

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor



Companies have more oversight and control mechanisms than ever before. Yet serious failures continue to emerge. Corporate Governance expert Daniel Lucien Bühr explains why more regulation is unlikely to solve the problem, and why boards should measure the effectiveness of oversight and control.

Mr Bühr, companies today have boards, statutory auditors, compliance teams, risk management departments and extensive internal controls. Why do serious failures still occur?

Every organisation experiences failures, not every objective is achieved, and people make mistakes. And I am not convinced that serious incidents are more common today than they were in the past. However, they are detected sooner, are documented more thoroughly and often become public.

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

The broader issue is that oversight and control do generally not perform well enough across organisations.

«Over the past 20 years, companies have added more control functions without adapting their governance accordingly.»

Even though companies have invested heavily in expanding their controls?

That is part of the problem. Over the past 20 years, companies have added more control functions without adapting their governance accordingly. There are now numerous checks in place, but basic questions often remain unanswered: Who does what? Who is accountable for which tasks? How do the different control functions work together? And who ultimately takes responsibility for the internal control system as a whole?

The result is a diffusion of responsibility. Nobody feels accountable anymore.

So, is this really an accountability problem rather than a control problem?

The two are inseparable. Responsibility for effective oversight and control ultimately rests with the organization's governing body. In a Swiss company limited by shares, that responsibility lies with the board of directors. If oversight and control fail, there is thus both a control problem and an accountability problem.

Another problem is the disproportionate attention devoted to strategy: new markets, new products, higher revenues and greater profits. Execution of strategy and board decisions, and compliance and risk management often receive far less attention.

Why have repeated corporate scandals failed to bring about more change?

Over the past decade, we have not consistently developed and implemented governance models that meet today's oversight and control requirements.

Boards also spend too little time, critically examining whether their own decisions are carried out. Are employees actually following the rules? Is that also the case at subsidiaries abroad? Do management reports reflect what is happening in reality?

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

«Too few people are willing to challenge decisions and processes independently and persistently.»

Have people lost the habit of asking difficult questions?

Critical questioning is not always seen and valued as a sign of acumen and professionalism. Too few people are willing to challenge decisions and processes independently and persistently. Yet that is a core responsibility of a board member. They must be prepared to ask uncomfortable questions and keep pressing for accurate and complete factual answers until they understand what is really happening.

Does that mean some boards have the wrong people on them?

This is certainly an issue. Nominations for governing bodies are often based on personal connections or existing relationships of trust. There should be much greater scrutiny of whether candidates' professional experience, character, independence and willingness to challenge make them suitable for the role.

Particularly in large organisations facing significant risks, board appointments should follow transparent, professional selection processes.

What would that look like in practice?

Key roles should be filled based on clear selection criteria, with at least two qualified candidates considered for each position. The aim is to make a more objective assessment of who is best suited for the task.

An effective governing body needs a combination of strong and independent personalities, respected specialists and experienced executives. Getting that mix wrong comes at a cost.

What kind of cost?

If you look at cases where problems have built up over years, very often the failure was not something no one could have foreseen. The risks were often widely known, warning signs were present, or systemic weaknesses were apparent.

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

When such situations result in substantial harm, questions inevitably arise about the quality and effectiveness of leadership, oversight and control.

How can you tell whether an organisation has good governance?

One simple test is to ask a senior leader to draw the organisation's oversight and control framework on a blank sheet of paper. Which control functions exist? How do they interact? Who reports to whom? How is structural independence of control functions safeguarded? Who oversees the control framework itself? And what responsibilities are assigned to the board and the audit committee?

The clarity, coherence, and completeness of that diagram often reveals more about the quality of governance than any formal policy document.

But who holds the board to account?

The legal standard is clear. Swiss company law requires members of the board of directors and the members of executive management to perform their duties with all due care.

«The conduct of those at the top has a multiplier effect throughout the organisation.»

This is the highest standard of diligence and care under Swiss law. As a matter of principle, the board must act exemplary in complying with the law and the company's internal rules. Of course, people can make mistakes. But compliance with the law, commitment to ethical values and adherence to internal rules must be visibly and consistently demonstrated by those at the top.

What happens when leaders fail to set that example?

If senior leaders knowingly disregard internal rules or the law, or tolerate breaches, their behaviour negatively shapes the entire organisation.

It creates a culture in which the implicit message is that the rules do not really apply. This increases the risk of internal fraud, unlawful conduct and regulatory breaches.

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

The conduct of those at the top has a multiplier effect throughout the organisation.

Why, then, are relatively few civil liability claims brought against directors and members of executive management in Switzerland?

Such claims are complex and expensive. For individuals, the costs are often prohibitive. That leaves a relatively small pool of potential claimants, who have the financial resources to pursue a case.

Even where a claim has merit, well-funded parties frequently prefer to resolve the dispute through a negotiated settlement. Because those settlements are typically confidential, they rarely become publicly known.

In my experience, however, wrongdoing comes to light over time. It is an illusion to believe that laws or internal rules can be breached over a long period without anyone finding out.

Artificial intelligence and better data analysis are likely to make misconduct easier to detect.

That makes the quality and effectiveness of board oversight and control all the more important.

But there is another crucial point: companies measure almost everything that matters operationally: Revenue, cost, profitability, and growth are all tracked through detailed metrics.

«Only by measuring performance can leadership identify where improvement is needed.»

By contrast, the performance of oversight and control is rarely measured systematically.

How should companies address that?

The board needs to know whether its internal control system actually works. That requires performance objectives and metrics by which the performance of oversight and control is measured.

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

The chair of the board or the audit committee should be able to explain: this is how our internal control system works; these are our assurance processes; these are our key performance indicators; this is how they have evolved over time; and these are the areas that require attention and corrective action.

Only by measuring performance can leadership identify where improvement is needed.

The financial industry often argues that stricter regulation limits the freedom to do business. Where should the balance be struck?

The freedom to conduct business exists within the law. Companies benefit significantly from what the state provides, including infrastructure, security, licences and a stable legal system.

In return, the state expects undertakings to respect and comply with the law. Within that framework, businesses enjoy considerable freedom. But there is no right to conduct business outside the law.

Does putting commercial success ahead of governance and control create a problem?

Yes. When commercial success takes precedence over the law and good governance, an organisation ultimately puts itself on a collision course with the state.

«If the system is performing well, it needs to keep evolving.»

The issue is particularly serious where a governing body knows that the organisation is operating outside the law and still fails to take corrective action.

Those who know and do nothing bear responsibility.

What is the first step towards better corporate governance?

An organisation should begin by assessing the effectiveness of its oversight and control. What performance objectives have we set? Are we achieving the objectives? Where are the weaknesses?

Daniel Bühr: «The Problem is Not The Law. It is The Failure to Implement it»

Wednesday, 30 September 2026 06:00 Written by: Dominik Buholzer | Chefredaktor

If the system is performing well, it needs to keep evolving. If it is not, the organisation must identify the causes and take action.

Ultimately, this is straightforward good management through planning, implementation, checks and action.

Does Switzerland need tougher laws to make that happen?

Not as a general rule, broadly speaking. Switzerland already has a substantial body of laws and enforcement instruments at its disposal. Applying the existing rules more consistently would take us a long way.

That is why I am sceptical about introducing new mechanisms unless the practical questions can be answered: Who will implement them? Who has the necessary resources? Who will oversee implementation? Who will measure performance? And who will decide on corrective action?

So, the real weakness lies in implementation rather than in the rules themselves?

Exactly. The fundamental issue is not with our laws. In many areas, it is a failure of execution.

Before creating new rules, we should do a better job of applying those already in place. Members of the board of directors and executive management are required to perform their duties with all due care. That is the legal standard against which they are judged.

We should also measure how effective oversight and control are governed and executed. If an audit committee can clearly show how the governance of oversight and control performs, which KPIs are used, how they have developed over time and where weaknesses remain, that would represent a significant step forward.

[Daniel Lucien Bühr](#) is a lawyer and partner at [Lalive](#). His practice focuses on corporate governance, oversight and control frameworks, compliance, internal investigations, and corporate responsibility.