Barriers against globalizing corporate ethics

BARRIERS AGAINST GLOBALIZING CORPORATE ETHICS: AN ANALYSIS OF THE LEGAL DISPUTE ON WAL-MART'S STATEMENT OF ETHICS IN GERMANY

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Paper accepted for presentation at The Fourth ISBEE World Congress

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Abstract: The case of Wal-Mart in Germany and the lawsuit on its Statement of Ethics demonstrate some of the business ethical complexities and traps companies have to consider when they go global. The paper analyzes the impact of different legal and cultural frameworks on the admissibility and appropriateness of codes of ethics, the different types of standardization applicable in codes of ethics as well as the potential conflicts between corporate and personal interests. The analysis tackles the issues of global versus local codes of ethics, rule-based versus principle-based approaches of standardization, and of restricting versus protecting employees' privacy to advantage corporate affairs.

Keywords: Codes of conduct; Codes of ethics; Codetermination; Principles; Privacy; Rules.

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INTRODUCTION

In December 1997, Wal-Mart – the world's largest retailer – entered the German market. As part of Wal-Mart's global ethics strategy, the firm established its 'Statement of Ethics' in the German subsidiary and imposed on German employees to obey the norms put forward in this code. German employees and their representatives filed an action against this code and substantiated their claims with reference to German rules of codetermination which are stipulated by law and which were allegedly ignored by Wal-Mart when the company had implemented its code in Germany. Legal judgments on this case were rendered on two levels of judicial authority. Appealing against the second judgment was still feasible at the German Federal Court. However, Wal-Mart did not exhaust these remedies after exiting the German market due to persistently inferior business performance and selling its German operations in the year 2006.

The present paper analyzes this case in more depth because it highlights some of the business ethical complexities and traps companies have to consider when they go global. This analysis provides insights into the impact of different legal and cultural frameworks on the admissibility and appropriateness of codes of ethics, into the different types of standardization which can be applied in codes of ethics as well as into the potential conflicts between corporate and personal interests which firms have to cope with. The analysis tackles the issues of global versus local codes of ethics, rule-based versus principle-based approaches of standardization, and of restricting versus protecting employees' privacy to advantage corporate affairs.

THE CASE OF WAL-MART IN GERMANY

Market Entry and Market Exit

In December 1997, Wal-Mart entered Germany by an agreement with the Mann family to acquire the Wertkauf hypermarket chain. The attractiveness of an investment in Germany resulted from the size and the location of this market. Germany is the biggest market in Europe, centrally placed on the continent and hence also contiguous to the fast growing states of central and east-

ern Europe (e.g., Arnold, 1999; Fernie, Hahn, Gerhard, Pioch and Arnold, 2006; Christopherson, 2007). The acquisition of the 21 Wertkauf hypermarkets was completed on 30 December 1997. One year later, on 9 December 1998, Wal-Mart announced that it had reached an agreement to purchase 74 units of the Interspar hypermarket chain from Spar Handels AG, a German company that owns multiple retail formats and wholesale operations throughout the country. According to Bob L. Martin, the then president and chief executive officer of Wal-Mart International, the acquisition demonstrated Wal-Mart's commitment to invest in Germany and its continued optimism about this market. The acquired Interspar hypermarkets had combined annual sales of about US-$ 1.7 billion and the average unit provided 73,000 square feet of selling space. They were hence smaller than an average Wal-Mart store in the U.S. as well as an average Wertkauf store. In addition, the size of the acquired Interspar stores varied considerably (Gerhard and Hahn, 2005). The combined companies of Wal-Mart Germany employed more than 14,000 people. The former Interspar headquarters in Wuppertal became the seat of Wal-Mart in Germany.

The acquisitions allowed Wal-Mart a comparably fast entry into the German market (Aoyama and Schwarz, 2006). The entry mode by acquisitions may have, among other things, been selected because of rather disappointing joint venture experiences made in South America and Asia (Arnold, 1999). In addition, starting the business from scratch was not a viable option because of the highly regulated and protracting issue of building licences in Germany (Hurth, 2003; Gerhard and Hahn, 2005; Aoyama and Schwarz, 2006). Due to these transactions, Wal-Mart became the fourth largest operator of hypermarkets in Germany. However, with regard to sales and market share, Wal-Mart was not even ranked among the top ten German retailers (Gerhard and Hahn, 2005). In 2002, the turnover amounted to about EUR 2.9 billion. This corresponds with a stagnating market share of just 1.1 per cent (Knorr and Arndt, 2003). As a result, Wal-Mart's impact on the German market has been marginal (Fernie, Hahn, Gerhard, Pioch and Arnold, 2006).

From the beginning, Wal-Mart faced severe difficulties in the German market. A few scholars have attributed these failures primarily to external circumstances rather than company-specific deficits. For instance, Shugan (2007) refers to antitrust regulations which ban prices for selling products below costs, to limited shopping hours and to the (obstructive) exercise of trade unions in Germany. Whereas these forces may hamper competition to some degree – at least partly in accordance with their underlying intention to protect fair competition and employees' interest, they can, by no means, explain Wal-Mart's failure because its competitors faced identical environmental conditions. Therefore, management problems have to be taken into consideration, too (Hurth, 2003; Knorr and Arndt, 2003; Gerhard and Hahn, 2005). More specifically, the acquisition targets turned out to be rather weak (Christopherson, 2006). In particular, many Interspar stores were in poor locations, suffered from low profitability and were in need of renovation (Hurth, 2003; Gerhard and Hahn, 2005; Aoyama and Schwarz, 2006). The management did not succeed to integrate the two separate acquired chains with their different organizational cultures and a rather heterogeneous portfolio of stores (Fernie, Hahn, Gerhard, Pioch and Arnold, 2006). Moreover, the management style lacked sensitivity for business, cultural and legal peculiarities within the German setting. Consequently, Wal-Mart remained unable to attract German customers for its value proposition. The firm did not achieve low-price leadership due to a lack of scale economies, inefficient cost structures and the dominance of hard discounters in the German market. Limited awareness of cultural and legal specifics also led to bad publicity as Wal-Mart was violating social and legal norms (Christopherson, 2007). A number of different CEOs appointed to Wal-Mart Germany were unable to improve the standing of the firm within this market.

Christopherson (2007) estimates that Wal-Mart had been losing about US-$ 200 million every year of its operation in Germany. On 28 July 2006, Wal-Mart announced the sale of its German retail business to Metro AG. Two months earlier, the company withdraw from the Korean market, too. Interestingly, the disclosed reasonings of both market exits were extremely

similar. Michael Duke, Vice-Chairman of Wal-Mart Stores, Inc., explained that the company had decided to focus its efforts on the markets where Wal-Mart can achieve its strategic objectives with regard to growth and return on investment. At the same time, he admitted that 'it had become increasingly clear that in Germany's business environment it would be difficult for us to obtain the scale and results we desire' (Wal-Mart press release of 28 July 2006). The transaction to divest the German chain was expected to incur a pre-tax loss of approximately US-$ 1 billion. While Wal-Mart's financial resources may have been sufficient to cover these losses for some more while (e.g., Gerhard and Hahn, 2005), the publicly listed firm may have feared shareholder pressure to remedy these defects and apparently did not perceive promising perspectives in this regard. The decision to withdraw from the German market may therefore reflect that Wal-Mart's shareholders lost patience that the investment in Germany would produce a profit in the foreseeable future (Christopherson, 2006).

Wal-Mart's Statement of Ethics

In 1970, Wal-Mart stock was offered for the first time on the New York Stock Exchange (NYSE). A listing at this stock exchange requires to establish a code of ethics. In connexion with the Sarbanes-Oxley Act of 2002, the Listing Company Manual has been modified. According to #303A.10 of the Manual, listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. The Manual concedes that each listed company may determine its own policies. However, these policies should address regulations on conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations (including insider trading laws) as well as encouraging the reporting of any illegal or unethical behaviour. Proactively promoting ethical behaviour includes to encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. In addition,

employees should report any violations of laws or the code of business conduct to appropriate personnel without fear of retaliation for reports made in good faith.

Wal-Mart's Statement of Ethics satisfies the requirements put forward by these NYSE regulations. At the beginning of the 30 pages document, a message from the Chairman of the Board as well as the President and CEO summarizes the commitment of the firm. Subsequently, the three basic beliefs of the company are specified: Respect for the individual, service to the customers and strive for excellence. Below, ten guiding ethical principles are enumerated which employees and directors are expected to apply. The Statement of Ethics itself contains information on how to use the Statement and how it is organized, an introduction which provides an overview on the content of the Statement and the various responsibilities demanded from employees, an explanation of the recommended procedures when ethics concerns have arisen, as well as an outline of important company policies. These policies refer to responsibilities to the company and its shareholders, to fellow employees, to suppliers, competitors, customers, communities and governmental authorities as well to responsibilities regarding international business practices. These policies also address the topics quoted in the NYSE Manual.

Wal-Mart has implemented this Statement in all units and subsidiaries of operation. An ethics office has been established to which ethical concerns can be communicated. In each country a toll-free phone number can be used to contact the office. The Statement has been translated into the home languages of the countries where Wal-Mart operates business. A German version of the Statement has been communicated to all German employees. The pay slips of February 2005 contained a four pages summary of the Code. Moreover, at the bulletin board and the personnel division of every Wal-Mart location in Germany a poster was hung which displayed excerpts from the Statement and to use the ethics hotline in the case of alleged violations against the Statement.

Legal Proceedings on the Code

The works council of Wal-Mart Germany took legal actions against this Statement because it felt its codetermination rights to be violated. Depending on the size of the firm, the German Works Constitution Act (*Betriebsverfassungsgesetz*, BVerfG) allows employees to establish works councils which are granted certain information, consultation and participation rights in order to attend the interest of the workforce. The number, the size and the specific competencies of these councils also depend on the size as well as the structure of the firm. Essentially, these codetermination rules are recognized as a vehicle to protect employees against unfair treatment (e.g., Wiedemann, 1980). The works council shall improve the employees' chances of being able to assert themselves against the employer who tends to be their economic and intellectual superior (Belling, 2000: 6). Works councils are mandatory but not automatic in German establishments with at least five employees because they must be voted in by employees (Addison, 2005). Although works councils can be elected in all establishments or plants of business organizations with five or more employees qualified to vote, German hard discounters frequently manage to remain without codetermination. In contrast, the two hypermarket chains which Wal-Mart acquired were rather strongly unionized (Christopherson, 2006), i.e., a comparably large portion of the workforce was union member and legally admitted rights of employees' participation via the establishment of works councils were extensively utilized. While there are still no unionized Wal-Mart stores in the U.S. (e.g., Johansson, 2007), Wal-Mart was hence unable to continue its anti-union labour practice and to remain union-free in Germany. Wal-Mart's U.S. managers who are known to be articulately anti-union (Cascio, 2006; Christopherson, 2006; Basker, 2007) were unfamiliar with the legally required role of the works councils and consulted them only sporadically (Christopherson, 2006). However, the employer may independently issue ethical norms of conduct only as long as their content does not refer to topics and regulations which are captured by the Works Constitution Act. Issuing such Code norms requires consultation with the works council. The works council argued that the establishment and the concrete

content of the Code are subject to codetermination. Since Wal-Mart did not consult with the council, the council claimed that the Code is invalid and that Wal-Mart shall suffer monetary fines if the firm maintains to oblige its German employees to follow the Code and rejects to withdraw the document.

At the first level of jurisdiction, the Labour Court Wuppertal accepted these claims to a large extent. Accordingly, ten objections made by the works council were accepted. Wal-Mart appealed this decision. After an agreement with the works council regarding alcohol and drug tests, the following issues remained in dispute: Regulations on raising and disclosing ethical concerns by employees, receiving gifts or gratuities, releasing statements on behalf of the firm to the media, preventing harassment and inappropriate conduct, accessing company personnel and medical records, as well as banning fraternization. At the second level of jurisdiction, the Regional Labour Court Düsseldorf had to decide whether these Code norms were subject to co-determination.

On 14 November 2005, the Court rendered the judgement that the codified requirement to use the telephone hotline, the prohibition to accept any gifts or gratuities as well as the Code norms for preventing harassment and inappropriate conduct were subject to codetermination. According to section 87 para. 1 #1 of the Works Constitution Act, the works council shall have a right of codetermination in matters relating to the rules of operation of the establishment and the conduct of employees in the establishment. The Code norms are subject to codetermination because their content refers to the social order in the establishment (rather than to directly substantiating the required job performance), goes beyond legally stipulated duties of conduct and therefore features some latitude which ought to be utilized jointly by the employer and the works council. Employees have to defend damages from the employer, must not accept a bribe and have to be protected by the employer from sexual harassment. However, the concrete Code regulations of Wal-Mart's Statement of Ethics do not simply replicate existing legal requirements. Rather, they provide very specific, and more extensive, procedures for employee con-

duct. Using the ethics hotline, employees shall not only report legal wrongdoings but (alleged) violations against the Code as well. The prohibition to accept any gifts or gratuities largely exceeds anti-corruption rules and also excludes, for instance, to receive valueless appreciation gifts like advertising ball-pens. Similarly, the Code norms for preventing harassment and inappropriate conduct go far beyond the legally required measures according to the Employees Protection Act (*Beschäftigtenschutzgesetz*, BeschSchG) which has meanwhile been substituted by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG). The Court does not conclude that such extensive regulations are necessarily inappropriate. Rather, the Court clarifies that the corresponding Code norms are related to the rules of operation of the establishment and the conduct of employees in the establishment and therefore subject to codetermination.

In contrast, the employer is allowed to issue the directives that press information may only be given on behalf of the firm after approval by an authorized division and that access to personnel files and records is restricted to authorized persons in order to protect privacy. The employer has the decisional authority to determine who shall be authorized to release press statements of the firm. This decision does not refer to the social order of the establishment and is therefore not subject to codetermination. The Code norms to restrict access to personnel files and records are in accordance with corresponding duties of the employer who has to assure that inspections of these files are not allowed unwarrantedly. These restrictions are by no means opposed to the requirement that the employee shall have access to his or her personal file and that (s)he may call in a member of the works council in this connection as stipulated in section 83 para. 1 of the Works Constitution Act.

Finally, the employer is not allowed to ban personal and romantic relationships between employees. Such restrictions contradict basic German constitution norms and are therefore, irrespective of the issue of codetermination, void. The Court concedes that the Ethics Statement does not proscribe each and every personal or romantic relationship among employees. Rather, the Code only refers to relationships between associates if one of them can influence the other's

terms and conditions of employment and if the two are therefore in a state of dependence within the firm. Hence, supervisors and superiors are enjoined from dating subordinates. Nonetheless, the Court asserts that this restriction is a too far-reaching invasion of the employees' privacy. The Court acknowledges that private and in particular romantic relationships between firm members are not very welcome in many companies. However, banning such relationships in general violates the personal rights of these individuals to freely develop their personalities and to actualise their lives according to their own preferences. The Court explains that individuals spend a lot of their time at work, that many of their social contacts are shaped by work experiences and that their self-esteem will also depend on how they are seen by colleagues and other members of the firm. Meeting colleagues and other members of the firm after work is for the time being a personal matter of the involved individuals. The right to privacy is at the core of human dignity (e.g., Dorff, 1997). The Court therefore concludes that the corresponding Code obligations to ban fraternization contradict the fundamental norms of the German Basic Law (*Grundgesetz*, GG) which claims that the dignity of man is inviolable (article 1 para. 1) and that everyone has the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral code (article 2 para. 1).

DISCUSSION

Global versus Local Ethics Strategies

Firms which go global have to decide what kind of ethics strategy they intend to apply. A major issue in global ethics decision-making is the extent to which managers (shall) use home-country versus host-country ethical standards (Carroll, 2004). In general, firms which operate in various countries can hence implement roughly either a global ethics strategy or a local one. Global ethics strategies claim that there are universal norms of business ethics which may demand validity worldwide. Such global norms could, accordingly, be included into a global code of ethics, i.e., a corporate code of ethics which shall be binding in the mother company and all subsidiaries

(note that the term global code of ethics is frequently used differently to refer to supra-company codes of ethics, see, e.g., Cavanagh, 2004; Schwartz, 2005; Sama, 2006). A local ethics strategy, in contrast, establishes somewhat different ethics programs in the various countries of operations. This strategy reflects the notion that cultural and legal peculiarities inhibit the establishment of a unitary code of ethics. Rather, each country or region has to develop its own code of ethics in order to adapt to country- or region-specific norms of good and responsible behaviour (for more nuanced typologies, see, for instance, Donaldson and Dunfee, 1999: 217; Arthaud-Day, 2005; Sama, 2006).

This dichotomy mirrors the distinction between universalistic and relativistic approaches to ethics (cf., for instance, Donaldson and Dunfee, 1999: 22-23; Carroll, 2004; Windsor, 2004). Regarding the implementation of corporate ethics, both strategies have strengths and weaknesses. Wal-Mart has implemented a global ethics strategy. Its Statement of Ethics constitutes a global code of ethics which obliges to be observed by all associates in all countries of operations. Ethics programmes and strategies have to match the contingencies of a certain firm (cf. Talaulicar, 2006: 545). More specifically, overall corporate strategy can be expected to have direct implications for a firm's ethics orientation and practice (Arthaud-Day, 2005). A global approach, as the one Wal-Mart has pursued, seems to fit the strategy of global retailers because they expand internationally using a specific business model as a proven standard retail format (Salmon and Tordjman, 1989). Moreover, to succeed in their business, retailers largely depend on their customers. Due to their interactions with the final consumers, large retailers have a rather high visibility and extensive media coverage. Many retail issues with an ethical dimension have recently gained increased attention in the general media (Whysall, 2000). As a consequence, large retailers may be particularly vulnerable to consumer boycotts (cf. Pines and Meyer, 2005). In order to meet the expectations of their constituencies and to avoid to become the target of customer boycotts, large retailers may promote ethics to improve their frequently rather negative image (Lavorata and Pontier, 2005). Customer pressures are therefore a very

important motivator of retailers to engage in ethics and corporate social responsibility (Piacentini, MacFayden and Eadie, 2000).

Many retailing companies address corresponding concerns and have responded to criticisms with a range of ethics initiatives. In particular, they admit that global sourcing must not only be a means of low-cost procurement. Rather, global sourcing has also to consider basic ethical standards with regard to working conditions as well as protecting the environment. Therefore, large retailers have commonly adopted codes of conduct to compel their suppliers to observe certain standards (cf. Vandenbergh, 2007). Such codes suggest acceptance of responsibility and accountability for the operating decisions that may affect the interests of a number of stakeholders and the working conditions of suppliers (cf. Sama, 2006). Wal-Mart established its Standards for Suppliers in 1992 (for details, see Backer, 2007). This code of conduct pertains to matters such as compensation, hours of labour, child labour, health and safety as well as the environment. Wal-Mart expects its suppliers to comply with the codified conditions of employment and reserves the right to make inspections to monitor and implement these standards. Such private contracting may be a promising avenue to reduce negative externalities (Vandenbergh, 2007), although these codes should not necessarily be interpreted as a contract binding on foreign suppliers and their employees (Kenny, 2007). While there has been some debate whether or not such imposed standards are indeed the best way to support economic improvements in less developed countries (e.g., Zwolinski, 2007), large retailers have hardly a choice to omit such standards. The public in their home countries expects that certain standards shall be binding even for independent suppliers which do not belong to the respective retailing company. Even more, global businesses which engage in global operations and benefit from more open trading systems are expected to play an active role in reducing deplorable conditions in their countries of sourcing and operation (e.g., Bachman, 2000).

Against this background, a global ethics strategy may also appear to be dominant with regard to the own operations of the retailers. Imposing universal standards on suppliers and em-

ploying a local strategy with regard to the own operations appears to be rather inconsistent and may at least require more detailed explanations. The reluctance to globalize the own ethics policy may evoke criticism that the retailer only responds to customer concerns in its home country, lacks true commitment to the underlying values and is not genuinely interested in acting ethically. As De George (1993: 7) explains, the reputation for being ethical depends not only on acting ethically but also on being perceived as acting ethically. Corporations which pursue a global strategy are more likely to define their ethics policies centrally (Arthaud-Day, 2005). Global retailers will therefore tend to establish universal codes of ethics which shall be binding for all of their employees irrespective of their country of operation. Indeed, the world's largest retailers have established such global codes which shall be applied in all countries of their operation. A global code also reflects that there are some moral norms which may claim universal validity (e.g., De George, 1993: 19; Donaldson and Dunfee, 1999: 68; Schwartz, 2005). However, global codes of ethics can be designed very differently and can take various forms. This leads to the issue of the degree of speciality versus generality such global codes can (or should) feature.

Rule- versus Principle-based Code Norms

Codes of ethics are frequently characterized as well as differentiated with regard to the concreteness of their norms. For instance, Brenner and Molander (1977) distinguish between general precept codes and specific practice codes. Benson (1989) differentiates credos, which lack specific instructions to employees, and codes, which are often detailed. Similarly, Robin, Giallourakis, David and Moritz (1989) contrast value-based codes with little specific guidance and rule-based codes with very specific guidance. These classifications have in common that they differentiate codes with regard to the concreteness (i.e., the specificality or specificalness, respectively) of their norms. Moreover, they utilize an ordinal measure of concreteness. Accordingly, codes can contain more specific or more general norms. However, the applicable thresh-

old remains unclear. One may hence debate whether a certain code has to be characterized as a specific or a general one. In addition, comparing two codes on their concreteness may (frequently) be fruitless because a conclusive comparison requires that the norms of one code are a logical subset of the others' (Talaulicar, 2006: 273-280). Therefore, a qualitative distinction may be more promising which allows a more precise assignment of a code as either specific or general.

A qualitative distinction can be borrowed from legal philosophy. In legal philosophy, the distinction between rules and principles has a long tradition (Dworkin, 1977; Alexy, 1994; Borowski, 1998). Rules and principles are qualitatively different kinds of norms (of course, there are different meanings of this distinction available, see, for instance, Sama, 2006). In short, rules are definite obligations, whereas principles obligate to approximate ideals. This distinction mirrors the concreteness of the norms. More specifically, rules tend to be more concrete because they explicitly define which conduct the norm addressees have to apply. In contrast, principles remain more general. Their ideals cannot be applied straightforward. Rather, the addressees have to balance the factual and normative circumstances in order to decide in specific situations which degree of fulfillment of the ideal is deemed appropriate. As a result, principles tend to leave a higher degree of discretion to the addressees and require higher capabilities of these persons because they have to be willing as well as able to take the factual and normative circumstances appropriately into consideration (for details, see Talaulicar, 2006: 295-344).

Applying this distinction to the Statement of Ethics reveals that Wal-Mart has adopted a rather rule-based code. The Code norms constitute specific obligations which employees ought to observe. The preamble of the Statement clarifies that no code of ethics can spell out the proper conduct for every situation and that employees therefore have to rely on their own judgment and sense of ethical behaviour to make sure that they do the right thing. However, the vast majority of the Code norms do not leave much discretion. Rather, they feature extremely definite obligations. This holds particularly true for the highlighted 'Things to Remember' within

this Statement. With regard to gifts and gratuities, for instance, the Code states that any gift or gratuity received from a supplier must be returned with an explanation of this policy, that any gift that is not returned becomes the property of Wal-Mart and that any offer of a gift or gratuity must be reported to the supervisor.

Wal-Mart also turned out to be unable to defend its Code successfully at the German courts due to the concreteness of its norms. One may hence conclude that global ethics strategies tend to be more consistent if they utilize rather principle-based approaches for codifying ethical conduct. This conclusion does not apply generally. Rather, the Higher Labour Court did not exclude that the regulations on gifts and gratuities could not be reconciled with German law. However, due to their concreteness the process of implementing these Code norms violated mandatory rules of codetermination. In contrast, a more principle-based codification may have been legally permissible even without consulting the works council in advance. However, the Court also judged that the Statement contains norms which are not applicable in a German setting.

Restricting versus Protecting Privacy

With regard to the topical content of the Statement of Ethics, the Regional Labour Court judged that the norms on banning fraternization are an illegitimate intrusion into the employees' privacy and for this reason incompatible with the German Basic Law. This judgment may have come with some surprise because the constitutions of other countries including the U.S. also contain legal standards for protecting the right to privacy, although this protection may be partly less comprehensive (cf. Mayer, 1991; Spinello, 1998; Kovach, Jordan, Tansey and Framinan, 2000). Moreover, various U.S. companies have codified similar Code norms like Wal-Mart. Corresponding norms are hence not uncommon in ethical codes and related documents by U.S. companies. For instance, PETCO – a leading specialty retailer of premium pet food, supplies and services which operates over 850 stores – states in its Code of Ethics that the firm strongly discourages romantic or sexual relationships between co-workers and strictly prohibits such frater-

nization between supervisors and anyone they directly or indirectly supervise or who is in their chain-of-command. The Code explains that PETCO believes that fraternization (such as dating or other types of repetitive socializing outside the normal business relationship) between associates and supervisors, or between management personnel where there is a direct or indirect reporting relationship, puts undue pressure on the working relationship. The firm therefore demands that associates whose relationships are prohibited or may be considered questionable must notify their supervisors of the relationship. Finally, the document clarifies that associates who fail to disclose such relationships may be subject to disciplinary action, up to and including separation.

Apparently, these regulations are rather similar to the norms put forward in Wal-Mart's Statement of Ethics. However, PETCO does not operate stores abroad. Intriguingly, many global U.S. firms may share the beliefs and motives backing these Code norms but refrained from codifying as specific regulations as Wal-Mart or PETCO did. The underlying motivation of these Code norms may gain common approval as these Code norms basically intend to contribute to the avoidance of conflicts of interests. However, achieving this (widely respected) goal may not overweigh all other normative considerations under all discernable circumstances. In the same vein, privacy is not an absolute right (e.g., Dorff, 1997) and there are degrees of privacy (e.g., Moore, 2000). Rather, some limitations to the right to privacy may be legitimate and reasonable if they are sufficiently well-founded and justified. A principle-based codification therefore appears to be a better suited codification strategy. Accordingly, more general ideals are put forward in the code which need to be balanced in certain situations. This balancing may lead to the conclusion that specific relationships may be inappropriate and may create serious conflicts of interest. However, this codification respects the privacy of the employees too a higher degree and does not compromise privacy issues in general in order to advantage corporate affairs.

Comparing U.S. codes of ethics with European codes as well as the reasoning by the Higher Labour Court in Germany indicate cultural and legal differences with regard to the extent of admissible codifications. Even within the U.S., employees enjoy a more rigorously protected right of privacy if they are employed in the public rather than in the private sector (e.g., Wilson, Filosa and Fennel, 2003). Naturally, there are even more pronounced differences across various countries (e.g., Plá Rodríguez, 1995). Global firms in general and large retailers in particular have to be aware of these differences and need to take them into consideration. Westfield (2002) therefore recommends that the substantive content of codes of global enterprises must be flexible enough to respect global employment and labour rights as well as to allow an appropriate adaptation to the norms in various host countries. Against this background, a global code may start with a more general principle-based approach which can be specified over time if indeed deemed necessary and appropriate.

CONCLUSION

A global code of ethics may be desirable and sometimes perhaps even indispensable in the case of global firms in general and global retailing companies in particular. However, a too specific code may evoke conflicts because universalizing specific requirements faces greater difficulties and barriers. In contrast to more general principles, specific rules tend to clash more pronounced with local customs, cultural as well as legal norms. Principles do in general conflict with other norms to some degree because they require to approximate ideals which cannot be completely fulfilled under realistic conditions. Therefore, applying principles always demands to assess the appropriate degree of their realization. This balancing has to take factual as well as normative considerations into account. However, such balancing must not be confused with a relativistic position. Rather, principles constitute universal norms. They demand equal application under equal conditions. Since global firms face various conditions, a principle-based approach provides better opportunities to adapt to these various contingencies. This does not imply

that global codes shall not include rules in general. However, the appropriateness of such rules as well as their implementation have to be delineated even more carefully if these definite obligations are to be applied in various settings.

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