctly, a culture of compliance can elevate the entire organisation.

**Küster:** Training and audits are probably still the best way to ensure compliance. Conducting interviews internally and with business partners or the implementation of whistleblowing systems, can help uncover compliance gaps and enable corrective actions to be taken. All of this can be supported by digital tools. However, I believe the success of compliance also lies in the creation of a compliance culture. Therefore, the right ‘tone from the top’ and role modelling of management is also very important to influence behaviour.

### **R&C: To what extent is the sector seeing any operational excellence benefits as a result of a stronger focus on compliance?**

**Chasen:** There is a lot more overlap between compliance and operations than many organisations may think. Historically, the compliance function has had a reputation of being the ‘no-police’. Today, leading food companies are recognising that there is a clear alignment of interests between compliance and operations. Instead of compliance being the function that limits organisations, it is becoming more apparent that compliance in fact ensures that organisations run smoothly and efficiently, thereby resulting in greater operational benefits overall. Companies that adopt

the approach that compliance enables operations are seeing the benefits in the bottom line. Getting better at compliance helps companies be better at what they do.

**Küster:** I believe that compliance is a key pillar for sustainable business growth. Compliance problems not only cost money but, more importantly, lead to reputational damage and a loss of trust from business partners and consumers. This may lead to a loss of business. A company’s long-term commitment to compliance reduces costs and improves operations and processes. Creating a culture of compliance and promoting compliant behaviour positively changes how a business collaborates, both internally and externally.

**Foley:** Compliance departments are being asked to do more with less. Despite these potential constraints, the quest for commercial growth should not be overlooked. Compliance efforts should not hinder the business; instead, compliance professionals should proactively identify new skills and approaches that are critical to helping their internal business partners deliver their strategic goals, all the while minimising risk and exposure. Compliance can be a critical ‘touch point’ as the company establishes and implements its commercial initiatives, as it can help with risk analyses and return on investment expectations – all information that assists the company make informed operational- and business-related decisions. **RC**