

Ulrich Sieber / Marc Engelhart

Compliance Programs for the Prevention of Economic Crimes

An Empirical Survey of German Companies

Schriftenreihe des Max-Planck-Instituts
für ausländisches und internationales
Strafrecht

Strafrechtliche Forschungsberichte
Herausgegeben von Ulrich Sieber

Band S 140



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Herausgegeben von Ulrich Sieber

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Ulrich Sieber • Marc Engelhart



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Preface

I.

The research program of the Max Planck Institute for Foreign and International Criminal Law is devoted to the prevailing changes of crime and criminal law in the global risk and information society. It focuses on the global changes in risks and risk perception as well as the resulting changes in criminal law and criminal policy, especially with respect to white-collar crime, cyber crime, organized crime, and terrorism. These fundamental threats to our society have pushed traditional criminal law to its territorial and functional limits. They require new alternative forms of social control beyond the traditional “standard repertoire” of criminal law.

These challenges and responses become evident when considering the global threats to economic markets caused by new forms of corporate crime in the 21st century. In this area, states are compensating their loss of control in preventing and prosecuting economic crime by obliging private persons and companies to cooperate in crime prevention. The methods used are public-private partnerships and different forms of “regulated self-regulation”, especially by compliance measures. The fundamental paradigm shift connected with this change is a further step towards privatization of crime control providing the private sector with new responsibilities and powers. It amends and it partly replaces the traditional state law by new normative systems of self- and co-regulation. This shift in social control is accompanied by new fundamental legal challenges, especially the loss of the traditional safeguards of state law gained in the Enlightenment, which now must be compensated by other functional alternatives in the private and public sector.

Against this background, in the past decade, the development of compliance programs has turned into one of the most interesting and sensible approaches toward alternative measures of criminal policy. The draft for a new law on corporate criminal liability in Germany is taking up this approach, without, however, sufficiently considering these basic changes and especially without systematically using the already existing experience of the business sector with compliance programs.

The present publication contributes to filling this gap in empirical and fundamental research: For the first time in Germany, it does not only analyze the existence, content, and effectiveness of compliance programs in a broad scientifically based empirical study but also the effectiveness of different strategies to prevent economic crime and foster the implementation of compliance programs. It is primarily based on two broad empirical surveys with detailed questionnaires which were answered by 140 (respective 148) high ranking business experts. The analysis of the

given answers by the Max Planck Institute for Foreign and International Criminal Law can now provide new insights for the future discussion of compliance programs and the reform of corporate liability in Germany.

II.

This empirical analysis of the present publication would not have been possible without the support of the management consultancy Deloitte (Germany) which helped us win high ranking business representatives for contributing to our survey. Special thanks are due to Dr. *Hans-Rudolf Röhm*, Mr. *Frank Marzluf* and Mr. *Alexander Buhl* of Deloitte who twice sent out our questionnaires to more than 5000 of their clients. We also thank Dr. *Hansjörg Scheel* of the law firm Gleiss Lutz who provided valuable help in sending out the present study's first questionnaire to the firm's professional contacts. Furthermore, we are most grateful to Professor *Mori-kazu Taguchi* and Professor *Katsunori Kai* of Waseda University Tokyo for their excellent cooperation in compliance program research since 2004 and their parallel empirical survey in Japan (to be published in 2014). For logistical support which we received within the Max Planck Institute in producing the present report, our thanks go to Dr. *Dietrich Oberwittler* for his advice in methodological questions of sociological research, to Ms. *Ines Hofmann* for editing the manuscript with its numerous graphics, to Ms. *Indira Tie* and Mr. *Daniel Burke* for help with proofreading, as well as to Ms. *Maria Tsilimpari*, Mr. *Björn Baumann* and Ms. *Birte Schöler* for assisting in the analysis of the data.

III.

We hope that the results of this study will enlarge the picture on compliance and prevention in the field of economic crime and will serve as a basis for broader comparative legal analysis and further empirical research. The present publication not only provides companies with information so that they can evaluate and compare their own compliance efforts with respect to the activities of other companies. It also lays the groundwork for innovative national and international criminal policy. We hope that this will enable practitioners, researchers, and politicians to find new responses to the current challenges of global economic crime.

Freiburg, June 2014

Ulrich Sieber and Marc Engelhart

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Abbreviations

AG	Aktiengesellschaft/Die Aktiengesellschaft
AktG	Aktiengesetz
AnwBl.	Anwaltsblatt
BB	Der Betriebs-Berater
BKA	Bundeskriminalamt
BKR	Bank- und Kapitalmarktrecht
bn.	billion
BME	Bundesverband Materialwirtschaft, Einkauf und Logistik
BSCI	Business Social Compliance Initiative
BVerfGE	Entscheidungen des Bundesverfassungsgerichts (Official Court Reports)
CCO	Chief Compliance Officer
CCZ	Corporate Compliance Zeitschrift
CEO	Chief Executive Officer
Cf.	confer
CFO	Chief Financial Officer
chap.	chapter
Co.	Compagnie, Company
CRO	Chief Risk Officer
D&O	Directors and Officers Liability Insurance
DAX	Deutscher Aktienindex
DB	Der Betrieb
DBW	Die Betriebswirtschaft
DDR	Deutsche Demokratische Republik (German Democratic Republic)
ed.	editor
edn.	edition
eds.	editors
e.g.	exempli gratia (for example)
e.G.	eingetragene Genossenschaft
EG	Europäische Gemeinschaft
EMNID	TNS Emnid GmbH & Co. KG (Erforschung der öffentlichen

	Meinung, Marktforschung, Nachrichten, Informationen und Dienstleistungen)
et al.	et alii (and others)
et seq.	et sequentes (and the following)
etc.	et cetera (and other things)
EUR	euro
e.V.	eingetragener Verein (registered voluntary association)
E&Y	Ernst & Young
FS	Festschrift
FTA	Foreign Trade Association
GbR	Gesellschaft bürgerlichen Rechts (general partnership)
GmbH	Gesellschaft mit beschränkter Haftung (limited liability company)
GVG	Gerichtsverfassungsgesetz
GwG	Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz)
HWSt	Handbuch Wirtschaftsstrafrecht, ed. by Achenbach/Ransiek
IDW	Institut der Wirtschaftsprüfer e.V.
IKS	Internes Kontrollsystem (internal control system)
ISO	International Organization for Standardization
IT	information technology
JuS	Juristische Schulung
JZ	Juristenzeitung
KG	Kommanditgesellschaft (limited partnership)
KGaA	Kommanditgesellschaft auf Aktien
KK OWiG	Karlsruher Kommentar zum Gesetz über Ordnungswidrigkeiten, ed. by Lothar Senge
KPMG	KPMG International Cooperative
LKA	Landeskriminalamt
LLP	Limited Liability Partnership
MaComp	Mindestanforderungen an die Compliance-Funktion und die weiteren Verhaltens-, Organisations- und Transparenzpflichten nach §§ 31 ff. WpHG für Wertpapierdienstleistungsunternehmen
Mio.	million
MschrKrim	Monatsschrift für Kriminologie und Strafrechtsreform
N/A	no answer/not available
NJW	Neue Juristische Wochenschrift
No.	Number
NStZ	Neue Zeitschrift für Strafrecht

NZG	Neue Zeitschrift für Gesellschaftsrecht
NZWist	Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht
OECD	Organisation for Economic Co-operation and Development
OHSAS	Occupational Health and Safety Assessment Series
OWiG	Gesetz über Ordnungswidrigkeiten
p.	page
para.	paragraph
pp.	pages
PS	Prüfungsstandard
PwC	PricewaterhouseCoopers
SE	Societas Europea
sec.	Section
StGB	Strafgesetzbuch
StraFo	Strafverteidiger Forum
UN	United Nations
USA	United States of America
vol.	volume
VVaG	Versicherungsverein auf Gegenseitigkeit
WiJ	Journal der Wirtschaftsstrafrechtlichen Vereinigung e.V.
wistra	Zeitschrift für Wirtschafts- und Steuerrecht
WM	Wertpapier-Mitteilungen
ZBB	Zeitschrift für Bankrecht und Bankwirtschaft
ZCG	Zeitschrift für Corporate Governance
ZfB	Zeitschrift für Betriebswirtschaft
zfo	Zeitschrift Führung und Organisation
zfwu	Zeitschrift für Wirtschafts- und Unternehmensethik
ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZIS	Zeitschrift für Internationale Strafrechtsdogmatik
ZStrR	Schweizerische Zeitschrift für Strafrecht
ZStW	Zeitschrift für die gesamte Strafrechtswissenschaft
ZRP	Zeitschrift für Rechtspolitik
ZWH	Zeitschrift für Wirtschaftsstrafrecht und Haftung im Unternehmen

Part 1

Introduction

I. Object of Present Study

A. Compliance as a Research Topic

During the past decade, companies have been increasingly installing programs in order to achieve better compliance with legal regulations and to facilitate the detection of respective infringements. In addition to these “compliance programs”, there are also programs with broader or different aims, especially promoting ethical values (“business ethics”), programs on the social activities of companies (“corporate social responsibility”) as well as programs on good and transparent company structures (“corporate governance”).

With respect to legal issues, compliance programs supporting the prevention and detection of crime are of particular interest (so-called criminal compliance).¹ They not only promise to reduce crime and improve the companies’ reputations. Furthermore, they are also gaining legal relevance, since they are required by law in specific areas and they can exclude or reduce the criminal liability of companies in cases in which employees infringe legal provisions (corporate crime). Compliance is therefore part of a new discussion on legal approaches in the global risk society, where private and public spheres merge more closely in order to enhance their efforts against (transnational) economic crime.²

Compliance programs have gained greatly in importance in practice, not only in the home country of compliance, the United States of America, but also increasingly in Asia, especially Japan, and in Europe, e.g. in Italy, Spain, or Germany.³ As regards the scope and the efficiency of such compliance programs and related activities in practice, however, there is little precise empirical research available that is based on sound, verifiable criminological methods. It is especially not clear whether

¹ See *Bock*, Criminal Compliance (2011); *Engelhart*, Sanktionierung, p. 497 et seq.; *Rotsch*, ZIS 2010, 614; *Sieber*, in: Festschrift Tiedemann, p. 475 et seq.; *Tiedemann*, Wirtschaftsstrafrecht, p. 4 et seq.

² See the contributions by *Sieber*, ZStW 119, p. 1 (35 et seq.); *Sieber*, in: Festschrift Tiedemann, p. 475; *Sieber*, Rechtstheorie 41 (2010), p. 151 (189).

³ See *Bock*, Criminal Compliance (2011); *Engelhart*, Sanktionierung (2nd edn. 2012); *Görling et al.* (eds.), Compliance (2010); *Hauschka* (ed.), Corporate Compliance (2nd edn. 2010); *Moosmayer*, Compliance (2nd edn. 2012).

such compliance programs can effectively reduce infringements of rules in companies (especially economic crime) or whether companies primarily set them up in order to benefit from a better reputation or even maintain them as mere window dressing. Thus, legislators in many countries are challenged by the question of whether and by which means they should foster the implementation of such programs.⁴

B. Definitions

1. Compliance

Compliance is not clearly defined within the context of (lacking) legal regulation.⁵ In the following, *compliance* will be understood as the adherence to legal regulations. *Criminal compliance* is hence the adherence to criminal law in a comprehensive sense, including both the German “Kriminalstrafrecht” and the “Ordnungswidrigkeitenrecht”.⁶ A *compliance program* is the sum of measures to secure the adherence to legal regulations. A *compliance measure* is a respective single measure, in most cases, of a comprehensive compliance program.

2. “Small”, “Middle-sized” and “Large” Companies

If a company is distinguished by size in this report, this is done according to the following criteria for the number of (fulltime) employees within the company:

- *Small companies* are those with up to 500 employees worldwide.
- *Middle-sized companies* have more than 500 and up to 5000 employees worldwide.
- *Large companies* are companies with more than 5000 employees worldwide.

II. Current State of Research

The questions analyzed in this report move within a triangle of three main issues: (A.) Corporate Crime, (B.) its prevention and prosecution by traditional criminal law, and (C.) its prevention and detection by compliance programs.

⁴ See also *Bock*, Criminal Compliance, p. 131.

⁵ See e.g. *Engelhart*, Sanktionierung, p. 40 et seq.

⁶ For the differentiation of these two systems of sanction law see *infra* Part 1 II.B.1. and 2.

A. Scope of Economic Crime

As compliance programs aim at preventing and detecting crimes, the first question is how much economic crime, especially corporate crime, actually exists. One problem in providing an answer is the unclear definition of economic crime that has been disputed since *Sutherland* published his book on white-collar crime in 1949.⁷ Another problem is the lack of research, as Germany has no broad tradition of empirical social research in the field of economic crime.⁸ Therefore, only very limited up-to-date information on the scope and relevance of economic crime exists.⁹ This is especially true for sound data about corporate crime.

1. Criminological Research

a) Studies by Research Institutions

Criminological studies on economic crime in Germany only partially exist.¹⁰ One early major research undertaking in this field was the “Bundesweite Erfassung von Wirtschaftsdelikten nach einheitlichen Gesichtspunkten”, which was conducted from 1974 to 1985 by the Freiburg Max Planck Institute for Foreign and International Criminal Law.¹¹ The results of this study showed that more than 80 percent of economic crimes took place within companies in connection with business activities.¹² However, the study predominantly concentrated on the delinquency of individuals and not on the role of companies and their responsibility.¹³ Another major research endeavor in the 1970s, also conducted by the Freiburg Max Planck Institute for Foreign and International Criminal Law, concentrated on internal sanctions within companies (so-called “Betriebsjustiz”).¹⁴ The study did not focus on economic crime. It showed that internal measures in companies are quite common but applied on a case-by-case basis and are hardly formalized.

⁷ See *Tiedemann*, *Wirtschaftsstrafrecht*, p. 15 et seq. with reference to *Sutherland*, *White Collar Crime* (1949).

⁸ See *Bannenbergh*, *Korruption*, p. 61.

⁹ See also *Achenbach*, *Festschrift Tiedemann*, p. 47 (52 et seq.); *Boers*, *MschKrim* 84 (2001), p. 335 et seq.; *Busmann*, *MschKrim* 86 (2003), p. 89 (90); *Schneider*, in: *Löhr/Burkatzki* (eds.), *Wirtschaftskriminalität*, p. 135.

¹⁰ Therefore researchers often refer to the “classic” studies by *Sutherland*, *White Collar Crime* (1949), *Clinard/Yeager*, *Corporate Crime* (1980) and *Braithwaite*, *Corporate Crime in the pharmaceutical industry* (1984). See also the study on companies in the German Democratic Republic cited by *Arnold*, in: *Schünemann* (ed.), *Deutsche Wiedervereinigung*, Vol. III, p. 3 et seq.

¹¹ Cf. *Liebl*, *Wirtschaftsstraftaten* (1984) as well as *Liebl*, *wistra* 1988, p. 83.

¹² Cf. *Liebl*, *Wirtschaftsstraftaten*, p. 135 et seq.

¹³ See *Ziegleder*, *Wirtschaftskriminalität*, p. 26.

¹⁴ *Kaiser/Metzger-Pregizer*, *Betriebsjustiz* (1976).

A larger study on economic crime was conducted by *Boers, Nelles* and *Theile* that analyzed the privatization of state companies of the former German Democratic Republic in the 1990s by the responsible state authority, the so-called “Treuhand.”¹⁵ The study included an analysis of the official court files and – as a qualitative research method – interviews with 76 experts. It provides valuable insights but is limited to the special circumstances of the transitional period after the fall of communism and the introduction of the market economy in the former GDR.

Other – partly newer – studies concentrate on specific offenses: on EU-subsidy fraud in the 1960s,¹⁶ on computer crime in the 1970s,¹⁷ on environmental crimes in the 1980s/1990s,¹⁸ on corruption as well as on organized economic crime since the 1990s.¹⁹ Yet these specialized studies only provide a limited sector-specific picture of the scope of economic crime. They also concentrate very much on the criminal offenses and individual responsibility, meaning that the corporate sphere is hardly taken into account.

b) Police Statistics

The most comprehensive and up-to-date information on economic crime in Germany is provided by the police. The Federal Criminal Police Office (Bundeskriminalamt – BKA) annually publishes its “Polizeiliche Kriminalstatistik”. It defines economic crime in accordance with the only legally based definition in sec. 74c of the German Courts Constitution Act (GVG). This provision regulates the jurisdiction of a specialized chamber of the court of first instance for economic crimes. This definition is often used by authorities to draw up statistics on economic crime. Contrary to sociological definitions (referring to the social status of the perpetrator), business-oriented definitions (referring to corporate crime) and criminal-law-oriented definitions (referring to the infringed supraindividual legal interest), this definition is oriented toward criminalistic requirements. The regulation reads as follows:

¹⁵ See *Boers/Nelles/Theile (eds.)*, *Wirtschaftskriminalität und die Privatisierung der DDR-Betriebe*, 2010.

¹⁶ *Tiedemann*, *Subventionskriminalität in der Bundesrepublik: Erscheinungsformen, Ursachen, Folgerungen* (1974). For a later empirical study see *Sieber*, *ZStrR* 1996, p. 357 et seq.

¹⁷ See *Sieber*, *Computerkriminalität und Strafrecht*, 1st edn. 1977, 2nd edn. 1980.

¹⁸ See the study by the Max Planck Institute reported by *Meinberg*, *NJW* 1990, p. 1273 (1276 et seq.). See also the analysis by *Ralf Busch*, *Unternehmen*, p. 50 et seq.

¹⁹ For corruption see *Bannenbergh*, *Korruption* (2002); *Vahlenkamp/Knauß*, *Korruption* (1995); for organized forms of economic crimes see *Sieber/Bögel*, *Logistik der Organisierten Kriminalität* (1993).

Section 74c

(1) For criminal offenses

1. pursuant to the Patent Law, the Utility Model Act, the Semiconductor Protection Act, the Plant Variety Protection Act, the Trade Mark Act, the Designs Act, the Copyright Act, the Act against Unfair Competition, the Insolvency Statute, the Stock Corporation Act, the Act on the Financial Statements of Certain Enterprises and Groups, the Act on Limited Liability Companies, the Commercial Code, the SE Implementation Act, the Act to Implement Council Regulation (EEC) on the European Economic Interest Grouping (EEIG), the Cooperatives Act, the SCE Implementation Act and the Company Transformation Act,
2. pursuant to the laws governing the banking industry, the custody and acquisition of securities, the stock exchanges and the credit system as well as the Act on the Supervision of Insurance Companies, the Payment Services Oversight Act and the Securities Trading Act,
3. pursuant to the Economic Offenses Act of 1954, the Foreign Trade and Payments Act and foreign exchange control legislation as well as fiscal monopoly, tax and customs laws, including cases where their criminal provisions are applicable pursuant to other laws; this shall not apply if the same act constitutes a criminal offense under the Narcotics Act and shall not apply to fiscal offenses involving the motor vehicle tax,
4. pursuant to the Wine Act and food products legislation,
5. involving subsidy fraud, capital investment fraud, credit fraud, bankruptcy offenses, violation of book-keeping duties, preferential treatment for a creditor and preferential treatment for a debtor,
- 5a) involving agreements in restriction of competition upon invitations to tender as well as the taking and offering of a bribe in business transactions,
6. a) involving fraud, computer fraud, breach of trust, the withholding and embezzlement of wages or salaries usury, the acceptance of a benefit, the taking of a bribe, the granting of a benefit, the offering of a bribe,
 b) pursuant to the Labour Leasing Act and the Act to Combat Clandestine Employment, *to the extent that special knowledge of business operations and practices is required in order to judge the case,*
 [...] jurisdiction shall be vested in a criminal division as an economic offenses division.

For years, the data collected on this basis showed a similar pattern. In terms of case numbers, economic crimes only make up a small percentage of all crimes recorded by the police, as is illustrated in the following figure (*figure 1*).²⁰ However, *figure 2* shows that according to these statistics the small proportion of economic crime cases make up a large percentage of the overall damage caused by crimes.

Although this information is quite illustrative, it is nonetheless limited to offenses reported to the police and does not cover the dark field, which is estimated to be quite high in the area of economic crime.²¹ Moreover, much of the damage done cannot be depicted by statistics. Market disturbances or lost trust in the economic system, for example, are not quantifiable.

²⁰ Federal Criminal Police Office (Bundeskriminalamt), Bundeslagebild Wirtschaftskriminalität 2012 (2013), p. 3–4.

²¹ See *Boers*, MschrKrim 84 (2001), p. 335; *Wallat*, NJW 1995, p. 3236.

Figure 1: Percentage of economic crime cases reported to the police (2012)

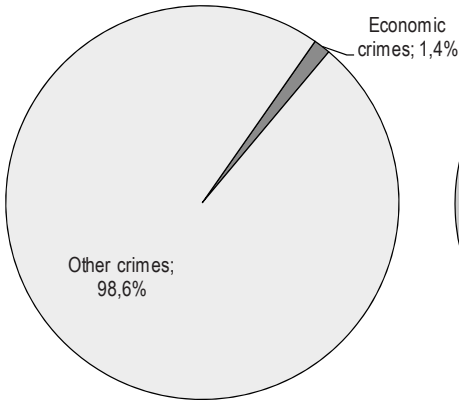
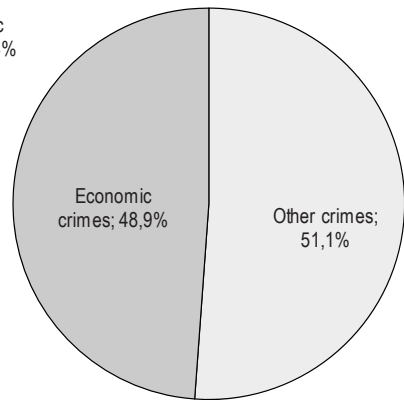


Figure 2: Damages of economic crime cases reported to the police (2012)



2. Studies by Private Organizations

In recent years, private organizations, especially consultancies, have taken up the topic of economic crime, especially in connection with compliance. Economic crime is defined broadly in their studies and, in essence, embraces all aspects connected to crime in companies.²² These studies primarily aim at informing clients and marketing the services of consultancies. An exception are the studies by the chamber of commerce and industry Ostbrandenburg, which serve as general information for companies, politics, and researchers. Up to now, four studies of the chamber have been conducted in cooperation with other chambers, although they were limited to companies in the Berlin-Brandenburg region.²³

These studies by private organizations often use standard methods of research (especially interviews and questionnaires) and therefore fulfill scientific standards to a certain degree, especially when they are conducted in cooperation with academic institutions (e.g. the economic crime studies by *PricewaterhouseCoopers* were conducted in cooperation with Professor *Kai-D. Bussmann*). They include:²⁴

²² See *Ziegleder*, *Wirtschaftskriminalität*, p. 26.

²³ Industrie- und Handelskammer Ostbrandenburg (ed.), *Kriminalitätsbarometer Berlin-Brandenburg 2011* (2011); *Kriminalitätsbarometer Berlin-Brandenburg 2009* (2009); *Kriminalitätsbarometer Berlin-Brandenburg 2007* (2007); *Kriminalitätsbarometer Berlin-Brandenburg* (2005).

²⁴ For older studies (1997–2001) see the references by *Bussmann*, *MschKrim* 86 (2003), 89 (92).

Studies by *PricewaterhouseCoopers (PwC)*:²⁵

- Economic Crime Study 2013²⁶
- Economic Crime Study 2011²⁷
- Compliance and Corporate Culture 2010²⁸
- Economic Crime Study 2009²⁹
- Motives of Economic Crime 2009³⁰
- Economic Crime Study 2007³¹
- Economic Crime in Banks and Insurances 2006³²
- Economic Crime Study 2005³³
- Economic Crime Study 2003³⁴
- European Economic Crime Study 2001³⁵

Studies by *KPMG*:

- Economic Crime Study 2012³⁶
- Study on fraud 2011³⁷
- Economic Crime Study 2010³⁸
- Economic Crime Study 2006³⁹
- Economic Crime Study 2003⁴⁰

Studies by *Euler Hermes*:

- Economic Crime Study 2008⁴¹
- Economic Crime Study 2003⁴²

²⁵ The studies “Economic Crime Study 2011”, “Compliance and Corporate Culture 2010”, “Economic Crime Study 2009”, “Economic Crime Study 2007”, “Economic Crime in Banks and Insurances 2006”, “Economic Crime Study 2005” were supported by *Bussmann* (University Halle-Wittenberg). “The Motives of Economic Crime 2009” was supported by the Hochschule Pforzheim.

²⁶ PwC, Wirtschaftskriminalität und Unternehmenskultur 2013 (2013).

²⁷ PwC, Wirtschaftskriminalität 2011 (2011).

²⁸ PwC, Compliance und Unternehmenskultur (2010).

²⁹ PwC, Wirtschaftskriminalität 2009 (2009).

³⁰ PwC, Wirtschaftskriminalität. Eine Analyse der Motivstrukturen (2009).

³¹ PwC, Wirtschaftskriminalität 2007, Sicherheitslage der deutschen Wirtschaft (2007); see also *Bussmann/Salvenmoser*, CCZ 2008, 192 et seq.

³² PwC, Wirtschaftskriminalität bei Banken und Versicherungen (2006).

³³ PwC, Wirtschaftskriminalität 2005, Internationale und deutsche Ergebnisse (2005); see also *Bussmann/Salvenmoser*, NSTZ 2006, 203 et seq.

³⁴ PwC, Wirtschaftskriminalität 2003, Internationale und deutsche Ergebnisse (2003).

³⁵ PwC, Europäische Umfrage zur Wirtschaftskriminalität 2001 (2001).

³⁶ KPMG, Wirtschaftskriminalität in Deutschland 2012 (2012).

³⁷ KPMG, Who is the typical fraudster? (2011).

³⁸ KPMG, Wirtschaftskriminalität in Deutschland 2010 (2010).

³⁹ KPMG, Studie 2006 zur Wirtschaftskriminalität in Deutschland (2006).

⁴⁰ KPMG, Wirtschaftskriminalität in Deutschland 2003/04 (2003).

⁴¹ Euler Hermes, Wirtschaftskriminalität – Die verkannte Gefahr (2008).

Studies by *Ernst & Young*:

- Compliance Study 2012⁴³
- Economic Crime Study 2003⁴⁴

The studies demonstrate that economic crimes are widespread and cause substantial damage.⁴⁵ They indicate that more than half of the acting individuals are members of the organization, hence the perpetrators often come from the inside.⁴⁶ The majority of the internal perpetrators were from neither the middle nor the top management level.⁴⁷ They typically did not work alone.⁴⁸ One study shows that the majority of the perpetrators is male, has been employed for a longer period of time and is about 50 years of age.⁴⁹ The typical perpetrator is hence a person who does not fall under one of the categories in sec. 30 OWiG, upon which a corporate fine could be based against his company (see below § 1 II.B.2). The studies consider the lack of insight into one's own wrongful conduct, financial interests, and the lack of supervision as the main motives for commission of economic crimes.⁵⁰

3. Summary

The studies and data mentioned show that economic crime is a serious problem especially because of the resulting high damage. Incidents such as the banking crisis illustrate how deeply the economy, society, and the legal system are affected by illegal behavior in the economic sector. This makes clear that not only prosecution of such crimes but also active prevention is an important element in dealing with these phenomena.

⁴² Euler Hermes, *Wirtschaftskriminalität – das diskrete Risiko. Die erste repräsentative Untersuchung für den Mittelstand* (2003).

⁴³ E&Y, *Enabling Compliance – Welche Rolle spielt Technologie?* (2012).

⁴⁴ E&Y, *Wirtschaftskriminalität in Deutschland – Nur ein Problem der anderen?* (2003).

⁴⁵ See e.g. KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 11 et seq.; PwC, *Wirtschaftskriminalität 2011*; KPMG, *Wirtschaftskriminalität in Deutschland 2010*; PwC, *Compliance und Unternehmenskultur* (2010); PwC, *Wirtschaftskriminalität 2009*; PwC, *Wirtschaftskriminalität 2007*, p. 10 et seq.; KPMG, *Studie 2006 zur Wirtschaftskriminalität in Deutschland*, p. 11; Euler Hermes, *Wirtschaftskriminalität – Die verkannte Gefahr* (2008), p. 6 et seq.; KPMG, *Wirtschaftskriminalität in Deutschland 2003/04*, p. 12.

⁴⁶ See KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 14; KPMG, *Wirtschaftskriminalität in Deutschland 2010*, p. 9; PwC, *Wirtschaftskriminalität 2011* (2011), p. 62; PwC, *Wirtschaftskriminalität 2009*, p. 29; Euler Hermes, *Wirtschaftskriminalität – Die verkannte Gefahr*, p. 10 et seq.

⁴⁷ See KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 14; Euler Hermes, *Wirtschaftskriminalität – Die verkannte Gefahr*, p. 11; PwC, *Wirtschaftskriminalität 2007*, p. 39; E&Y, *Wirtschaftskriminalität in Deutschland – Nur ein Problem der anderen?*, p. 18.

⁴⁸ KPMG, *Who is the typical fraudster?*, p. 8.

⁴⁹ PwC, *Wirtschaftskriminalität 2009*, p. 43; see also KPMG, *Who is the typical fraudster?*, p. 3 et seq.

⁵⁰ KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 14; PwC, *Wirtschaftskriminalität 2007*, p. 39 et seq.

B. Prosecution of Economic Crimes and Regulatory Offenses

1. Prosecution of Economic Crimes

The statutes on economic crimes make up a substantial number of all offenses in German criminal law. The most important ones are regulated within the criminal code, yet the majority is spread over a large number of different laws.⁵¹ In recent decades, the number of statutes has increased substantially, since the legislator often resorted to criminal law for the regulation of economic problems.

The investigation and prosecution of many of these crimes require special skills. This is especially the case when bookkeeping and balance sheets must be analyzed or special knowledge on the respective topic is required, e.g. on bankruptcy offenses, environmental crime or cybercrime. The legislator has been reacting to this demand for specialization ever since the 1970s, especially by creating specialized police departments, prosecution services and court chambers to deal with economic crime.⁵² Yet this specialization was not able to solve the problem that, in many areas, the investigation and prosecution of economic crimes is a time- and resource-consuming task.

As a consequence, high case numbers, divergent areas of crime and difficult special investigation problems lead to high pressure on the investigation and prosecution services and the courts responsible for economic crime. This is also based on the fact that the German “principle of legality” in sec. 152 para. 2 Strafprozessordnung (StPO – Code of Criminal Procedure) requires that the criminal justice system *must* investigate all cases of suspicion of crime. In addition, and especially when cases are dealt with in court, the pressure on the criminal justice system is aggravated by important legal guarantees within the German criminal law. These guarantees can be used to put additional workload on the courts, e.g. by extensive applications to hear more evidence, based on evidentiary rules, which have to be followed extensively under German law.

The German criminal justice system is seeking relief for these problems by making extensive and sometimes excessive use of sec 153a StPO, which allows it to dispense with the preferment of public charges in conjunction with the imposition of certain conditions and instructions upon the suspect if this procedure does not conflict with the “gravity of his culpability”.⁵³ Another path followed in practice are agreements on “deals” to shorten proceedings and to fix a certain range for the

⁵¹ See *Sieber/Engelhart*, Strafrechtskodifikation, RW 2012, p. 383 et seq.

⁵² See e.g. the provision of sec. 74 c GVG cited above. For details of the reforms in the 1970s, see *Tiedemann*, Gutachten für den 49. Juristentag, p. C 3 et seq.

⁵³ See *Meyer-Goßner*, Strafprozessordnung, § 153a para. 1.

sentence under the condition that the accused admits the facts.⁵⁴ Since 2009, the procedure of a deal and respective minimum safeguards are regulated by sec. 257c StPO. In 2013, the German Constitutional Court regarded the provision to be constitutional but criticized its application in practice.⁵⁵

These developments are legally problematic and leading to an unsatisfactory situation: When cases are brought before the specialized – but overloaded – courts responsible for economic crimes, perpetrators often receive a more favorable treatment than they would in the proceedings of the general chambers. In addition, the extensive use of sec. 153a StPO has been criticized as being a “paraphrase for millionaires”. Furthermore, the courts complain about “extortion” from the defense (threatening them with extensive applications to grant motions for the admission of evidence), and the defense complains about unjust pressure by the court. Thus, despite the fact that Germany has one of the highest rates of judges per inhabitants in Europe,⁵⁶ the prosecution of economic crime is far from ideal. This situation is improved only to a certain degree by a more flexible procedure for minor offenses, the so-called “Ordnungswidrigkeiten” or regulatory offenses that play an important role in the field of – especially minor – economic infringements.

2. Prosecution of Economic Regulatory Offenses (“Ordnungswidrigkeiten”)

Besides criminal law in the sense of “Kriminalstrafrecht” the German legal system recognizes a second sanction system, the “Ordnungswidrigkeitenrecht” (“law of regulatory offenses” or “administrative criminal law”). “Ordnungswidrigkeiten” or administrative/regulatory offenses are seen as counterparts to criminal offenses and designed primarily for minor infringements. However, within certain limits, the legislator is free as to which of the two sanction systems to choose for legal infringements. In addition to economic crimes, there exist numerous economic regulatory offenses.⁵⁷

⁵⁴ See *Altenhain et al.*, NStZ 2007, p. 71; *Fischer*, ZRP 2010, p. 249; *Hettinger*, Juristenzeitung (JZ) 2011, p. 292; *Schünemann*, ZRP 2009, p. 104 and – in the context of compliance programs – *Engelhart*, Sanktionierung, p. 465, 765.

⁵⁵ German Constitutional Court (Bundesverfassungsgericht), Decision of 19 March 2013 – 2 BvR 2628/10 et al. = BVerfGE 133, p. 168. See also *Beulke/Stoffer*, JZ 2013, p. 662; *Kudlich*, ZRP 2013, 162; *Meyer*, NJW 2013, p. 1850.

⁵⁶ Germany has about 18.4 judges per 100.000 inhabitants working for the ordinary judiciary (which comprises civil and criminal courts). See Statistische Bundesamt, *Ausgewählte Zahlen für die Rechtspflege*, Fachserie 10 Reihe 1 (2012).

⁵⁷ See the reference supra note 51.

The law of regulatory offenses provides only for administrative fines and mitigated measures but not for prison sentences. In contrast to the “Kriminalstrafrecht” (i.e. “criminal penal law”), these fines are regarded by the majority of scholars and by the courts as not carrying a socio-ethical blame.⁵⁸ They can be issued by administrative authorities, whereas a criminal sanction must be handed out by a court. Apart from these differences, the system of regulatory offenses is very similar to the criminal system, especially concerning rights and guarantees for the accused. If the accused person files for appeal against the decision of the issuing administrative authority, the case is dealt with by the competent criminal court in a manner similar to that for a criminal case.

The Regulatory Offenses Act (“Ordnungswidrigkeitengesetz – OWiG”) also provides for a corporate fine (sec. 30 OWiG), which is of great importance, as German law does not recognize corporate *criminal* liability. Sec. 30 OWiG is based on a (criminal or regulatory) offense on the part of an employee abusing a leading position in his company. Many scholars assume that the regulation follows an attribution model,⁵⁹ comparable to the identification theory in common law.⁶⁰ *Tiedemann* has proposed that sec. 30 OWiG be based on organizational culpability (“Organisationsverschulden”).⁶¹ Indeed, the lack of organizational measures to prevent crime, which can constitute a breach of the duty of supervision according to sec. 130 OWiG, is one of the most important constellations of corporate liability.⁶² Nonetheless, the wording of sec. 30 OWiG requires neither a lack of supervision nor defective corporate structures. Thus, organizational culpability cannot explain the nature of sec. 30 OWiG alone. A full explanation of this provision is only achieved if one takes both elements into account: the offense of the employee and the corporate setting. It follows that sec. 30 OWiG has a twofold nature: It attributes the offense of the employee to the organization and it limits the attribution by requiring elements that classify the offense as typically corporate.⁶³ The main focus is on the offense of the employee. The corporate features are rather scarce and

⁵⁸ For details and the opposing view, see *Engelhart*, Sanktionierung, p. 630 et seq.

⁵⁹ See e.g. *Bohnert*, Ordnungswidrigkeitengesetz, 2nd edn. 2007, § 30 para. 1; *Ransiek*, Unternehmensstrafrecht, p. 111; KK OWiG-Rogall, § 30 para. 8. For other interpretations of sec. 30 OWiG see *Engelhart*, Sanktionierung, p. 375 et seq.

⁶⁰ *Böse*, in: Basedow et al. (eds.), German National Reports to the 18th International Congress of Comparative Law, 2010, p. 651 (655).

⁶¹ *Tiedemann*, NJW 1988, p. 1169 (1172); *Tiedemann*, Wirtschaftsstrafrecht, 2nd edn. 2007, p. 244; *Engelhart*, Sanktionierung, p. 378 et seq.; see also *Sieber*, in: Festschrift *Tiedemann*, p. 449 (463 et seq.).

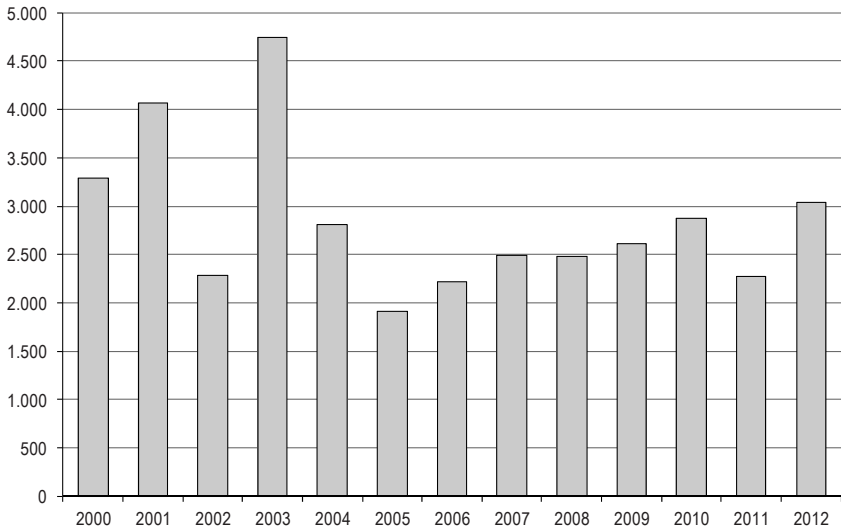
⁶² See *Engelhart*, Sanktionierung, p. 403 et seq.; KK OWiG-Rogall, § 30 para. 75; *Tiedemann*, NJW 1988, p. 1169 (1172).

⁶³ See *Engelhart*, Sanktionierung, p. 378 et seq.; see also *Sieber*, in: Festschrift *Tiedemann*, p. 449 (467).

Table 1: Numbers and amounts of fines according to sec. 30 OWiG (in EUR)

Year	New fines	Up to 300	300–1.000	1.000–5.000	5.000–20.000	20.000–50.000	above 50.000	Total no. of fines
2000	3.295 (100%)	486 (14,7%)	1.357 (41,2%)	962 (29,2%)	339 (10,3%)	90 (2,7%)	61 (1,9%)	12.124
2001	4.067 (100%)	669 (16,4%)	1.610 (39,6%)	1.343 (33,0%)	364 (9,0%)	0 (0%)	81 (2,0%)	40.086
2002	2.286 (100%)	608 (26,6%)	914 (40,0%)	547 (23,9%)	162 (7,1%)	24 (1,0%)	31 (1,4%)	42.365
2003	4.745 (100%)	817 (17,2%)	2.488 (52,4%)	922 (19,4%)	375 (7,9%)	91 (1,9%)	52 (1,1%)	23.329
2004	2.804 (100%)	562 (20,2%)	1.356 (48,4%)	708 (25,2%)	137 (4,9%)	28 (1,0%)	13 (0,5%)	24.250
2005	1.911 (100%)	491 (25,7%)	661 (34,6%)	561 (29,4%)	115 (6,0%)	39 (2,0%)	44 (2,3%)	20.663
2006	2.222 (100%)	410 (18,5%)	884 (39,8%)	791 (35,6%)	92 (4,1%)	29 (1,3%)	16 (0,7%)	19.250
2007	2.487 (100%)	514 (20,7%)	929 (37,4%)	884 (35,5%)	106 (4,3%)	30 (1,2%)	24 (1,0%)	19.801
2008	2.483 (100%)	456 (18,4%)	1.147 (46,2%)	727 (29,2%)	95 (3,8%)	36 (1,4%)	22 (0,9%)	17.539
2009	2.617 (100%)	405 (15,5%)	1.143 (43,7%)	850 (32,5%)	136 (5,2%)	42 (1,6%)	41 (1,6%)	19.623
2010	2.871 (100%)	412 (14,4%)	1.297 (45,2%)	893 (31,1%)	164 (5,7%)	30 (1,0%)	75 (2,6%)	23.355
2011	2.273 (100%)	396 (17,4%)	1.066 (46,9%)	641 (28,2%)	125 (5,5%)	21 (0,9%)	24 (1,1%)	21.013
2012	3.035 (100%)	418 (13,8%)	1.604 (52,9%)	830 (27,3%)	132 (4,3%)	16 (0,5%)	35 (1,2%)	20.041
Ø	2.854 (100%)	511 (17,9%)	1.266 (44,4%)	820 (28,7%)	180 (6,3%)	37 (1,3%)	40 (1,4%)	23.341

Figure 3: Numbers of sanctions according to sec. 30 OWiG in EUR (2000–2012)



depict the corporate setting only roughly. Criticism therefore often places its focus on better consideration of the corporate setting.⁶⁴

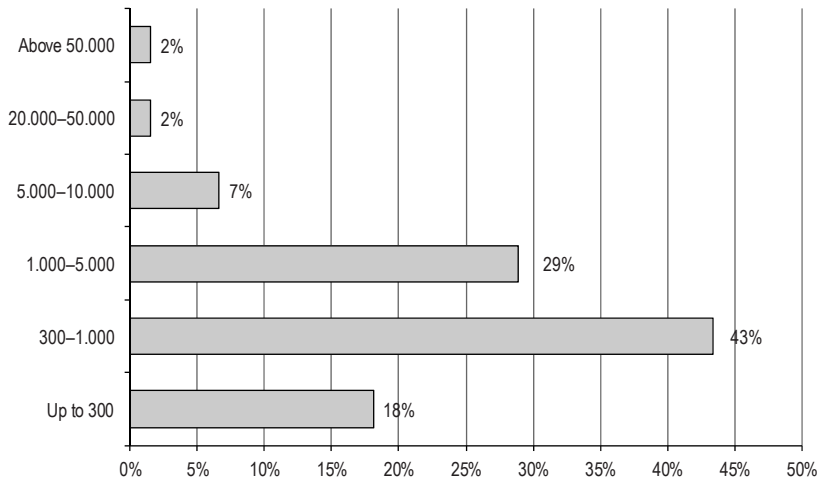
Data on the application of this provision and its correspondence to many foreign statutes on corporate criminal responsibility is hardly available. One exception is the central trade register (“Gewerbezentralregister”) that provides information on the corporate fine according to sec. 30 OWiG.⁶⁵ The data provides information on the fines registered per year and the total number of registered fines. It also provides some basic information about the amount of the fine (*table 1*).

The data show that the number of companies sanctioned according to sec. 30 OWiG has been between 2000 and 5000 per annum since the year 2000. The numbers differ substantially from year to year, and there is no clear upward or downward trend. The only trend visible is an increase in numbers since 2005, although neither the maximum numbers of 2003 nor those of 2001 were ever reached again (*figure 3*).

⁶⁴ See Böse, in: Basedow et al. (eds.), German National Reports to the 18th International Congress of Comparative Law, 2010, p. 651 (672); Pieth, ZStrR 119 (2001), p. 1 (11 et seq.); Schünemann, Unternehmenskriminalität und Strafrecht, p. 254.

⁶⁵ See Federal Office of Justice (Bundesamt für Justiz), Übersicht über die Eintragungen im Gewerbezentralregister. Teilregister für juristische Personen und Personenvereinigungen (2000–2010). The publication is available online, from 2006 on: <<http://www.bundesjustizamt.de>>.

Figure 4: Amounts of sanctions according to sec. 30 OWiG in EUR (Average 2000–2012)



In over ninety percent of the cases, the fine is below 5,000 EUR. Two thirds are even below 1,000 EUR (*figure 4*). The sanctions against Siemens in 2007 and 2008 with several million EUR were a rare exception.⁶⁶ In the USA, Siemens had to pay two fines of 350 million and 450 million U.S. dollars. Insofar, the exceptionally high fines in Germany and the USA are comparable.

3. Summary and Resulting Questions

Germany has improved its criminal justice system in the field of economic crimes, especially by having created special units for investigation, prosecution and adjudication ever since the 1970s. In addition, it has enacted legislation against the abuse of procedural rights.⁶⁷ However, due to the extension of economic criminal law, high numbers of cases and qualified procedural guarantees, the criminal justice system is at its limit and seeking further relief. In addition, the criminal justice system in the field of economic crime is being challenged by academic controversies about its deterrent function and its effectiveness.⁶⁸

⁶⁶ For details, see *Engelhart*, Sanktionierung, p. 2 et seq.

⁶⁷ See e.g. sec. 249 para. 2 StPO, which allows the court to dispense with reading out documents if the parties already had the opportunity to read them; see also sec. 33a, 311a StPO, which allow the court to hear violations of the right of a participant to be heard in a subsequent hearing. See *Meyer-Göfner*, Strafprozessordnung, § 33a para. 1, § 249 para. 16 et seq.

⁶⁸ Critical, e.g. *Hefendehl*, ZStW 119 (2007), 816 (826 et seq.). However – more balanced – *Dölling et al.*, Soziale Probleme 2006, p. 193.

As a consequence, new reform proposals are being discussed. At present, these proposals focus on the amendment (or replacement) of the above-described administrative fine system against companies, regulated in the Ordnungswidrigkeitengesetz, by a true criminal law system against companies, as provided for in the USA and many other countries.⁶⁹ Yet it is questionable whether a pure re-categorization and upgrading of sanctions against companies (alone) could substantially solve the present problems, which lie more in the areas of deterrence, detection, investigation, and prosecution.

In this situation, which is similar in many other countries, the promise of a self-regulating compliance system is tempting. This is especially the case when public authorities expect companies to conduct the necessary investigations on their own (by means of so-called compliance investigations) and then present the outcome to the authorities.⁷⁰ However, in contrast to this very optimistic approach, some scholars evaluate compliance programs as mere “window dressing” on the part of companies in order to improve their reputations.⁷¹ Other legal researchers propose or develop constructive reform proposals for the introduction of corporate criminal liability in connection with the implementation of compliance programs.⁷² This controversial situation leads to the decisive questions of this study: What are compliance programs? How extensively can they fulfill such promises? And how could they be used and integrated into future criminal policy?

C. Emergence of Compliance Programs

1. Current Situation

a) *Increasing Importance of Compliance Programs*

As no generally accepted definition of compliance exists, it is difficult to evaluate the present existence and scope of compliance programs in Germany.⁷³ A look at the websites of German companies, especially publicly traded companies, shows that

⁶⁹ See among the numerous publications in recent years e.g. Böse, Festschrift Jakobs, p. 15 ff.; Engelhart, Sanktionierung, p. 599 et seq.; Kelker, Festschrift Krey, p. 221; Kirch-Heim, Sanktionen (2007); Ransiek, NZWiSt 2012, p. 45; Trüg, StraFO 2011, p. 471. For further references see Engelhart, Sanktionierung, pp. 346, 749.

⁷⁰ See Engelhart, Sanktionierung, p. 756 et seq.; Reeb, Internal Investigations, p. 7 et seq. See also Hamm, NJW 2010, p. 1332 (1334 et seq.); Knierim, in: Rotsch (ed.), Compliance-Diskussion, p. 77 et seq.

⁷¹ See e.g. Hefendehl, JZ 2006, p. 119 (125); Schünemann, in: Hefendehl (ed.), Brennpunkte, p. 349 (361 et seq.).

⁷² For a detailed legislative proposal, see Engelhart, Sanktionierung, p. 680 et seq., 720 et seq.

⁷³ See also Sieber, in: Festschrift Tiedemann, p. 449 (452).

compliance has become common-place for the corporate image of big companies, although the respective questions are often published among related subjects such as corporate governance and corporate social responsibility.⁷⁴ In addition, professional publications increasingly present company compliance programs and regularly cover the topic.⁷⁵ Many external experts also offer their expertise.⁷⁶ Thus, compliance has become common-place in Germany and is well known within the companies.

b) Academic Empirical Studies

The above facts show the importance of compliance and several scholars have taken up the subject within the past few years.⁷⁷ Yet not many empirical academic studies on the topic have been conducted.⁷⁸

Several studies on *corporate governance* analyze the implementation of the German Corporate Governance Codex.⁷⁹ Since companies have to annually publish information on whether they comply with the codex or not, the respective data on corporate governance are readily available. However, this is not equally the case for compliance programs, which makes analysis much more difficult.

One of the few empirically-based studies on *compliance programs* of companies is the work of *Ziegleder*,⁸⁰ who makes use of the data collected by the *Bussmann* team in cooperation with *PricewaterhouseCoopers* from 2004 to 2007.⁸¹ She examines the formal and informal strategies of companies against economic crime in addition and/or together with public measures.⁸² The data includes 75 interviews, an analysis of 219 codes of conduct and a telephone survey of 613 employees deal-

⁷⁴ See *Sieber*, in: Festschrift Tiedemann, p. 449 (454).

⁷⁵ See e.g. Bayer AG, zfo 2008, p. 150; *Köhler/Marten/Schlereth*, DB 2009, p. 1477 (1484 et seq.); *Moosmayer/Sölle/Toifl*, in: Petsche/Mair (eds.), Handbuch Compliance, p. 403; *Puls*, in: Löhr/Burkatzki (eds.), Wirtschaftskriminalität, p. 205 on the German Railroad company (Deutsche Bahn AG).

⁷⁶ See e.g. regarding forensic service providers *Eiselt/Uhlen*, ZCG 2009, p. 176.

⁷⁷ See, for most of the cases with a reference to existing (foreign) empirical data, *Köbel*, MschKrim 91 (2008), p. 22 et seq.; *Krause*, StraFO 2011, p. 437 (439); *Pape*, Compliance, p. 154 et seq.; HWSt (3rd edn.)-*Rotsch*, I 4 para. 46; *Theile*, ZIS 2008, p. 406.

⁷⁸ See *Schneider*, in: Kempf et al. (eds.) Handlungsfreiheit, p. 61 (79).

⁷⁹ See, especially, the periodic reports by v. *Werder/Bartz*, DB 2014, p. 905; DB 2013, p. 885; DB 2012, p. 869; v. *Werder/Böhme*, DB 2011, pp. 1285–1290 (part 1) und pp. 1345–1353 (part 2) as well as v. *Werder/Talaucar*, DB 2010, p. 853; DB 2009, p. 689; DB 2008, p. 825; DB 2007, p. 869; DB 2006, p. 849; DB 2005, p. 841; DB 2004, p. 1377; DB 2003, p. 1857. See also *Drobetz/Schillhofer/Zimmermann*, ZfB 2004, p. 5; *Nowak/Rott/Mahr*, ZGR 2005, p. 252.

⁸⁰ *Ziegleder*, Wirtschaftskriminalität (2010). See also the studies published by PwC in the following text.

⁸¹ *Ziegleder*, Wirtschaftskriminalität, p. 55.

⁸² *Ziegleder*, Wirtschaftskriminalität, p. 32.

ing with internal preventive strategies.⁸³ The interviews were conducted with structured questionnaires and lasted 30 to 120 minutes. The telephone survey was executed by the survey institute EMNID. The average duration of this survey is not given. As the focus of the study is on the reaction to corporate crime either unilaterally by companies, bilaterally by companies and external private actors or trilaterally by companies, external private actors and the state, individual compliance measures were not analyzed in detail.

Another study was conducted by *Steßl* on effective compliance management within companies.⁸⁴ The study analyzed 357 responses from national and international employees of an internationally active German company in regard to the commission and prevention of corruption. The results show that compliance management strategies and a positive ethical climate within the company have a significant effect on preventing corruption within the company.⁸⁵

c) *Studies by Private Organizations*

Most other studies stem from the aforementioned consultancies and are often related to corporate crime research.⁸⁶ A major aim of these studies is to raise the awareness of companies regarding compliance and to encourage them to make use of the services that consultancies offer in the field of compliance. The mere existence of these studies indicates the high relevance of and the big market for compliance.⁸⁷ In most cases, the underlying methods for gaining information (and especially the respective questionnaires) are not published. Nonetheless, these studies – some of which were conducted in cooperation with academic institutions⁸⁸ – show the compliance development in more detail than any other contribution and therefore have value as empiric evidence. The main studies for Germany are:⁸⁹

Studies by *PricewaterhouseCoopers (PwC)*:

- Economic Crime Study 2013⁹⁰
- Economic Crime Study 2011⁹¹
- Compliance and Corporate Culture 2010⁹²

⁸³ *Ziegleder*, *Wirtschaftskriminalität*, p. 55.

⁸⁴ *Steßl*, *Effektives Compliance Management* (2012).

⁸⁵ *Steßl*, *Effektives Compliance Management* (2012), p. 197.

⁸⁶ See *supra* Part I I. B. 2. (p. 6).

⁸⁷ See *Bussmann*, *MschrKrim* 86 (2003), p. 89 (92); *Engelhart*, *Sanktionierung*, p. 516.

⁸⁸ See especially the studies by PwC that were mainly conducted in Cooperation with Professor *Kai-D. Bussmann* (Martin-Luther-University Halle-Wittenberg).

⁸⁹ See also, for an overview, *Krause*, *StraFO* 2011, p. 437 (439 et seq.).

⁹⁰ PwC, *Wirtschaftskriminalität und Unternehmenskultur* 2013 (2013).

⁹¹ PwC, *Wirtschaftskriminalität* 2011 (2011). See also *Bussmann*, in: *Festschrift Achenbach*, p. 57.

- Economic Crime Study 2009⁹³
- Economic Crime Study 2007⁹⁴
- Economic Crime Study 2005⁹⁵
- Economic Crime Study 2003⁹⁶

Studies by *KPMG*:

- Economic Crime Study 2012⁹⁷
- Study on fraud 2011⁹⁸
- Economic Crime Study 2010⁹⁹
- Survey on Compliance in publicly listed companies¹⁰⁰
- Economic Crime Study 2006¹⁰¹
- Economic Crime Study 2003¹⁰²

Studies by *Euler Hermes*:

- Economic Crime Study 2008¹⁰³
- Economic Crime Study 2003¹⁰⁴

Studies by *Ernst & Young*:

- Compliance Study 2012¹⁰⁵
- Economic Crime Study 2003¹⁰⁶

Study by *Alvarez & Marsal*:

- Compliance Study 2011¹⁰⁷

⁹² PwC, Compliance und Unternehmenskultur (2010). See also *Bussmann*, in: Bannenberg/Jehle (eds.), Wirtschaftskriminalität, p. 57.

⁹³ PwC, Wirtschaftskriminalität 2009 (2009).

⁹⁴ PwC, Wirtschaftskriminalität 2007, Sicherheitslage der deutschen Wirtschaft (2007); see also *Bussmann/Matschke*, wistra 2008, p. 88; *Bussmann/Salvenmoser*, CCZ 2008, 192 et seq.

⁹⁵ PwC, Wirtschaftskriminalität 2005, Internationale und deutsche Ergebnisse (2005); see also *Bussmann/Salvenmoser*, NStZ 2006, 203 et seq.

⁹⁶ PwC, Wirtschaftskriminalität 2003, Internationale und deutsche Ergebnisse (2003); see also *Bussmann*, zfwu vol 5/1 (2004), p. 35.

⁹⁷ KPMG, Wirtschaftskriminalität in Deutschland 2012 (2012).

⁹⁸ KPMG, Who is the typical fraudster? (2011).

⁹⁹ KPMG, Wirtschaftskriminalität in Deutschland 2010 (2010).

¹⁰⁰ KPMG, Compliance-Management in Deutschland. Ergebnisse einer EMNID-Umfrage (2007).

¹⁰¹ KPMG, Studie 2006 zur Wirtschaftskriminalität in Deutschland (2006).

¹⁰² KPMG, Wirtschaftskriminalität in Deutschland 2003/04 (2003).

¹⁰³ Euler Hermes, Wirtschaftskriminalität – Die verkannte Gefahr (2008).

¹⁰⁴ Euler Hermes, Wirtschaftskriminalität – das diskrete Risiko. Die erste repräsentative Untersuchung für den Mittelstand (2003).

¹⁰⁵ E&Y, Enabling Compliance – Welche Rolle spielt Technologie? (2012).

¹⁰⁶ E&Y, Wirtschaftskriminalität in Deutschland – Nur ein Problem der anderen? (2003).

The studies have a strong focus on preventive measures and compliance investigations.¹⁰⁸ As the risk of illegal behavior is often regarded as a main operative risk for companies,¹⁰⁹ they often deal with the question of which special measures companies have taken and how they investigate incidents. The results of the studies will be looked at below in the context of the results of this report,¹¹⁰ insofar as the studies cover possible aspects of this report and provide sufficient information.

2. General Legal and Self-Regulatory Compliance Frameworks

a) Legal Regulation

Germany has no general legislation on compliance. However, there are various sector-specific laws on compliance in the context of the prevention and detection of specific aspects of economic crime. The securities trading act is the only act explicitly addressing “compliance” and requires financial institutions trading in securities to implement a compliance program.¹¹¹ The Federal Financial Supervisory Authority issued guidelines in 2010, which give detailed advice on how to implement this legal framework and how to design a compliance program.¹¹² Although these guidelines formally apply only to securities trading, they provide general advice for companies operating in other areas of business.

Besides this exception, there is additional legislation that does not explicitly mention the term “compliance” but requires companies to take up comparable measures in order to prevent and detect crimes. The rules on money laundering in the Act Against Money Laundering (Geldwäschegesetz – GwG) are just such an example. According to these rules, companies must ensure, by means of organizational processes, that their business cannot be used to launder money or to finance terrorism.¹¹³ These measures enable companies to discover evidence of possible crimes, which they then have to report to the authorities.¹¹⁴

¹⁰⁷ Alvarez & Marsal, Compliance. Studie zur Strategie und Organisation 2011 (2011).

¹⁰⁸ See PwC, Wirtschaftskriminalität 2007, Sicherheitslage der deutschen Wirtschaft (2007), p. 30 et seq., 45; KPMG, Studie 2006 zur Wirtschaftskriminalität in Deutschland (2006), p. 17; E&Y, Wirtschaftskriminalität in Deutschland – Nur ein Problem der anderen? (2003), p. 30 et seq.

¹⁰⁹ See e.g. E&Y, Strategic Business Risk 2008. The top 10 risks for business (2008).

¹¹⁰ See *infra* Part 2.

¹¹¹ See sec. 33 Securities Trading Act (Wertpapierhandelsgesetz – WpHG); Engelhart, Sanktionierung, p. 503 et seq.; Engelhart, ZIP 2010, p. 1832; Lösler, NZG 2005, p. 104; Lösler, WM 2008, p. 1098; Vogel, in: Festschrift Jakobs, p. 731 (743 et seq.).

¹¹² See Birnbaum/Kütemeier, Wertpapier-Mitteilungen (WM) 2011, p. 293; Engelhart, ZIP 2010, p. 1832; Lösler, WM 2010, p. 1917; Niermann, ZBB 2010, p. 400; Schäfer, BKR, p. 45, 187; Sturm/Möller, ZCG 2010, p. 177; Zingel, BKR 2010, p. 500.

¹¹³ Sec. 9 GwG.

¹¹⁴ See Vogel, in: Festschrift Jakobs, p. 731 (745) who discusses a new criminal law model.

The German Corporate Governance Codex, a public-private regulation,¹¹⁵ regards compliance as part of the companies' duties.¹¹⁶ However, compliance in the sense of the German Corporate Governance Codex is connected to the more general corporate governance discussion aiming at a good corporate structure and management duties. The code primarily aims to make Germany's corporate governance rules transparent for both national and international investors, thus strengthening confidence in the management of German corporations and does not aim to preventing economic crime.

The new step of incorporating compliance into the legal system now might herald the introduction of a genuine corporate criminal liability system in Germany. In November 2013, the state of North Rhine-Westphalia presented a draft law on corporate criminal liability in the German "Bundesrat."¹¹⁷ The proposal follows the lines of the Second Protocol to the Convention on the protection of the European Communities' financial interests from 1997 (PIF Convention)¹¹⁸ and provides for corporate liability if senior management commits a crime or if the lack of supervision or control by senior management enables offenses of persons under their responsibility. Compliance is a key element of the proposal. If compliance measures were in place at the time of the commission of an offense by an employee this is regarded as being a relevant sentencing factor for the corporate sentence. If the company has taken up compliance measures to prevent future incidents after the incident in question the court can desist from imposing a sentence. Finally, the proposal provides for a kind of compliance sentence as the court can order the implementation of a compliance program as a condition of probation. Although the proposal has only recently been introduced into the political process and remains very controversial,¹¹⁹ the near future might bring about a change in German legislation in regard to corporate liability as well as compliance.

¹¹⁵ The Codex was initiated by the Federal Ministry of Justice, developed by economic experts and practitioners (who are also responsible for revisions), made public in an official organ and referred to in the Stock Companies Act (sec. 161 Aktiengesetz – AktG) according to which companies have to declare whether they adhere to the Codex and, if not, explain why. This makes the Codex neither a public law nor a private regulation. It is a set of rules "sui generis".

¹¹⁶ The Codex is available at <http://www.corporate-governance-code.de>.

¹¹⁷ Entwurf eines Gesetzes zur Einführung der strafrechtlichen Verantwortlichkeit von Unternehmen (to be published as Bundesrats-Drucksache).

¹¹⁸ Council Act of 19 June 1997 drawing up the Second Protocol to the Convention on the protection of the European Communities' financial interests, OJ C 221 of 19.7.1997, p. 11 (Art. 3). For details, see *Engelhart*, eucrim 2012, 110.

¹¹⁹ See *Kutschaty*, ZRP 2013, 74 (being responsible for the proposal in his function as the minister of justice of North Rhine-Westphalia). See also, *Görtz*, WiJ 2014, 8; *Hein*, CCZ 2014, 75; *Hoven*, ZIS 2014, 19; *Mitsch*, NZWiSt 2014, 1; *Rübenstahl/Tsambikakis*, ZWH 2014, 8; *Schünemann*, ZIS 2014, *Wessing*, ZWH 2013, 301; *Witte/Wagner*, BB 2014, 643.

b) Self-Regulation: General Auditing Standard for Compliance

As the law is largely silent on the compliance issue, private parties have begun setting standards for compliance programs and their evaluation. The most important one is the auditing standard for compliance programs by the German Institute of Public Auditors (IDW PS 980), which was published in April 2011.¹²⁰ It is used by auditors in order to certify corporate compliance systems. The resulting auditing report shall confirm that the statements of a compliance program about its principles and measures are adequate and that these principles and measures are suitable to a reasonable degree of certainty, for detecting and preventing infringements against the respective rules. It enables companies to have their system checked by an outside “authority”. This illustrates the possibility of evaluating the quality of compliance programs, which is important for a further going inclusion of the compliance program approach in legal concepts.

c) Discourse on “Compliance and Criminal Law”

Contrary to the extensive abstinence of the legislator and other actors from embedding compliance programs in a comprehensive system of prevention and prosecution of economic crime (including the traditional criminal law approach), a broad discussion on the legal aspects of compliance programs has emerged in German academic literature in recent years.¹²¹ This discussion was and is heavily influenced by and interrelated with the respective discussions in the USA, the United Kingdom, Japan, Italy, Spain, and other countries.

The compliance topic was first taken up in Germany by legal practitioners mainly practicing corporate and civil law,¹²² years before the discussion reached the field of criminal law. The academic discourse on compliance and criminal law was mainly triggered by the 2008 contribution in the *Festschrift* for *Klaus Tiedemann* (the doyen of German economic criminal law) by *Sieber*,¹²³ who has made compliance one of the major research topics of the Freiburg Max Planck Institute for

¹²⁰ Institut der Wirtschaftsprüfer e.V. (IDW), Grundsätze ordnungsgemäßer Prüfung von Compliance-Management-Systemen, IDW PS 980; see *Balk/Schulte/Westphal*, ZCG 2010, p. 242; *Eisolt*, BB 2010, p. 1843; *Gelhausen/Wermelt*, CCZ 2010, p. 208; *Görtz*, CCZ 2010, p. 127; *Görtz/Roskopf*, CCZ 2011, p. 103; *Horney/Kuhlmann*, CCZ 2010, p. 192; *Liese/Schulz*, Betriebs-Berater 2011, p. 1347; *Rieder/Jerg*, CCZ 2010, p. 201; *Willems/Schreiner*, CCZ 2010, p. 214.

¹²¹ A summary of the discussion is given by *Bock*, in: *Rotsch* (ed.), *Compliance Diskussion*, p. 63.

¹²² See e.g. *Hauschka*, AG 2004, 461. *Hauschka* is the editor of the standard handbook on corporate compliance, first published in 2007: See the second edition *Hauschka* (ed.), *Corporate Compliance* (2nd edn. 2010).

¹²³ *Sieber*, in: *Festschrift Tiedemann*, p. 449.

Foreign and International Criminal Law. This research resulted in the comprehensive German work on corporate liability and compliance programs by *Engelhart* (1st ed. 2010, 2nd ed. 2012), who provided a concrete, fully formulated proposal for a new German legislation on these issues, based on a detailed comparative analysis of the situation in Germany and the USA.¹²⁴

The topic has been taken up by many researchers since then – the discussion has become much more specialized and has led to a number of detailed analyses, not only in articles but also, increasingly, in book publications. The area of criminal compliance is depicted extensively in the analysis by *Bock*, who concentrates on aspects of individual criminal liability, especially in regard to the duty of supervision.¹²⁵ Dogmatic aspects of the discussion on compliance and criminal law had also been dealt with at an earlier date by *Rotsch*,¹²⁶ who addressed the topic – along with *Kölbel*¹²⁷ and *Bung*¹²⁸ – during the 35th meeting of the German criminal law scholars in Zurich in 2013 (Deutsche Strafrechtlehrertagung).¹²⁹ *Rotsch* additionally edited two book publications on further aspects of the German and European developments, the result of annual conferences on compliance at the Center for Criminal Compliance at Gießen University, and he is currently editing a comprehensive handbook on criminal compliance.¹³⁰ The Festschrift for *Imme Roxin* contains a number of articles on criminal compliance, concentrating on compliance investigations and comparative aspects.¹³¹ More specialized contributions address, for example, questions of the responsibility of compliance officers,¹³² compliance and the duty of due supervision,¹³³ compliance within groups of companies,¹³⁴ compliance and data protection,¹³⁵ or the scope and limits of compliance investiga-

¹²⁴ *Engelhart*, Sanktionierung, p. 720.

¹²⁵ *Bock*, Criminal Compliance (2011).

¹²⁶ *Rotsch*, Festschrift Samson, p. 141; *Rotsch*, ZIS 2010, p. 614.

¹²⁷ *Rotsch*, ZStW 125 (2013), 481.

¹²⁸ *Kölbel*, ZStW 125 (2013), 499.

¹²⁹ *Bung*, ZStW 125 (2013), 536.

¹³⁰ *Rotsch* (ed.), Criminal Compliance vor den Aufgaben der Zukunft (2013); *Rotsch* (ed.), Wissenschaftliche und praktische Aspekte der nationalen und internationalen Compliance-Diskussion (2012).

¹³¹ See *Schulz* (ed.), Festschrift Roxin, p. 453–554.

¹³² See *Konu*, Garantenstellung (2014); *Poguntke*, Compliance-Beauftragte (2013).

¹³³ See *Buchholz*, Der Begriff der Zuwiderhandlung (2013); *Wilhelm*, Aufsichtsmaßnahmen (2013). See also *Pietrek*, Verantwortlichkeit des Betriebsinhabers (2012).

¹³⁴ See *Petermann*, Die Bedeutung von Compliance-Maßnahmen (2013).

¹³⁵ See *Eisele*, Compliance und Datenschutzstrafrecht (2012), *Kruchen*, Telekommunikationskontrolle (2012). See also *Thoma*, Beschäftigtendatenschutz (2013); *Thüsing*, Arbeitnehmerdatenschutz und Compliance (2010).

tions and procedural aspects.¹³⁶ Corruption is often dealt with as the main offense in the public and academic discussion and in practice.¹³⁷

The influence of the Spanish and also the US-American discussion is illustrated by the fundamental article by *Nieto* in the Festschrift for *Tiedemann*, who focuses on the link between social responsibility, regulated self-regulation and corporate liability.¹³⁸ The Italian model linking compliance programs and criminal law was discussed early on, e.g. by *Castaldo*.¹³⁹ The newer German, Spanish and Italian discussion is depicted particularly in the publications originating from the project “Corporate criminal liability and compliance programs” edited by *Arroyo Zapatero* and *Fiorella*¹⁴⁰ and in the analysis on economic crime and compliance edited by *Arroyo Zapatero*.¹⁴¹ A book publication edited by *Kuhlen et al.* contains a collection of articles by German and Spanish authors on relevant dogmatic questions dealing with supervisory duties, employee rights, the legal position of the compliance officer, internal investigations, and corporate sanctions.¹⁴² The topic has also been dealt with extensively in Austria and Switzerland where compliance is of special relevance because of the existing corporate criminal liability systems.¹⁴³

In addition, many (hand)books and articles contain practical guidance for companies on the implementation of compliance measures.¹⁴⁴ Furthermore, in 2008, a new journal on “Corporate Compliance” was launched, illustrating the practical

¹³⁶ See *Moosmayer* (ed.), *Interne Untersuchungen* (2012); *Rosen*, *Internal Investigations* (2010); *Siebler*, *Criminal-Compliance* (2014); *Zapfe*, *Compliance und Strafverfahren* (2013). See also *Schemmel/Ruhmannseder/Witzigmann*, *Hinweisgebersysteme* (2012).

¹³⁷ See *Gentsch*, *Korruptionsprävention* (2012); *Kisch*, *Vermeidung von Wirtschaftskriminalität* (2010); *Rathgeber*, *Criminal Compliance* (2012); *Sprafke*, *Korruption* (2010); *Stanitzek*, *Wirtschaftskorruption* (2013).

¹³⁸ *Nieto Martín*, in: Festschrift *Tiedemann*, p. 485; on the Spanish discussion see also *Bacigalupo*, in: *Rotsch* (ed.), *Compliance-Diskussion*, p. 135; *Bacigalupo*, *Compliance y derecho penal* (2011); *Carbonell Mateu*, *ZStW* 123 (2011), S. 331; *Ortiz de Urbina*, in: *Kuhlen et al.* (eds.), *Compliance und Strafrecht*, p. 227. On the Anglo-American influence, see also *Huck* (ed.), *Compliance* (2013).

¹³⁹ *Castaldo*, *wistra* 2006, p. 361.

¹⁴⁰ *Arroyo Zapatero/Fiorella* (eds.), *Corporate Criminal Liability and compliance programs* (2012).

¹⁴¹ *Arroyo Zapatero* (ed.), *El derecho penal económico en la era compliance* (2013).

¹⁴² *Kuhlen/Kudlich/Ortiz de Urbina* (eds.), *Compliance und Strafrecht* (2013).

¹⁴³ On the Austrian discussion, see e.g. *Lewisich* (ed.), *Zauberwort Compliance?* (2012); see also *Dannecker/Leitner* (eds.), *Handbuch der Geldwäsche-Compliance* (2010); on the Swiss situation, see e.g. *Mueller*, *Compliance-management* (2007); *Roth*, *Compliance* (2011). See also *Inderst/Bannenberg/Poppe* (eds.), *Compliance* (2013).

¹⁴⁴ See e.g. *Dannecker/Leitner* (eds.), *Handbuch der Geldwäsche-Compliance* (2010); *Fissenewert* (ed.), *Compliance für den Mittelstand* (2013); *Grützner/Jakob*, *Compliance from A to Z* (2014); *Moosmayer*, *Compliance* (2nd edn. 2012); *Görling et al.* (eds.), *Compliance* (2010); *Petsche*, *Handbuch Compliance* (2011); *Pieth*, *Anti-Korruptions-Compliance*, p. 69; *Teichmann* (ed.), *Compliance* (2013); *Wecker/van Laak* (eds.), *Compliance* (2nd edn. 2009).

importance of compliance measures for companies, lawyers and auditors.¹⁴⁵ Thus, in summary, the recent years can be characterized by the beginning of a triumphant march of “compliance and criminal law” issues in academic discourse, creating new ideas that will exert pressure on the legislator to decide on the new concepts.

3. Open Questions

If compliance programs are to become an important instrument for the prevention, detection and eventually even the prosecution of economic crime, a number of questions on “compliance and criminal law” must be solved. This is especially the case if the compliance regime and the traditional legal regime are integrated into an effective, coherent system, in which the legal system strengthens the compliance regime and the compliance regime supports and disburdens the legal system. In addition, conflicts and contradictions between the two regulatory regimes must be avoided. As can be seen in other public private partnerships, such an integrated system without normative conflicts can be much stronger than the pure addition of two parallel systems.¹⁴⁶

For this reason, building up an effective compliance regime for the prevention, detection and prosecution of economic crime poses challenging research questions for various disciplines:

- *Economic and business management research* must specify the various elements of compliance programs that could best support the prevention, detection and prosecution of economic crime.¹⁴⁷
- *Criminological research* should analyze and evaluate the effectiveness of compliance programs (and specifically of the different elements of compliance programs) in the prevention, detection, and prosecution of economic crime.¹⁴⁸
- *Legal theory* must analyze the relationship between the (state-based) legal system and the (private) self-regulative systems as well as their interfaces alongside the options and problems of combining these two normative systems.¹⁴⁹

¹⁴⁵ See CCZ – Corporate Compliance Zeitschrift: Zeitschrift zur Haftungsvermeidung im Unternehmen.

¹⁴⁶ For the interrelations and the integration of the two systems, see *Sieber*, in: Festschrift Tiedemann, p. 449 (474 et seq.) with further references.

¹⁴⁷ See e.g. on the question of how to construct an effective compliance program *Engelhart*, Sanktionierung, p. 163 et seq. and 711 et seq.; *Inderst*, in: Göring et al. (eds.), Compliance, p. 103; *Moosmayer*, Compliance, p. 31; *Pieth*, Anti-Korruptions-Compliance, p. 63.

¹⁴⁸ See *Köbel*, MschKrim 91 (2008), p. 22 (33); *Sieber*, in: Festschrift Tiedemann, pp. 449 (474 et seq.) with further references.

- *Existing criminal law* (de lege lata) must determine the relevance of compliance programs for legal sanctions against companies under present law as well as the legal limits of compliance systems (e.g. with respect to the questioning of employees or the collection and matching of personal data).¹⁵⁰
- *Criminal policy* must analyze the various options with which the law can enforce or encourage companies to install compliance programs, especially their preventive, detective, and prosecuting elements.¹⁵¹

It is obvious that resolving these issues requires an interdisciplinary research approach with a sound empirical foundation. The present study aims to contribute empirical elements to this research on the borderline between state and private regulation.

III. Aims and Methods of Present Study

A. Research Aims

The present project is designed to contribute to filling the above-mentioned research gaps in Germany. Its specific aims are to:

1. analyze the incidence and especially the content of compliance programs in practice, based on solid empirical research;
2. collect information on the efficiency of compliance programs and other regimes in preventing, detecting, and prosecuting economic crime, especially information on the attitudes of company experts;¹⁵²
3. investigate how effective compliance programs and their different components could be prescribed or fostered (especially by the legislator in connection with a new regulation of the criminal or administrative criminal responsibility of companies) and in what way different types of sanctions are perceived by the respondents.

The study's underlying aim of searching for a new, coherent system for the prevention of economic crime is not driven just by the desire for tougher crime control. For criminal lawyers, this endeavor should also be seen against the back-

¹⁴⁹ See *Kuhlen*, in: *Kuhlen et al. (eds.)*, *Compliance und Strafrecht*, p. 1 (12 et seq.); *Rotsch*, *Festschrift Samson*, p. 141 et seq.; *Sieber*, in: *Festschrift Tiedemann*, p. 449 (460 et seq.); *Sieber*, *Rechtstheorie* 41 (2010), p. 151.

¹⁵⁰ See *Engelhart*, *Sanktionierung*, p. 776 et seq.; *Maschmann*, in: *Kuhlen et al. (eds.)*, *Compliance und Strafrecht*, p. 85 et seq.; *Sieber*, in: *Festschrift Tiedemann*, pp. 449 (474 et seq.).

¹⁵¹ *Engelhart*, *Sanktionierung*, p. 649 et seq.; *Sieber*, in: *Festschrift Tiedemann*, p. 449 (473).

ground of the German legal philosopher *Radbruch's* dream: he wanted not merely to improve criminal law but “to replace criminal law by something which is better than criminal law”.¹⁵² A complete replacement of criminal law is not realistic. However, a better prevention of economic crime as well as a partial replacement, amendment and improvement of traditional criminal law seems to be possible.

B. Research Methods

The research necessary to achieve these aims is based on two methods: The focus lies on (1.) two questionnaire-based gatherings of information from business experts. In addition, these results are amended by (2.) an analysis of the compliance documents published by the DAX 30 companies on the Internet.

1. Questionnaire-Based Information Gathering from Business Experts

a) *Questionnaire 1 (2012/2013)*

aa) Structure of the Questionnaire

The main method of the present study is a questionnaire-based gathering of information from business experts. The main questionnaire 1 used for this information gathering consists of three parts: The first part (part A. of the paper version of the questionnaire) provides basic information on the interviewed person and his/her company. The second part (B.) analyzes the factual situation in the company, especially with respect to the existence of a compliance program, its components, and the extent of irregularities observed in these companies. The third part (C.) calls on the interviewed person to evaluate the effectiveness of compliance programs and its components and to provide opinions on future methods of fostering compliance by means of legal, ethical, or other grounds for incentives to install compliance systems.

Research on the *first research aim*, the incidence and content of compliance programs, is based on part B of the questionnaire. The respective questions asking for the components of existing compliance programs are founded on the hypothesis that these programs could have at least four specific components: (1) measures of information and education (e.g. compliance manuals), (2) measures to prevent and detect irregular or unethical behavior (e.g. whistle-blowing systems), (3) organizational measures and internal sanctions for dealing with infringements, as well as (4)

¹⁵² *Gustav Radbruch*, Einführung in die Rechtswissenschaft, p. 115: „Das unendliche Ziel der strafrechtlichen Entwicklung [...] bleibt [...] nicht die Verbesserung des Strafrechts, sondern der Ersatz des Strafrechts durch Besseres”.

measures to foster a culture of values within the respective companies in which the leadership example given by top management as well as the peer pressure of colleagues create a climate for good ethical behavior. With respect to these components, the questionnaire not only elicits their existence and relevance in the companies participating in the interview (part B of the questionnaire). It also encourages a subjective evaluation by the interviewed expert on the effectiveness of these components with respect to crime prevention (part C). The questionnaire also tries to find a correlation between the companies' compliance components and their incidence of crime, requested in part B of the questionnaire. It therefore asks for information on how greatly companies are affected by illegal behavior of employees and to what extent they have implemented measures related to compliance investigations.

Research on the *second aim*, the effectiveness of compliance programs and especially their specific components, is based on the answers of the experts to part C of the questionnaire, which asked for evaluation of the companies' compliance programs. The questionnaire asked interviewees to evaluate the creation and revision of the program as well as the single components of their program.

Research on *the third research aim*, i.e. fostering compliance programs by means of incentives and especially legislation, is also based on the answers to the questions in part C of the questionnaire. The interviewees were asked to evaluate different strategies. The questionnaire differentiated between measures providing for direct obligations to implement compliance programs and various legal sanctions with and without incentives and their effect on the companies' efforts to take up compliance programs.

bb) Selection and Contacting of Interviewees

The sample of German companies the questionnaire was sent to was chosen to represent the following four criteria:

- different sizes, based on the assumption that larger companies implement more compliance measures;
- different fields of business, based on the assumption that certain fields of business implement more compliance measures (e.g. in the banking and insurance sectors);
- different legal forms of companies, based on the assumption that listed companies on the stock market implement more measures than family-run companies;
- different geographical locations, to reduce the effect of any specific local practice (such as the possible strong impetus of the prosecution in Munich to investigate corruption cases¹⁵³).

¹⁵³ See OECD, Germany: Phase 3, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and

In total, a sample of 5734 companies all over Germany was addressed. In order to include all sizes and all legal forms of companies from different business fields, the selection of addresses was based on three sources: (1) The 200 DAX International 100 as well as the DAX International Mid 100 companies,¹⁵⁴ (2) the contact data of 5534 clients of the consulting company *Deloitte* (Germany)¹⁵⁵ and (3) the contact data of 111 selected clients of the law firm *Gleiss Lutz*.¹⁵⁶ In order to protect the professional secrecy and privacy of their clients, *Deloitte* and *Gleiss Lutz* sent out the Institute's questionnaire themselves so that no personal data of their clients were transferred to third persons. *Deloitte* and *Gleiss Lutz* provided this service in order to support the scientific research of the Institute for idealistic reasons. Neither *Deloitte* and *Gleiss Lutz* nor the Institute provided any financial services to the other party. The authors are most grateful for this support for without this help the study would not have been possible.

The questionnaire was sent to the companies during the second half of 2012. A reminder was sent in March 2013 in the same way the questionnaire had been distributed. The companies were primarily contacted by e-mail, with the questionnaire attached as a pdf file. The e-mails also contained a link to the online version of the questionnaire at a website of the Max Planck Institute. The interviewees could either use the paper version and return it or fill it in online. The DAX International 100 and the DAX International Mid 100 companies were contacted by mail and in addition received a paper version of the questionnaire. They could also fill in the questionnaire online. For all procedures, anonymity was offered and guaranteed. Companies were asked to participate even when they do not have a (substantial) compliance program in order to get a representative picture of the situation in German companies.

The Institute received 87 filled out questionnaires by the end of February 2013, and another 53 after the reminder was sent out. Hence 140 questionnaires were answered altogether. This makes for a response rate of 2.4 percent. This low rate is due to the fact that, in recent years, many companies have already received a multitude of questionnaires on compliance issues and do not have the resources to re-

the 2009 Revised Recommendations on Combating Bribery in International Business Transactions (March 2011), p. 36 et seq.; available at: <<http://www.oecd.org/dataoecd/5/45/47416623.pdf>>.

¹⁵⁴ These listings belong to the Frankfurt Stock Exchange (<http://www.boerse-frankfurt.de>). See DAX International 100, ISIN: DE000A0S3CB2; DAX International Mid 100, ISIN: DE000A0S3CH9.

¹⁵⁵ The main sectors of activity of the companies contacted were: financial services (32%), public sector (24%), consumer business & transportation (15%), manufacturing (12%), technology, media & telecommunications (7%), energy & resources (4%), real estate & construction (4%) and life sciences & health care (2%).

¹⁵⁶ This sample included solely companies from the DAX International 100 as well as the DAX International Mid 100. These companies were contacted by *Gleiss Lutz* and not by the *Max Planck Institute for Foreign and International Criminal Law*.

spond to all the requests. In addition, the present questionnaire was quite detailed, requiring about 45 minutes to be filled out. However, without the companies in Germany having been addressed by their business partners *Deloitte* and *Gleiss Lutz*, the response rate would have been much lower than it was.

Anonymity was a major concern and was widely made use of. Only about 14 percent of the responding companies did not answer the questionnaire anonymously.

b) *Questionnaire 2 (2013)*

aa) Reasons for the Additional Questionnaire

The analysis of questionnaire 1 resulted in some most interesting results for legal policy which caused the wish for some confirmations, differentiations, and extensions beyond the first analysis. This demand was fostered especially by the new German discussion on the introduction of a criminal *corporate liability system* initiated by the German State North Rhine-Westphalia. Thus, in 2013 the first empirical survey was amended by a second one. The extension of this second survey concerned above all a comparable evaluation of the various policy systems against corporate crimes (esp. comparing compliance measures and legal measures), a special consideration of the German system of *regulatory criminal law* (“Ordnungswidrigkeiten”), as well as a differentiated evaluation of the sanction systems against the perpetrator, the responsible superior and the employing company. In addition, the second questionnaire provided the chance to include some control questions and to gather possible new trends in the field of compliance programs in Germany.

bb) Structure of the Questionnaire

The second questionnaire used for this gathering of information consists of four parts: The first part analyzes the factual situation in the company with respect to the existence of a compliance program and the types of programs in the companies (A. paper version of the questionnaire). The second part calls on the interviewed person to evaluate different strategies in regard to sanctions and incentives to introduce compliance programs (B.). The third part asks the companies to evaluate the scope of criminal behavior in general and in their company (C.). The fourth part again provides basic information on the interviewed person and his/her company (D.).

Research on the *first research aim*, the incidence and content of compliance programs, is mainly based on part A of the questionnaire. The respective questions asking for the reasons for setting up compliance programs, the types of measures used, and the importance of 17 different compliance topics are meant to complement the questions of the first questionnaire. In addition, the questionnaire also asks the respondents about their perception of crime in general, in Germany, and within their companies (C.).

Research on the *second aim*, the efficiency of compliance programs, is only taken up by the question on the cost-benefit ratio of implementing compliance programs (at the end of part B of the questionnaire), as the first questionnaire had already dealt with the topic in detail.

The main focus of the second questionnaire lies on *the third research aim*, the evaluation of different sanctions and strategies for enforcing compliance programs. The questionnaire in part B differentiates much more pronouncedly between the evaluation of different types of sanctions as well as the direct and indirect enforcement measures for fostering compliance programs than the first questionnaire did. Furthermore it differentiates between measures against perpetrators, superiors and companies and asks about different effects between criminal and regulatory sanctions. The latter difference is typical for the German system and had not been part of the first questionnaire due to its international orientation.

cc) Selection and Contacting of Interviewees

The German companies the questionnaire was sent to were again chosen to represent different company sizes, different fields of business, different legal forms of companies, and different geographical locations in order to reduce the effect of any specific local practice. The survey – both a print version and an online questionnaire – was distributed among 6300 addressees doing business in Germany at the beginning of August and was to be answered between 1 August 2013 and 1 October 2013. The addressees were again chosen from the contact data of the consulting company Deloitte (Germany), as the responses to the first questionnaire showed that companies of all sizes, of all legal forms and from different business fields and regions had been included. A reminder was sent to all addressees in mid-September. The Institute had received 99 answers by the time the reminder was sent and another 49 afterwards, hence 148 answers in total (a response rate of 2.3%).¹⁵⁷

c) Execution of the Analysis

For the analysis, the following rules were applied.

aa) Number of Answers, Percentage, and Rounding

Not all questions applied to all interviewees or were answered by all of them. Hence, for each figure depicted, the number of answers received is given. All numbers were rounded pursuant to the common rules to one decimal place (apart from percentages that are rounded to whole numbers in the majority of cases). In some

¹⁵⁷ For the respective methodical aspects see pp. 28 et seq., 200, 204 f.

cases, the total can therefore be slightly above or below 100 percent. Due to the software used, the tables and figures are using commas instead of points.

For some questions, the interviewee was allowed to give several answers. If multiple responses were allowed, the total can be significantly above 100 percent, as the percentage is given in relation to the number of interviewees and not the answers. The accompanying subtext of the figures indicates whether multiple responses were allowed or not.

bb) General and Specific Analysis

All answers have been analyzed in regard to the total number of answers given. Additionally, specific and differentiating analysis were conducted in regard to the size of the companies, the listing of companies, the differences between companies from the financial sector and those from other sectors, and in regard to differences in evaluation by members of the executive board, leading personnel, and compliance officers. The present report does not present all results of these specific analysis but only the most noteworthy ones, where remarkable differences can be seen or where expected differences could not be shown.

cc) “Three Most Important Answers”

Some questions asked the interviewee to name the three most important answers and to rank them from first to third place in order to determine the importance of the respective answers. Answers in first place were given three points, answers in second place were given two points and answers in third place were given one point. This allowed the answers to be weighted by their significance on a relative scale: the more points one topic received, the more important the subject is for the company.

dd) Average and Median

Several questions required the interviewee to evaluate the effectiveness or importance of certain measures. The interviewee was asked to rank the measure on a scale of 1 to 10. For the report, the arithmetic average of the answers is given.

In addition, the median is specified if there is a substantial difference compared to the arithmetic average. The median is the numerical value separating the higher half of a sample from the lower half. Hence, if all results are listed from lowest to highest, the median is the value exactly in the middle of the upper and the lower half. For example, if the results were 1, 2, 2, 5 and 50 the median would be “2”.

The median can thus give a clearer picture of the answers as it generally eliminates single and/or extreme outliers. For instance in the example given the average

is “12” due to the outlier “50” so that the median (“2”) is much closer to the majority of answers. In this case, the considerable difference between the average and the median indicates the diversity of the given results. Thus, if there is a substantial difference for the median compared to the average, this can be taken as a first indicator for the inconsistency of the answers.

ee) T-Test

In order to determine the significance of the results in regard to the evaluation of different regulatory measures and approaches, a significance test (t-test) was additionally used.¹⁵⁸ The t-test helps to determine whether a difference between two results is statistically significant or whether it has occurred by chance (and is therefore not likely to be reproduced in another survey). If a significant statistical difference exists, this supports the conclusion that the different evaluations of the interviewees indeed show a factual difference. However, the t-test does not say anything about the size of the difference itself: a significantly small difference, e.g. between 6.5 for civil measures and 6.8 for criminal measures, remains a small difference. Whether this small difference allows conclusions to be drawn (such as the greater importance of criminal measures) because it is a significant difference, is a question of interpretation and not of statistics.

As significance test a so called “dependent t-test” was used,¹⁵⁹ since the survey provided the results of two (and more) answers with the same units of measure (the scale from 1 to 10) from the same respondents at the same time.¹⁶⁰ The test compares the mean values of two given answers (each a result between 1 and 10). For instance the test allows comparing the mean values of the answers for the effectiveness of a criminal fine compared to the effectiveness of a regulatory fine. The t-test assumes that the difference in the mean values is zero (null hypothesis) and therefore no significant difference between the two pairs exists. If the assumption that the difference is zero (the null hypothesis) is rejected by the test, this shows that there is a significant difference between the two parts of the pair. As a statistical test, there are several levels of certainty for determining the significance: If the test result (the so called “p-value”) is less .05, one can conclude that the mean difference between the two answers of the respective pair is “significantly” (*) different from zero. A value below .01 is “very significant” (**) and a value below .001 “clearly significant” (***). Values below 0.1 are still considered “marginally significant” (“†”). Values greater than 0.1 are not considered significant.

¹⁵⁸ For details, see *infra* p. 200.

¹⁵⁹ As software, the program IBM SPSS Statistics (Version 21 and 22) was used; the test is called the paired-samples t-test.

¹⁶⁰ For details, see *infra* p. 200.

2. Analysis of Compliance Documents Published on the Internet

In addition to the questionnaire, the main compliance documents published on the Internet by the DAX 30 companies were analyzed. The analysis was based on the compliance documents of the companies available online during the period from December 1, 2012 to December 15, 2012. It aims to explore the acceptance of compliance and its public presentation as well as the topics and measures of the 30 leading companies listed on the German stock exchange in Frankfurt a. M. The analysis also aims to facilitate a comparison if these companies have referred to other measures than those of smaller or non-listed companies.

C. Structure of the Following Report

After this introduction to the object, aims and methods of the present research (Part 1), the following report will present the empirical results of the first and second questionnaire-based information gathering (Part 2 and Part 3) and the analysis of the compliance documents published on the Internet by the DAX 30 companies (Part 4). The final chapter (Part 5) will then give a short summary of these findings and formulate some hypotheses for criminal policy against corporate crime, which can be derived from these empirical results. The questionnaires, the tables of the t-test, and the bibliography used for this study are enclosed in the annex.

Part 2

Content and General Evaluation of Compliance Programs

The follow section presents the full results of the first questionnaire-based gathering of information from business experts.¹⁶¹ The results of the second questionnaire are depicted in this chapter as far as the scope and the content of compliance programs are concerned.¹⁶² The additional comparative results comparing the effectiveness of compliance measures and various legal strategies are presented separately in part 3, which also contains the overview of the companies surveyed in the second questionnaire.

According to the aims of the research, the survey first (A.) focuses on the status of compliance programs in Germany and then (B.) on results of the first questionnaire concerning the evaluation of the effectiveness of compliance measures. It concludes (C.) with an overview of the companies surveyed and the interviewees questioned with the first questionnaire.

I. Content of Compliance Programs

The first part of this analysis deals with the current state of compliance and its implementation within German companies. First (A.), the basic types and topics of compliance programs are described, followed (B.) by the organizational responsibility for the programs and (C.) their individual elements. A separate part (D.) examines compliance investigations, including the prevalence of crime in the corporate sphere.

A. Basic Types and Targeted Topics of Compliance Programs

The first questionnaire asked the companies (1.) to specify in detail the type of programs implemented within the companies; (2.) to name the topics covered by the compliance programs, including the three most significant ones; and (4.) to give the

¹⁶¹ See Annex I.A.1. for the print version of the questionnaire and Annex I.A.2. for the online-version.

¹⁶² See Annex B for the questionnaire.

type of rules enforced. The second questionnaire (3.) asked the companies to evaluate the importance of seventeen typical topics covered by compliance programs.

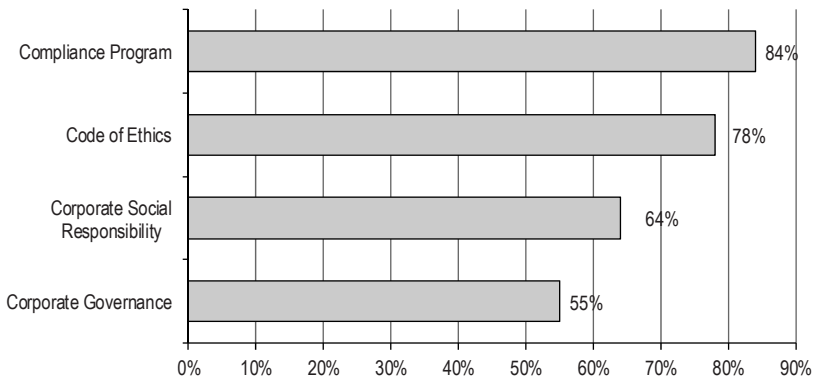
1. Compliance Programs and Other Types of Programs

a) Types of Programs

The first part of questionnaire 1 refers to the types of programs companies have set up. Compliance is not the only new development: Corporate Social Responsibility and Corporate Governance have likewise become commonplace topics. The question of business ethics has equally been taken up, although its roots go back to the 1970s. Hence, companies were asked to respond to all of these four aspects. “Compliance” in the context of the questionnaire refers to legal regulations; “ethics” refers to standards beyond legal requirements; “corporate social responsibility” refers to social activities and the support of charities, and “corporate governance” refers to a transparent corporate structure and to corporate control mechanisms.

84 percent of the companies have a compliance program and 78 percent have a code of ethics or apply ethical standards. Almost two thirds of the companies (64%) have a program for corporate social responsibility, which correlates with the size of the company: the smaller the company, the less likely activity in this field is (*figure 5*). Least common are measures on corporate governance (55%). These 55 percent mainly result from the participating incorporated companies (“Aktiengesellschaften” and “Societas Europeas”).

Figure 5: Types of programs (general)¹⁶³



No. of answers: 115.

¹⁶³ See no. 3 (questionnaire, Annex I.A.1./no. 11 (online questionnaire, Annex I.A.2.).

Figure 6: Types of programs (company size)

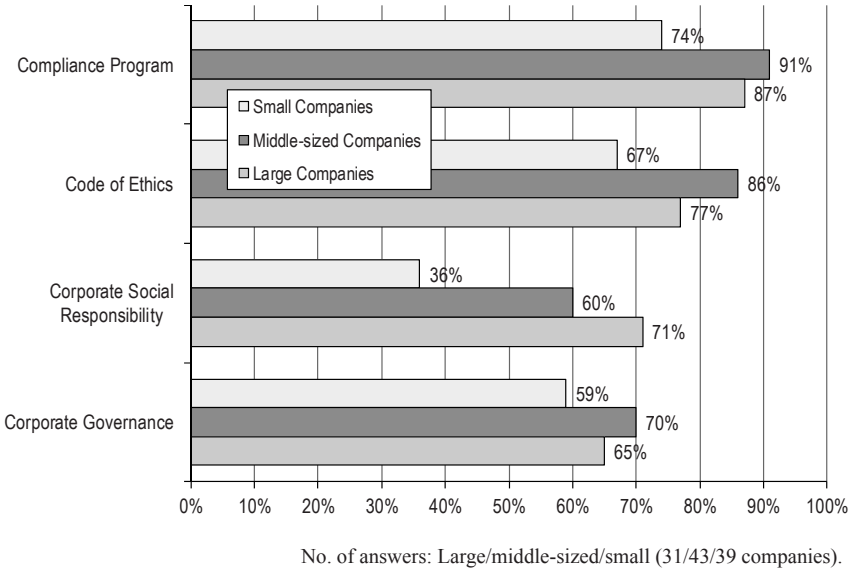
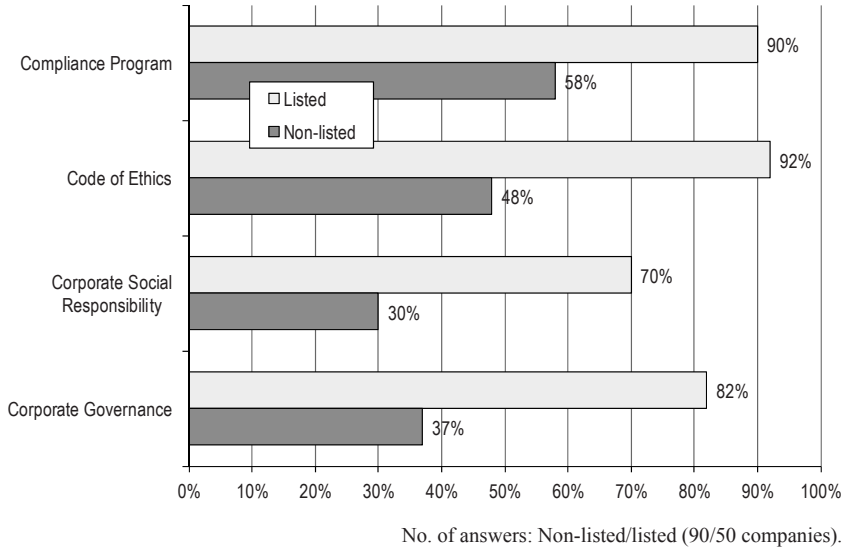


Figure 7: Types of programs (listing)



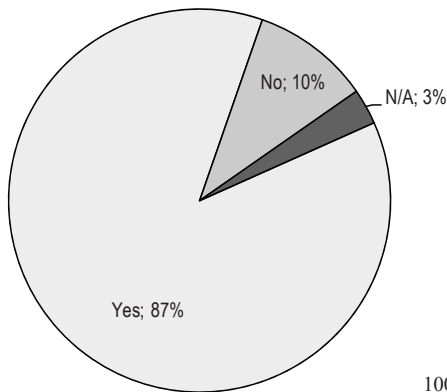
The results according to the size of the company show that only partially are there greater differences only in part between the companies as regards the existing types of programs. The majority of small companies does not have a program for corporate social responsibility, whereas far more middle-sized and an even greater number of larger companies do. Concerning the other measures, the percentage of small companies is also below that of the other companies, but the difference is not great. Furthermore, the analysis shows that it is middle-sized companies which have most frequently implemented the different types of programs, not large ones (*figure 6*).

The difference between listed and non-listed companies reveals that being listed is the main criteria for having taken up programs. Ethics and compliance is common practice for a very large number of listed companies, followed by corporate governance measures. Over two thirds of listed companies also have measures fostering corporate social responsibility. The figures for non-listed companies are far lower than the ones for listed companies, in particular in regard to corporate governance and corporate social responsibility (*figure 7*).

b) Existing Compliance Measures

In the second questionnaire, the companies were asked if they have implemented specific measures in order to prevent or detect violations of legal regulations, especially regulatory offense or crime prevention measures (compliance measures). The vast majority of the companies (87%) answered in the affirmative. Only ten percent stated that they have not dealt with the topic yet (*figure 8*). These results do not only

*Figure 8: Existing compliance measures*¹⁶⁴



100%: 148 companies.

¹⁶⁴ See no. 1 of the questionnaire (Annex I.B.).

confirm the common use of compliance measures seen in the results by the first questionnaire (see *supra* figure 5) but also show the ongoing tendency to implement compliance measures.

c) Comparison with Previous Studies

The above-mentioned studies by consultancies also partly queried the companies about different types of measures in regard to regulations and ethics.¹⁶⁵ The results of these studies show that companies began to take up preventive measures against economic crime in the first years after 2000.¹⁶⁶ The 2006 study by *KPMG* as well as the 2007 study by *PwC* revealed that quite a substantial number of companies had already implemented preventive measures.¹⁶⁷ Since then, the number has increased. The 2009 study by *PwC* showed that 73 percent of the companies have a code of ethics (2007: 67%) and 44 percent have a compliance program (2007: 41%).¹⁶⁸ In the 2011 study by *PwC*, the number of companies with a compliance program had already increased to 52 percent and reached 74 percent by the 2013 consultancy study.¹⁶⁹

The result of the first questionnaire of the present study – that 84 percent of the companies have a compliance program – is higher than the results of the 2013 study by *PwC*. The result of the second questionnaire, indicating 87 percent, shows that compliance programs have become slightly more common in the meantime. Overall, the present results confirm the trend of older studies that the implementation of compliance programs has been constantly increasing in the last decade.

The number of companies having a code of ethics (78%) is line with the findings of the previous studies showing an increase of 5 percent since the 2009 study by *PwC*. The analysis of the DAX 30 companies in the following reveals a much higher percentage (90%) among these listed companies.¹⁷⁰ The stronger rise in compliance programs compared to the rise in code of ethics might be seen as an indicator that ethical issues have been increasingly included into compliance programs so that single code of ethics have become less important.

¹⁶⁵ The studies are listed *supra* Part 1.I.B.2. (p. 14 et seq.).

¹⁶⁶ See E&Y, *Wirtschaftskriminalität in Deutschland 2003*, p. 30 et seq.

¹⁶⁷ See *KPMG, Studie 2006 zur Wirtschaftskriminalität in Deutschland*, p. 17; *PwC, Wirtschaftskriminalität 2007*, p. 30 et seq., 45.

¹⁶⁸ See *PwC, Wirtschaftskriminalität 2009*, p. 56; see also *PwC, Wirtschaftskriminalität 2007*, p. 31.

¹⁶⁹ See *PwC, Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 26; *PwC, Wirtschaftskriminalität 2011*, p. 40; similarly, the results by *KPMG, Wirtschaftskriminalität in Deutschland 2010 (2010)*, p. 18: In 2010, 74% of the surveyed companies had a compliance structure; in 2006, it was only 16%.

¹⁷⁰ See *infra* under Part 4 I. (p. 193).

2. Topics Targeted and Their Importance

a) Topics Targeted

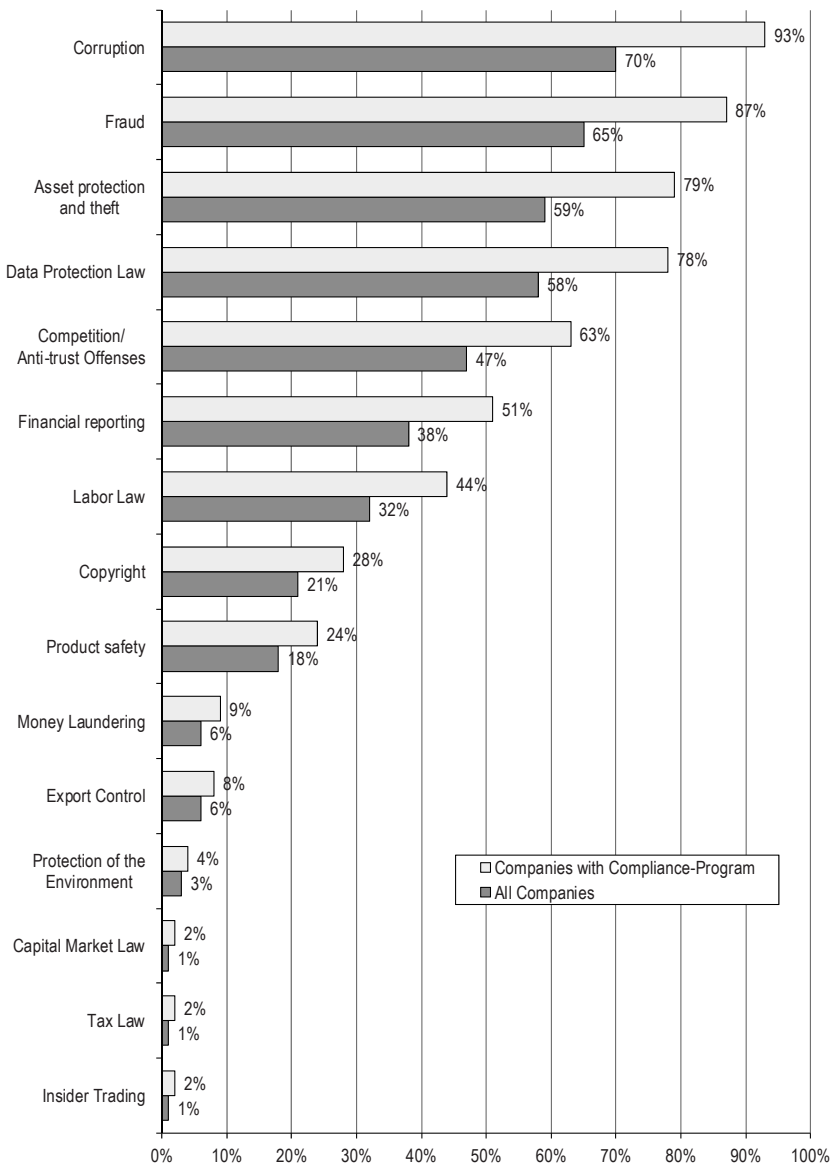
In the German discussion, compliance is often linked to the Siemens corruption cases, so that corruption and compliance seem to go hand in hand. Therefore, the first questionnaire asked the companies which topics were covered by their compliance program. Not surprisingly, corruption was mentioned most often: 93 percent of companies with a compliance program (which accounts for 70 percent of all participating companies) have addressed the topic. It is closely followed by fraud and – without the aim of protecting customers, but rather of protecting the company itself – the protection of company assets, especially from unparsimonious use or from theft. Data protection law is in fourth place and – surprisingly, considering the large fines by the European Union – competition law/anti-trust law in fifth (*figure 9*).

The results according to the size of the company show that there are great differences between the companies concerning the topics covered. Small companies tend to cover less topics, and the percentage of small companies covering a specific topic is smaller than that of middle-sized and large companies. Remarkably, the number of middle-sized companies exceeds the number of large companies in regard to the majority of topics. Concerning the topics covered, the picture mostly does not differ very much from the average. Corruption is in first place for all companies. A significant difference exists in regard to competition law and anti-trust offenses: Large companies cover this area in 77 percent of the cases (ranking it in third place), whereas middle-sized companies cover it in 60 percent of the cases (fifth place), and small companies rank it in seventh place with only 33 percent of the cases (*figure 10*).

The difference between listed and non-listed companies is even greater than that between small, middle-sized, and large companies. A much higher number of listed companies have addressed the different compliance topics in question. Only in regard to asset protection and theft as well as product safety, is the difference less prominent. Concerning the topics covered most, the picture does not differ very much from the average. Corruption and fraud are in the first two places (*figure 11*).

A rather diverse picture is shown by the analysis according to the different markets in which the companies mainly conduct their business. Corruption is the most important topic independent of business location. It is mainly nationally active companies that put more emphasis on asset protection and theft, and data protection law. Companies primarily active in Europe have a stronger emphasis on competition and anti-trust law. Internationally active companies do not rank the different topics much differently than the other companies, but more of them include labor law, copyright protection, and product safety in their compliance programs (*figure 12*).

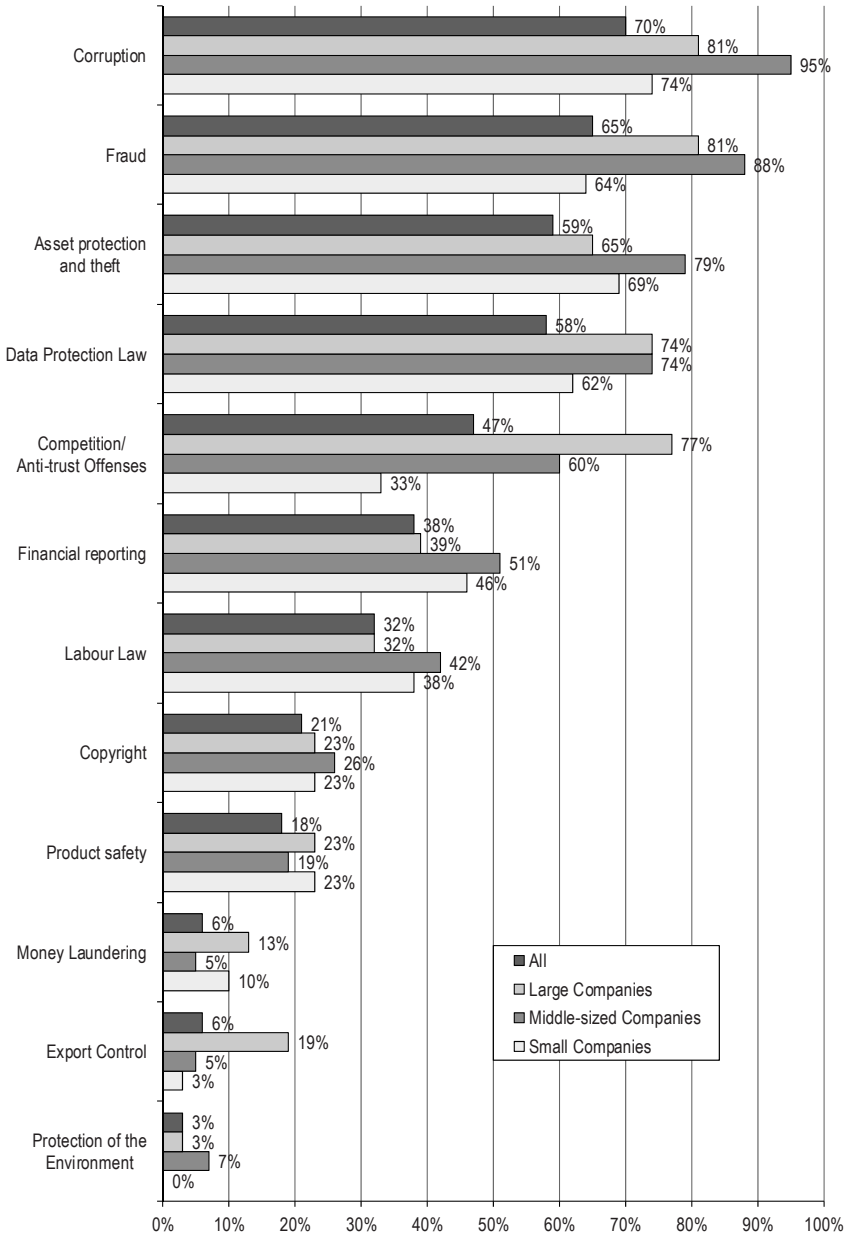
Figure 9: Topics covered by compliance programs (general)¹⁷¹



No. of answers: All/With compliance program (140/105 companies).

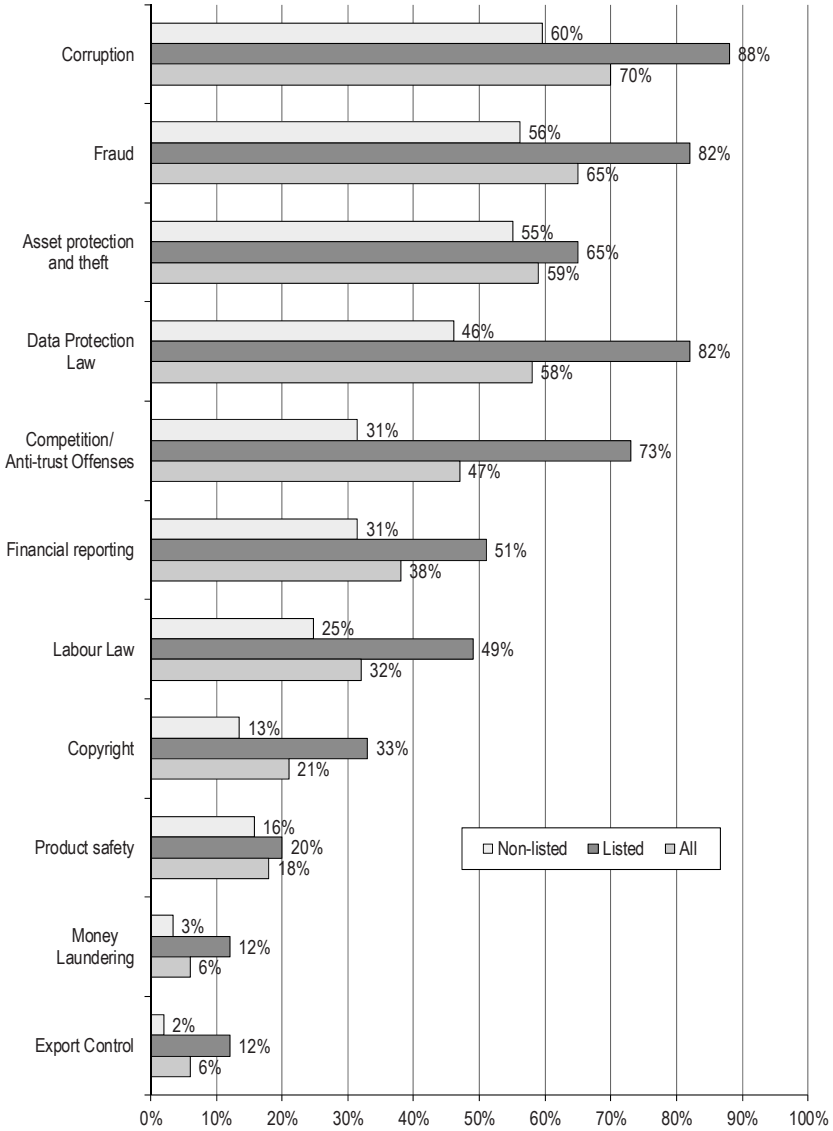
¹⁷¹ See no. 4 (questionnaire, Annex I.A.1.)/no. 12 (online questionnaire, Annex I.A.2.).

Figure 10: Topics covered by compliance programs (company size)



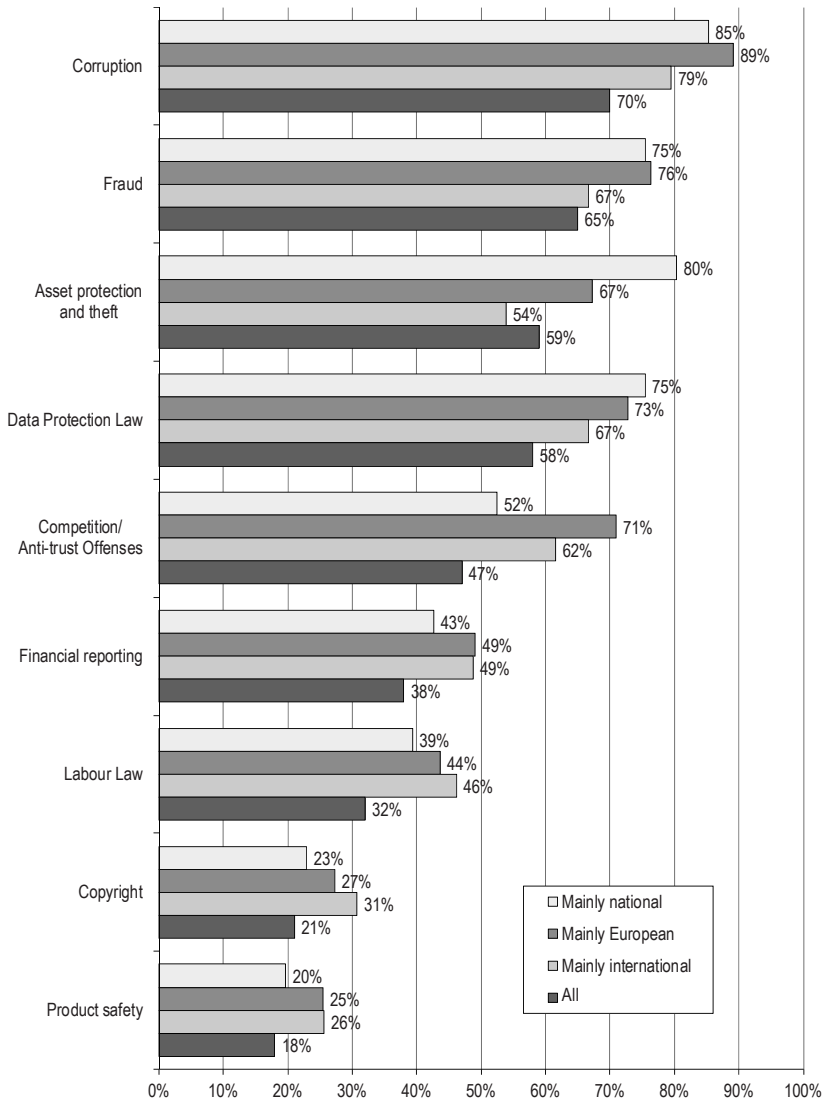
No. of answers: All/large/middle-sized/small (140/31/43/39 companies).

Figure 11: Topics covered by compliance programs (listing)



No. of answers: All/non-listed/listed (140/89/49 companies).

Figure 12: Topics covered by compliance programs (markets)



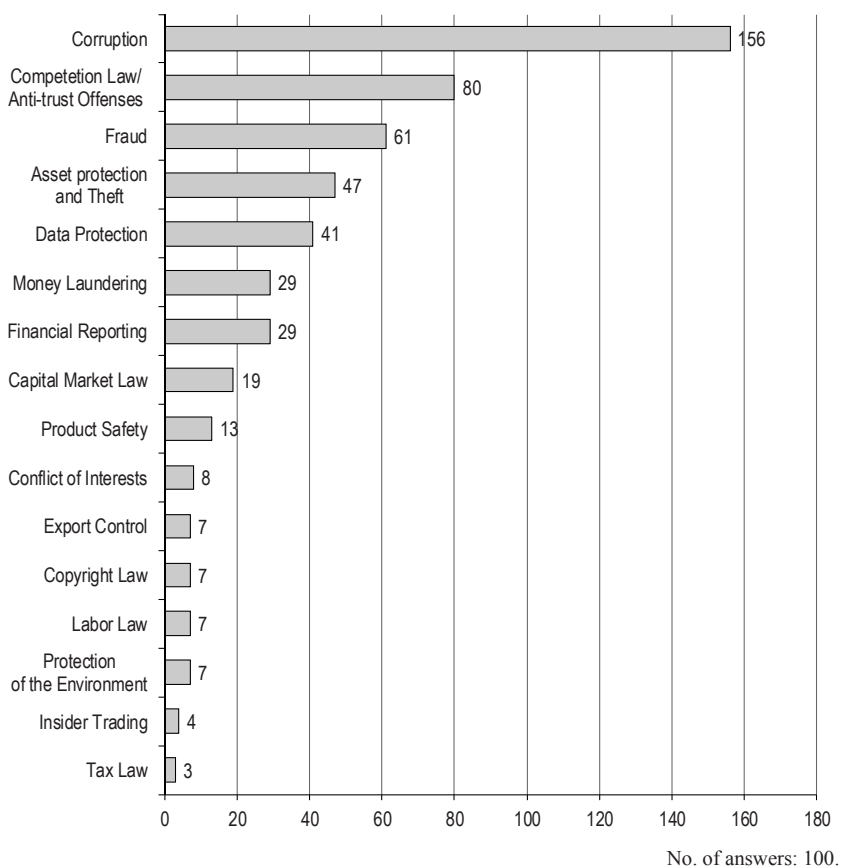
No. of answers: All/mainly national/mainly European/mainly international (140/61/55/39 companies – multiple responses allowed¹⁷²).

¹⁷² The companies were allowed to give multiple responses if e.g. a company is equally doing business in the national and European markets. Altogether, 114 companies were able to be analyzed for this question; hence, a substantial number of companies indicated more than one market.

b) Three Most Important Compliance Topics

The questionnaire also asked the companies to name the three most important subjects covered by their compliance program. This allowed them to be weighed by their significance for the companies.¹⁷³ In this regard, corruption is again in first place, but this time it is clearly separate from the other topics. Competition law and anti-trust law are in second place. Companies seem to be aware of the importance of anti-trust compliance, although not all of them have included it in their compliance program (figure 13).

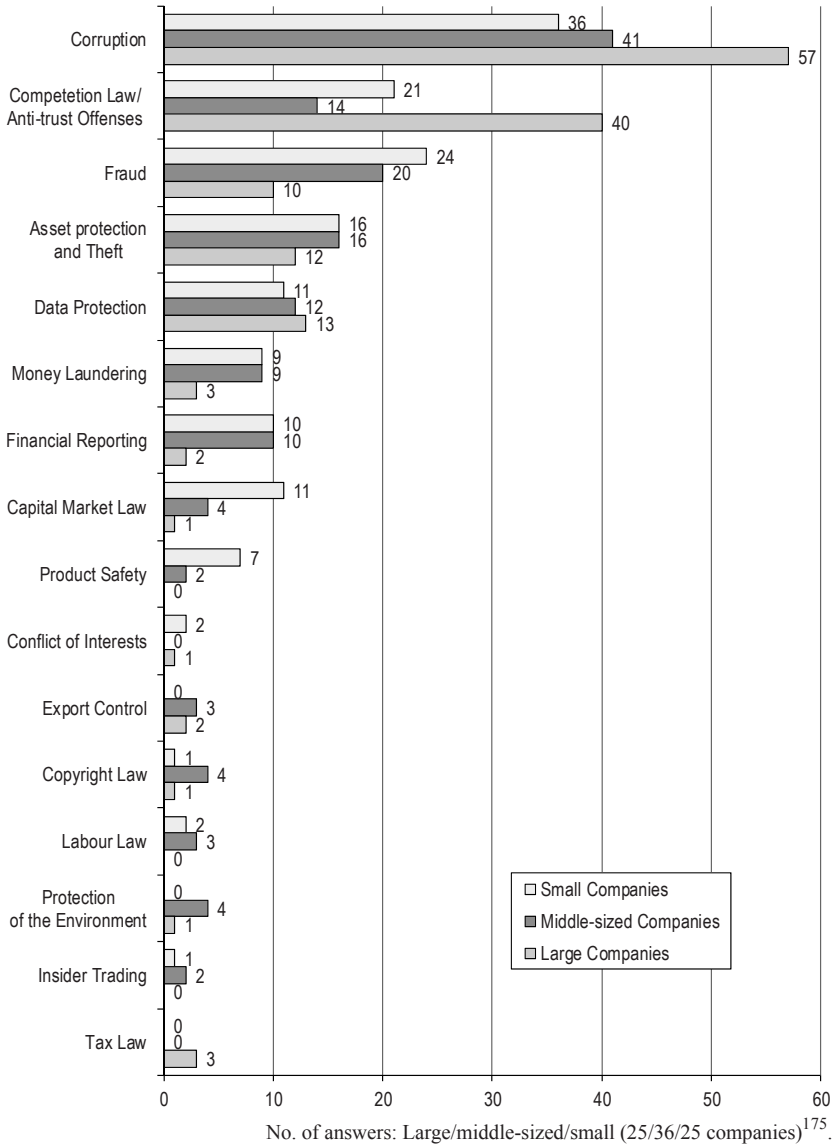
Figure 13: Three most important compliance topics (general)¹⁷⁴



¹⁷³ For the method used, see p. 30 above.

¹⁷⁴ See no. 4 (questionnaire, Annex I.A.1.)/no. 13 (online questionnaire, Annex I.A.2.).

Figure 14: Three most important compliance topics (company size)



¹⁷⁵ In order to make the results comparable the figures for middle-sized companies were adjusted (25 were taken as 100%, so that the figures for middle-sized companies were multiplied by 25/36).

The results according to the size of the company confirm the great differences between the different topics. Corruption, competition law/anti-trust offenses, and fraud dominate the compliance topics. Corruption and competition law/anti-trust offenses are rated much higher by large companies compared to smaller companies. Small and middle-sized companies regard fraud as being more important than competition law/anti-trust offenses (*figure 14*).

c) Comparison with Previous Studies

The studies by consultancies also analyzed the most common areas covered by compliance programs.¹⁷⁶ According to the 2011 survey by *PwC*, such programs mostly focus on money laundering (83%), protection of trade secrets/data protection (81%), fraud (77%), embezzlement (77%), and corruption (69%).¹⁷⁷ The 2010 *PwC* survey identified the protection of trade secrets/data protection (85%), corruption (85%), illegal acceptance of benefits (85%), fraud (85%), general ethical principles of the company (85%), and dealing with conflicts of interest (85%) as the most important elements of compliance programs.¹⁷⁸

The 2012 survey by *KPMG* asked companies about the highest risks in the field of economic crime. Theft or misuse of data and the breach of copyright law are seen as the highest risks. Of least importance are money laundering and financial reporting.¹⁷⁹

The survey carried out by *Alvarez & Marsal* in 2011 distinguishes between financial services and non-financial services. Regarding financial services, data protection and money laundering are the most important aspects. Concerning non-financial services, corruption and anti-trust offenses are most important. Least important for non-financial services is money laundering.¹⁸⁰ The study also shows the most important areas of compliance for the DAX 30 companies. These companies regard corruption and data protection to be the most relevant subjects. Least important are money laundering and insider trading.¹⁸¹

Taken together, the studies give no clear and consistent picture about the most important topics covered by companies. Some tendencies can be seen, however, that are in line with the present study. Fraud, the protection of trade secrets/data

¹⁷⁶ The studies are listed *supra* § 1 I.B.2. (p. 14 et seq.).

¹⁷⁷ *PwC*, *Wirtschaftskriminalität 2011*, p. 44. Companies without compliance programs see money laundering (83%), data-protection (81%), fraud and embezzlement (77%) as the most important areas, see *PwC*, *Wirtschaftskriminalität 2011*, p. 45

¹⁷⁸ *PwC*, *Compliance und Unternehmenskultur (2010)*, p. 21.

¹⁷⁹ *KPMG*, *Wirtschaftskriminalität in Deutschland 2012*, p. 16.

¹⁸⁰ *Alvarez & Marsal*, *Compliance. Studie zur Strategie und Organisation 2011*, p. 20.

¹⁸¹ *Alvarez & Marsal*, *Compliance. Studie zur Strategie und Organisation 2011*, p. 36.

protection and corruption are among the most important concerns of companies. Money laundering, in contrast, might be important for the financial services sector only. No clear tendency can be seen in regard to competition law/antitrust law. The 2001 survey by *PwC* points out that competition law/anti-trust law is not regarded as an important subject even though these offenses are increasingly prosecuted.¹⁸² The present study shows a similar mixed result: although not even two thirds of the companies deal with the topic, it is regarded as one of the two most important ones. One explanation is that companies especially regard anti-trust law as an important subject (probably because of the public coverage of many cases with high fines) but have not included it in their compliance programs since they do not see a risk of being personally involved in such activities.

3. Importance of Compliance Topics

The companies were asked in the second questionnaire to evaluate seventeen different areas for compliance measures according to their importance for the interviewee's company on a scale of 1 to 10 (ranging from "no importance" to "great importance"). Data protection came in first place, followed by bribery/corruption and conflicts of interest. Fraud and theft/embezzlement/breach of trust, hence questions of the protection of one's own and someone else's assets placed fourth and fifth. Competition law and anti-trust offenses ranked in midfield, coming even behind money laundering (*figure 15*).

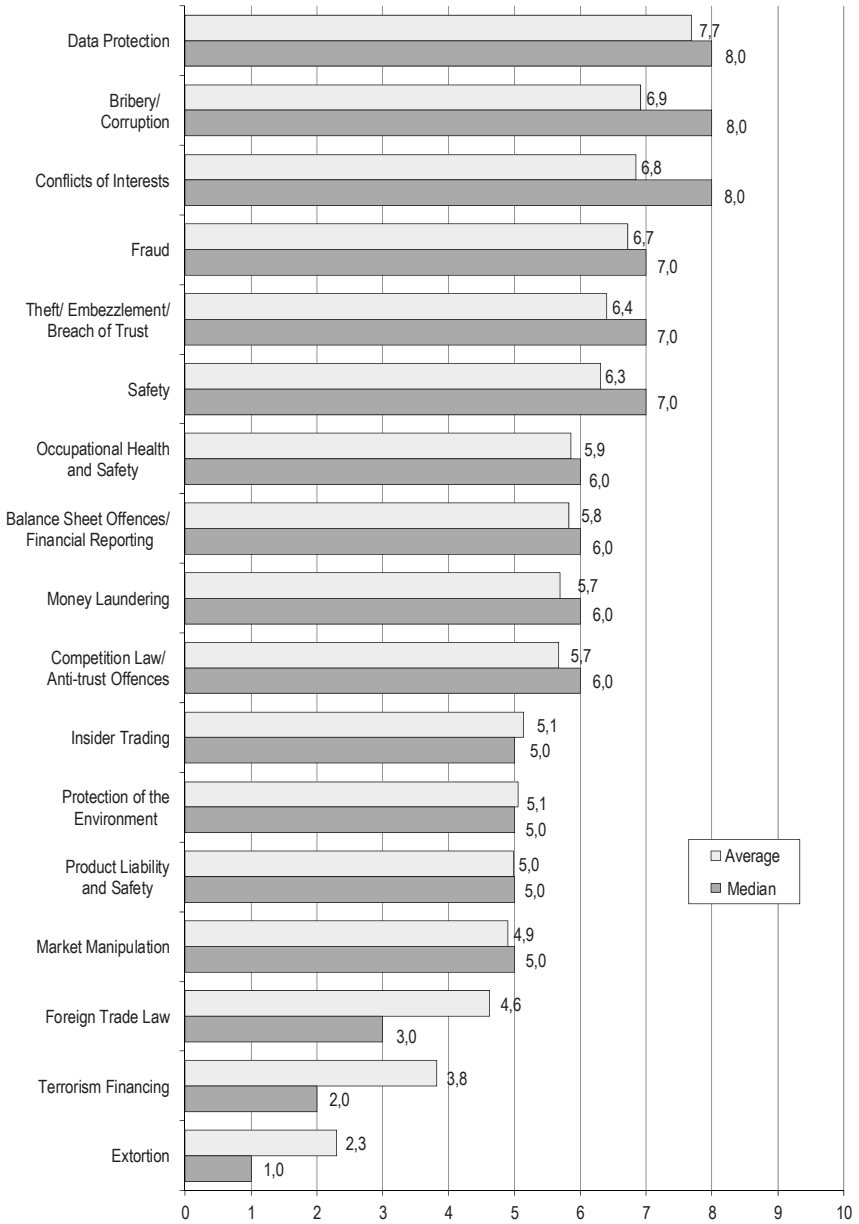
These results mainly confirm the findings of the first questionnaire concerning the importance of corruption, fraud, asset protection and theft. A difference can be seen in the evaluation of data protection which has become increasingly important. This might be due to the heightened sensitivity of dealing with personal data in internal investigations as well as the ongoing public discussion of data harvesting by foreign states and adequate possibilities for data protection. Competition law and anti-trust offenses are on average regarded as being less important than in the first questionnaire. Yet for large companies, competition law and anti-trust offenses are still among the top three topics covered. Insofar, the difference might be due to the different kinds of samples in the two questionnaires.

If one looks at the answers in regard to the size of the companies,¹⁸³ the picture is much more diverse. The larger the company is, the more concerned the company is about the different compliance topics. Small companies evaluate all topics as less important than large companies do, and, in most cases, as less important than middle-sized companies do. For some topics, the difference is especially great: among these are foreign trade law, product liability and safety, and competition law/

¹⁸² *PwC*, *Wirtschaftskriminalität 2011*, p. 44.

¹⁸³ For the definition of large, middle-sized, and small, see *supra* p. 2.

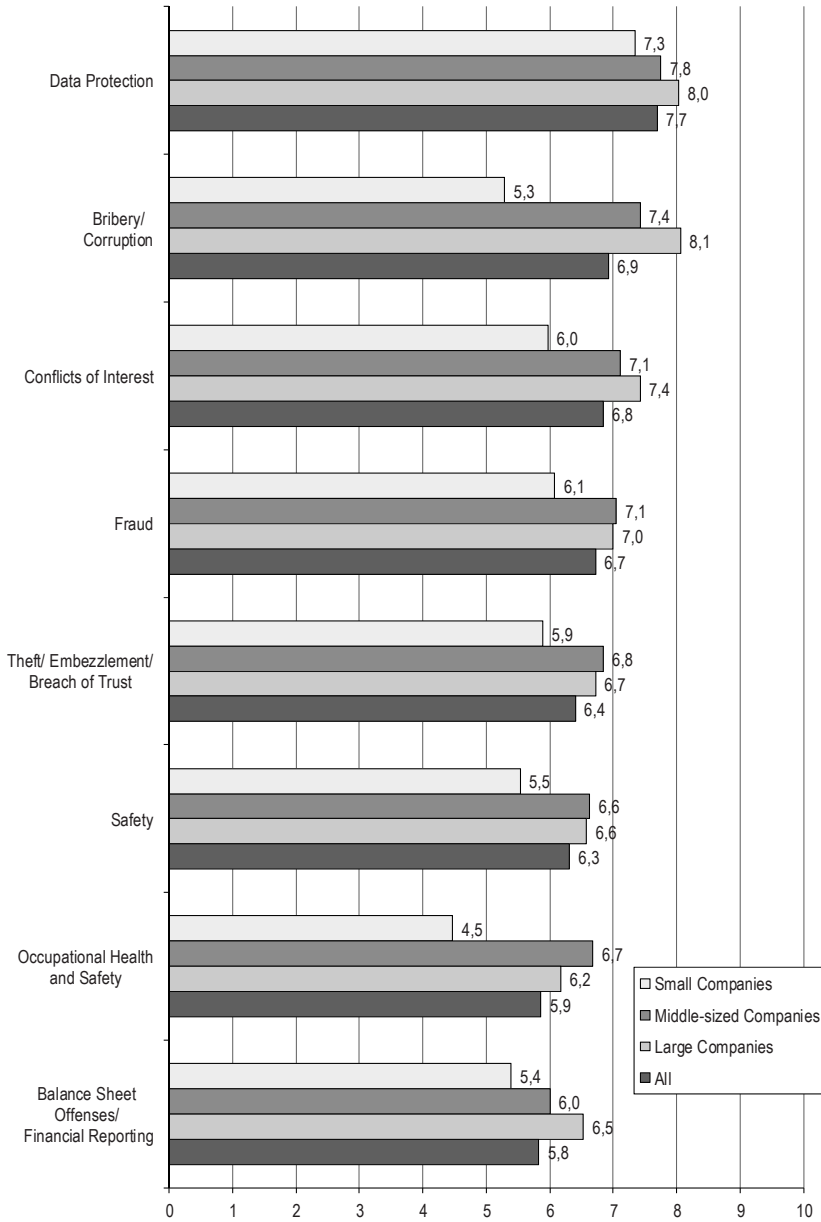
Figure 15: Importance of compliance topics (general)¹⁸⁴



No. of answers: 140 companies.

¹⁸⁴ See no. 4 of the questionnaire (Annex I.B.).

Figure 16: Importance of compliance topics (company size – part 1)



No. of answers: All/large/middle-sized/small (140/36/57/40 companies).

Figure 17: Importance of compliance topics (company size – part 2)

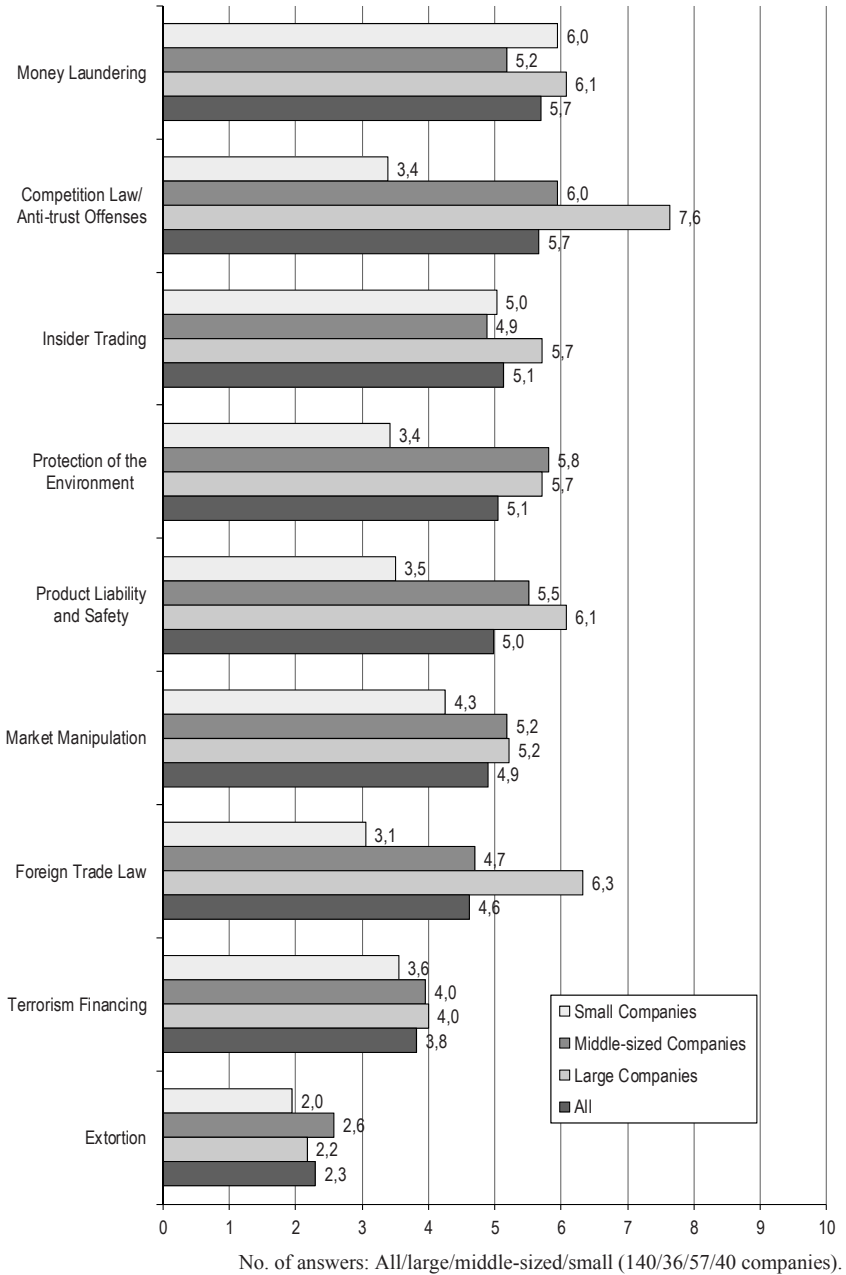
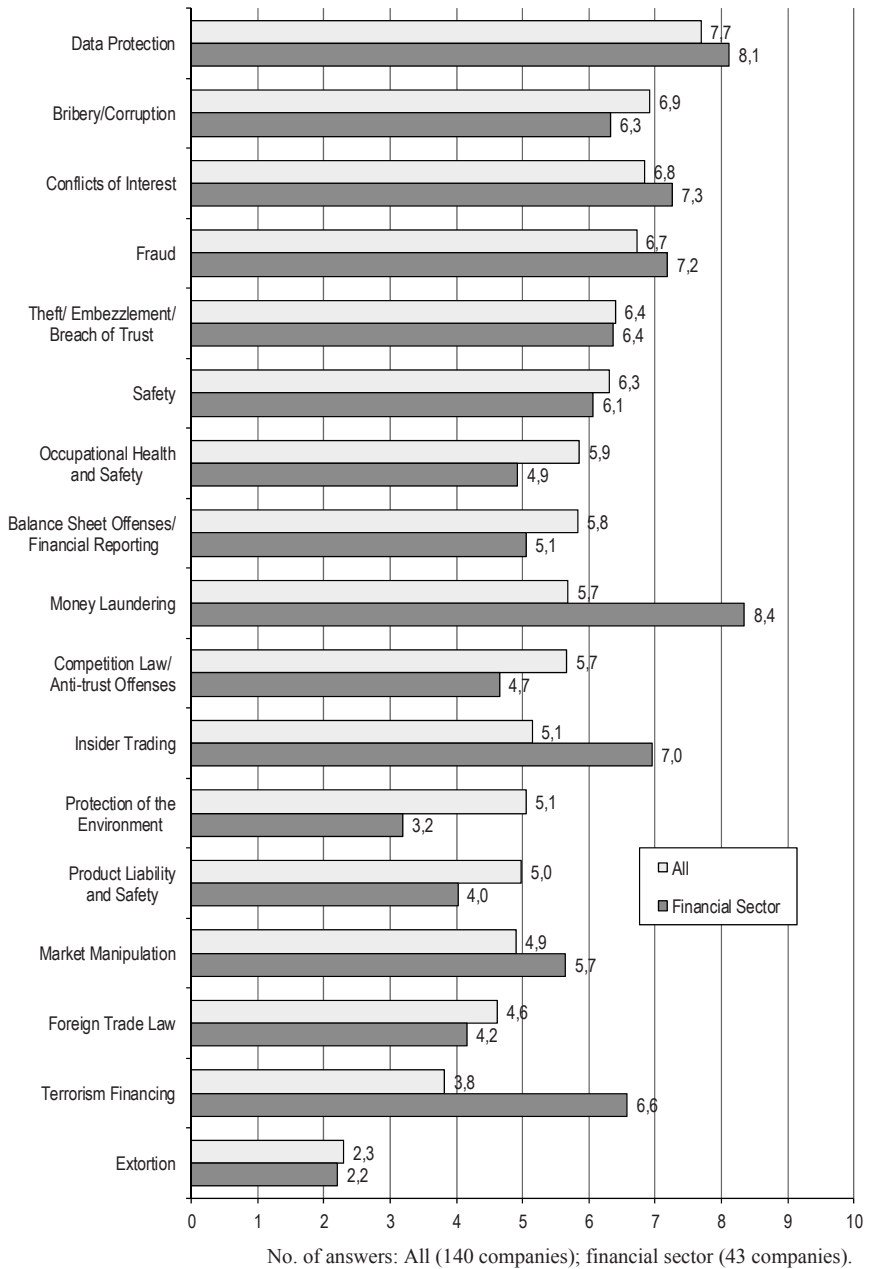


Figure 18: Importance of compliance topics (financial sector)



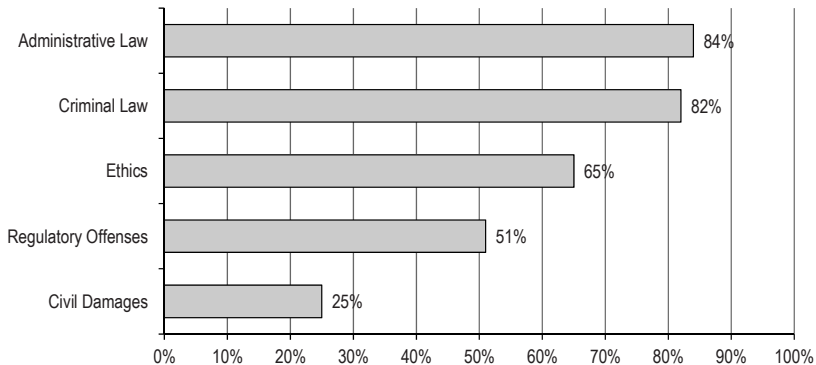
anti-trust offenses. For large companies, competition law and anti-trust offenses rank in third place, and therefore it is one of their main concerns besides bribery/corruption and data protection (*figures 16, 17*).

Looking solely at companies in the financial sector, the picture differs not only with respect to the average results but also regarding the results according to size. Money laundering is considered the most important topic. This can be explained by the dense legal framework that requires companies to take up a substantial number of organizational measures. In second place is data protection, followed by conflicts of interest. A significant difference compared to the average results is also apparent in the case of insider trading and the financing of terrorism, both being typical risks in the financial sector (*figure 18*).

4. Rules to be Enforced by Compliance Programs

The companies were additionally asked which regimes of law are enforced by their compliance programs. They were offered the five categories of: criminal law, regulatory offenses (*Ordnungswidrigkeitenrecht*), civil law regulations providing civil damages, administrative regulations and ethical rules. Over 80 percent of the companies have applied administrative regulations and criminal regulations, and 65 percent have also included ethics in their compliance program. In contrast, only half of the companies also take regulatory offenses into account. Only 25 percent of the companies' regulations provide for measures to avoid civil damages (*figure 19*).

*Figure 19: Types of rules enforced*¹⁸⁵



No. of answers: 97 (multiple responses allowed, so that the total can exceed 100%).

¹⁸⁵ See no. 5 (questionnaire, Annex I.A.1.)/no. 14 (online questionnaire, Annex I.A.2.).

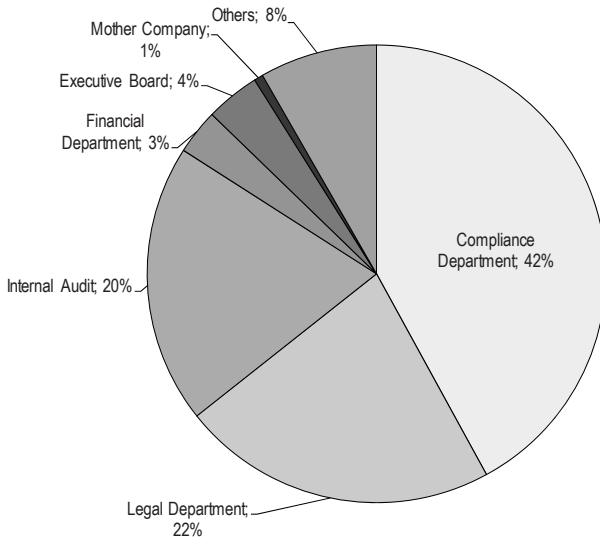
B. Organizational Responsibility for Compliance Programs

1. Compliance Responsibility

In most companies either the existing compliance department or the legal department is mainly responsible for the implementation and control of compliance programs. In a number of cases (31%), internal auditing is also involved. Rarely is the executive board itself responsible for the implementation. This means that, in almost all companies, this task has been delegated to a unit where compliance can be dealt with on a day-to-day basis (*figure 20*).

The cross-sectional analysis showed that the majority of the responding companies in which a compliance department is responsible are from the financial services sector (45%), followed by manufacturing companies (15 percent; *figure 21*). 48 percent of the companies with a compliance department are listed on the stock exchange, whereas 52 percent are not.¹⁸⁶ The listing does not seem to have a decisive effect in this case. Also, the size of the companies does not play a major role:

*Figure 20: Organizational responsibility for compliance program*¹⁸⁷

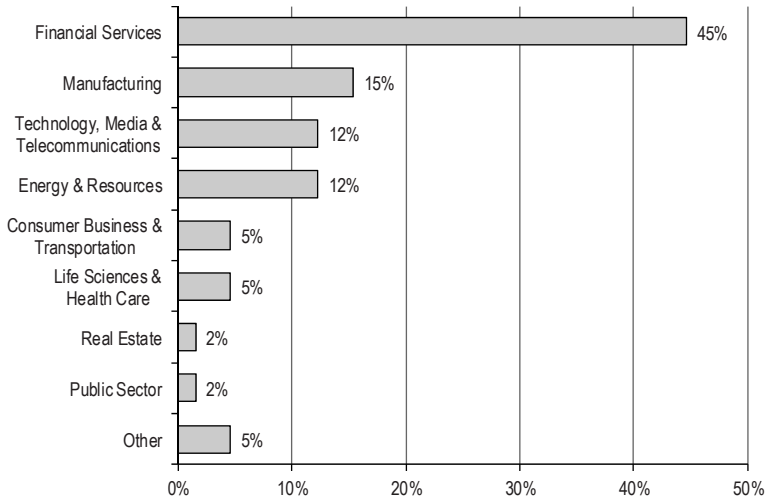


No. of answers: 102 (multiple responses allowed, so that the total can exceed 100%).

¹⁸⁶ Number of answers: 67 companies.

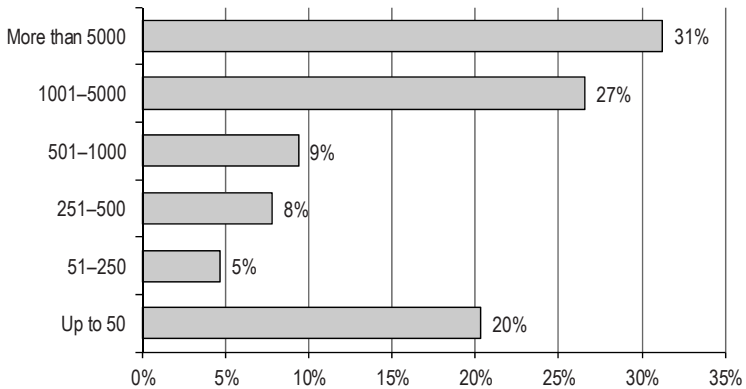
¹⁸⁷ See no. 6 (questionnaire, Annex I.A.1.)/no. 15 (online questionnaire, Annex I.A.2.).

Figure 21: Sector of activity of companies with responsible compliance department



No. of answers: 65 companies (multiple responses allowed, so that the total can exceed 100%).

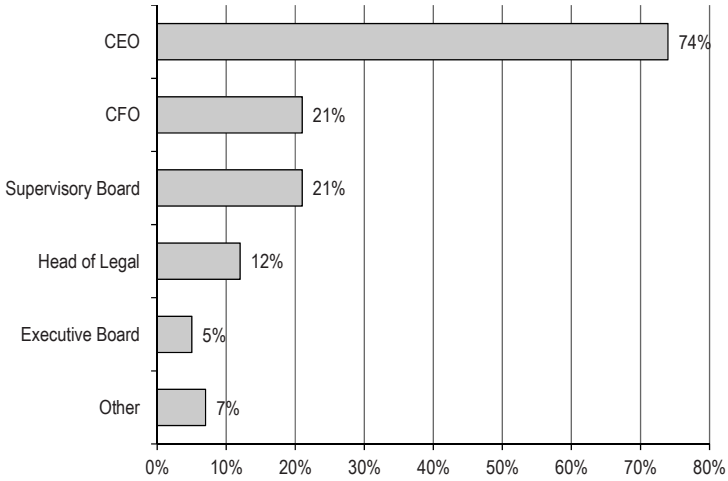
Figure 22: Number of employees in companies with responsible compliance department



No. of answers: 64 companies.

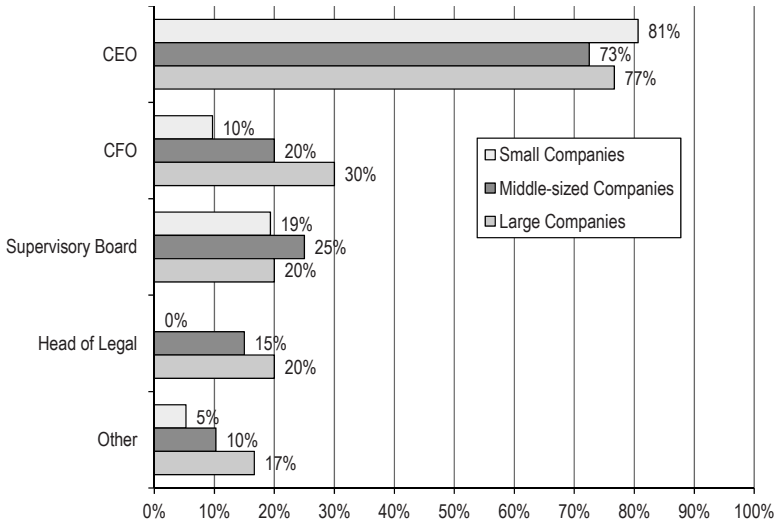
31 percent of the companies in which the compliance department is responsible are large companies, 36 percent are middle-sized ones and 33 percent are small. It is quite remarkable that a substantial number of very small companies with up to 50 employees have given the task to a special compliance department (figure 22).

Figure 23: Addressees for compliance reporting (general)¹⁸⁸



No. of answers: 105 (multiple responses allowed, so that the total can exceed 100%).

Figure 24: Addressees for compliance reporting (company size)



No. of answers: Large/middle-sized/small (36/57/40 companies; multiple responses allowed, so that the total can exceed 100%).

¹⁸⁸ See no. 6 (questionnaire, Annex I.A.1.)/no. 16 (online questionnaire, Annex I.A.2.).

2. Reporting by the Compliance Department

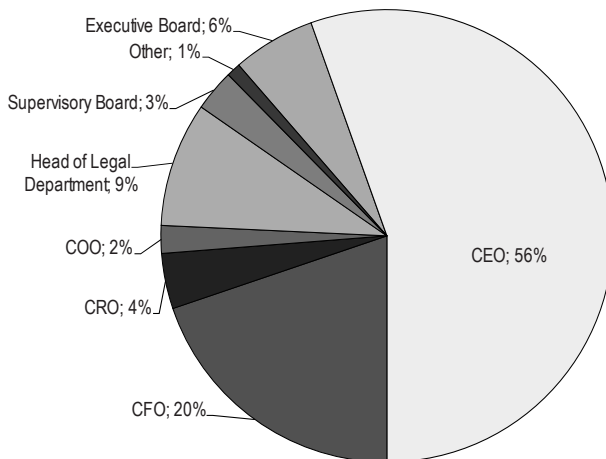
The department responsible for the implementation and control of compliance programs in almost three quarters of the companies reports to the CEO and is responsible to him. Far fewer companies provide for a structure where reports go to the CFO (21%). Surprisingly, there is a high number of companies in which the department reports compliance issues directly to the supervisory board (in most of the cases, the recipient is the “Aufsichtsrat” of an AG or SE), as the board is not involved in operational issues on a daily basis under the German company structure (figure 23).

The results according to the size of the companies indicate no major differences between small, middle-sized and large companies. In smaller companies the CEO is more often the sole and direct addressee, whereas in larger companies other members of the executive board are involved (figure 24).

3. Reporting by the Chief Compliance Officer

In the second questionnaire, the interviewees were also asked whom the chief compliance officer reports to. In over 80 percent of the cases, he reports to the executive board, the CEO, or the CFO. Nine percent, mainly the compliance officers

Figure 25: Person/department the CCO is reporting to¹⁸⁹

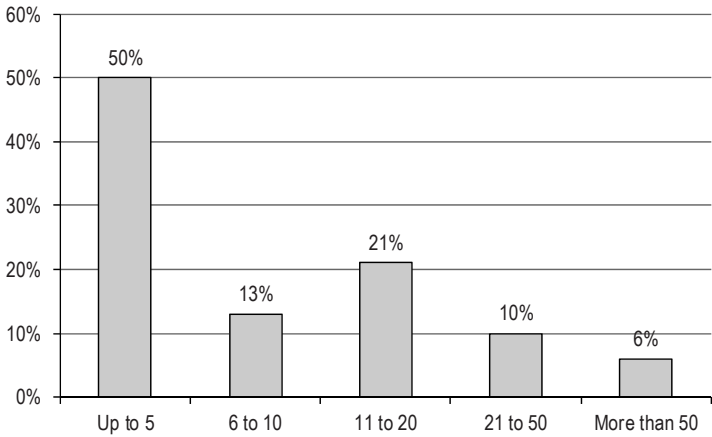


No. of answers: 115 companies (multiple responses allowed, so that the total can exceed 100%).

¹⁸⁹ See no. 14 of the questionnaire (Annex I.B.).

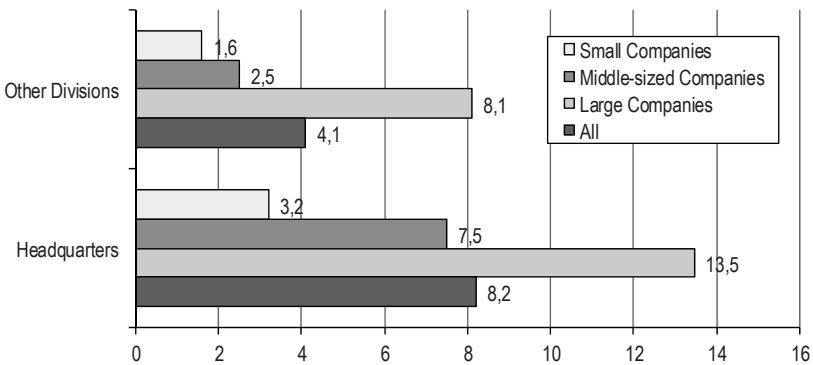
and company lawyers, report to the head of the legal or the compliance department, four percent to the Chief Risk Officer (CRO), and two percent to the Chief Operating Officer (COO). Three percent report to the supervisory board (“Aufsichtsrat”) (figure 25).

Figure 26: Number of employees in compliance departments¹⁹⁰



No. of answers: 68.

Figure 27: Average number of compliance officers (company size)



No. of answers: All/large/middle-sized/small (68/22/27/19 companies).

¹⁹⁰ See no. 6 (questionnaire, Annex I.A.1.)/no. 17 (online questionnaire, Annex I.A.2.).

4. Size and Location of Compliance Department

In the first questionnaire the companies were asked about the size of the “compliance department”. The number of employees working there is rather limited. In 50 percent of the companies, not more than five full-time positions exist. In 84 percent of the cases, 20 or less people work for the compliance department (*figure 26*).

Looking at the results more closely and also analyzing the location of the compliance department shows that all the responding companies have a compliance department in their headquarters. 47 percent of these companies also have compliance officers in other divisions. In large companies, this is more often the case (64%) than in middle-sized and small companies (each 37%).¹⁹¹ In large companies, the number of compliance officers is substantially higher in their headquarters as well as in other divisions compared to smaller companies (*figure 27*).

5. Comparison with Previous Studies

These results are only partly in line with the outcomes of other studies. The 2010 survey by *PwC* showed that only 29 percent of the companies have their own compliance department, although 63 percent have a compliance officer.¹⁹² In many cases, other departments have taken over responsibility for compliance.¹⁹³ A separate compliance department is more common among the larger companies.¹⁹⁴ The result of the present study, that about 42 percent of the companies have a separate compliance department responsible for compliance issues, is higher than the result in the *PwC* study and might be due to the ongoing expansion of the compliance idea.

According to the 2010 study by *PwC*, many companies have only a few compliance officers, the majority not more than ten.¹⁹⁵ According to the 2011 study by *PwC*, the number had declined in the years before the survey was conducted.¹⁹⁶ The 2013 study by *PwC* differentiated according to the size of the company. It showed that companies with more than 10,000 employees have 25 fulltime and 21.2 part-time compliance positions; companies with 5000-10,000 employees have

¹⁹¹ No. of answers: All/large/middle-sized/small (68/22/27/19 companies).

¹⁹² See *PwC, Compliance and Unternehmenskultur* (2010), p. 22.

¹⁹³ See *PwC, Compliance and Unternehmenskultur* (2010), p. 22.

¹⁹⁴ See *KPMG, Compliance-Management in Deutschland* (2007): the majority of the DAX 30 companies have a separate compliance department.

¹⁹⁵ See *PwC, Compliance and Unternehmenskultur* (2010), p. 23. See also *KPMG, Compliance-Management in Deutschland* (2007), p. 5: 65 percent of the companies have 10 positions or less.

¹⁹⁶ *PwC, Wirtschaftskriminalität 2011* (2011), S. 52

17.1 fulltime and 14.2 part-time compliance positions; companies with 1000 to 4999 employees have 2.6 fulltime and 2.9 part-time compliance positions, and companies with 500 to 1000 employees have 1.3 fulltime and 2.3 part-time compliance positions.

As for the result of the present study, that 63 percent of the companies have ten or less compliance positions, no substantial difference from the 2010 and 2011 studies by *PwC* is observed. Yet, the present results differ from the newer 2013 study as they show more compliance positions for smaller companies and less for larger companies. One explanation might be that, especially in smaller companies, the organizational responsibility is sometimes not quite clear, e.g. if someone who is “officially” part of the legal department has taken over responsibility for compliance issues. Still, this normally does not apply to large companies with an often clearer structure, so that the contradicting results might be due to the different samples taken in the different studies.

C. Elements of Compliance Programs

The companies were asked in detail about the elements of their existing compliance program. The questions targeted (1.) measures of information and education, (2.) measures to detect irregular or unethical behavior, (3.) organizational measures and sanctions after infringements are discovered, (4.) the commitment of top management, (5.) the importance of culture and ethics, and (6.) other elements not covered by the aforementioned categories.

1. Measures of Information and Education

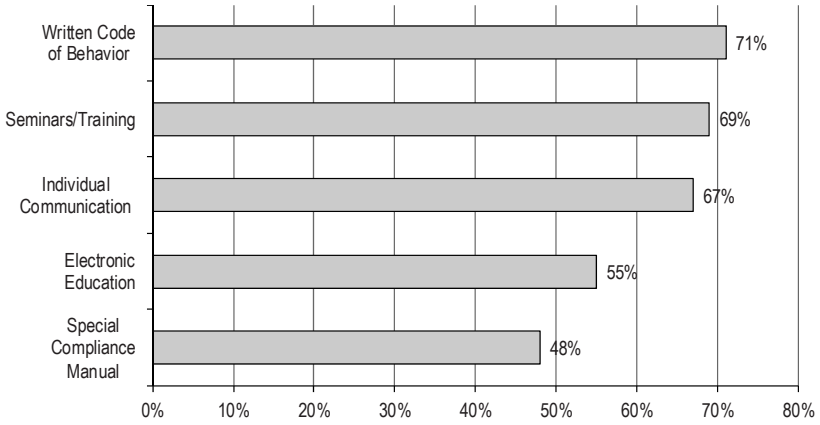
a) Types of Measures

aa) Results

The majority of companies have different measures for informing and training their employees in compliance issues. More than two thirds of the companies offer (offline) seminars and trainings, have a written code of behavior, and individually communicate compliance topics, e.g. through supervisors. E-training (such as online-schools, e-mails, CD-ROM) is used by more than half of the companies. Least common is a specific compliance manual (*figure 28*).

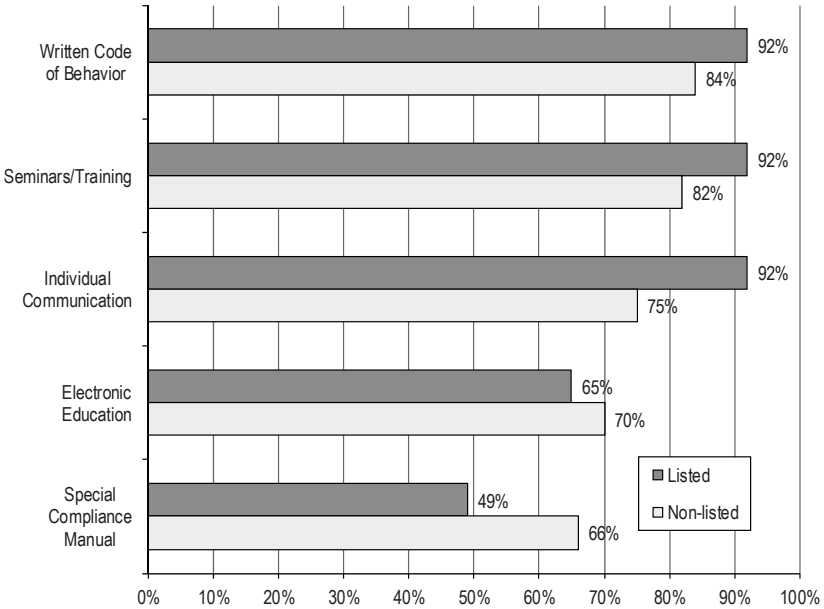
Looking at the results in respect to the listing of the companies, in comparison to non-listed companies, the listed ones have a higher percentage of compliance seminars and training, individual communication, and written codes of behavior.

Figure 28: Compliance measures for information and education (general)¹⁹⁷



No. of answers: 140 (multiple responses allowed, so that the total can exceed 100%).

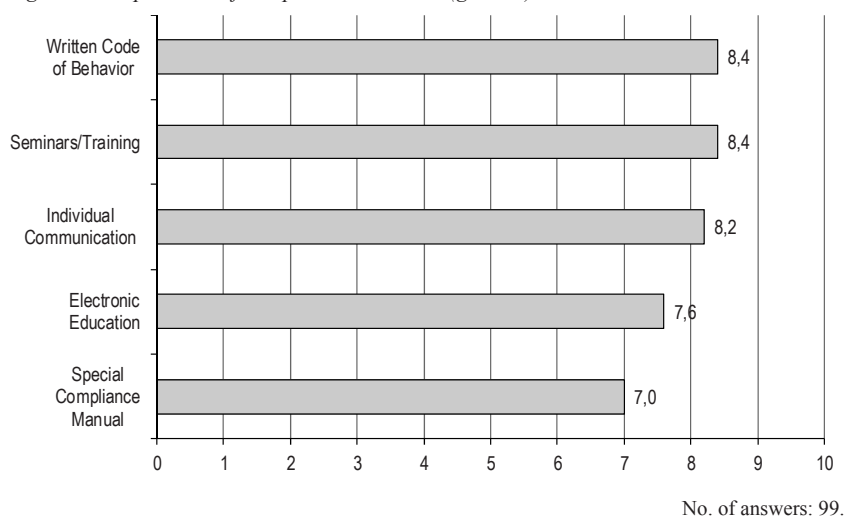
Figure 29: Compliance measures for information and education (listing)



No. of answers: Non-listed/listed (47/42 companies).

¹⁹⁷ See no. 7 (questionnaire, Annex I.A.1.)/no. 18 (online questionnaire, Annex I.A.2.).

Figure 30: Importance of compliance measures (general)¹⁹⁸



Surprisingly, the percentage of non-listed companies with electronic education and special compliance manuals is higher than that of the listed companies (*figure 29*).

When asked about the importance of these measures on a scale of 1 to 10 (ranking from “unimportant” to “important”), the answers confirm that the most common measure is also the most important one. A written code of behavior is seen as the most important way to communicate compliance. Seminars and training are equally favored by a large number of interviewees. A compliance manual is not seen as being very important (*figure 30*).

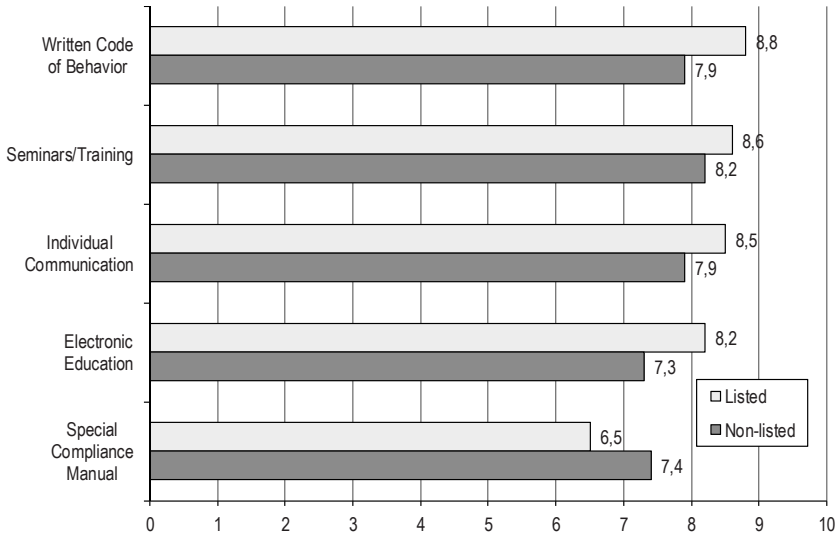
Compared to non-listed companies, listed companies regard all measures apart from special compliance manuals to be more important. Non-listed companies, although having implemented electronic education more frequently, regard this measure to be significantly less important than listed ones do (*figure 31*).

bb) Comparison with Previous Studies

The previous studies by consultancies have shown that written guidelines are one of the most common elements of compliance programs for the prevention of crime and other infringements of rules. According to the 2012 study by KPMG, 76 percent

¹⁹⁸ See no. 7 (questionnaire, Annex I.A.1.)/no. 18 (online questionnaire, Annex I.A.2.).

Figure 31: Importance of compliance measures (listing)



Non-listed/listed (47/42 companies).

of the companies have a code of behavior;¹⁹⁹ according to the 2011 study by PwC, ethical guidelines are used by 82 percent of the companies.²⁰⁰ The 2013 study by PwC showed that, in the special area of anti-corruption measures, 99 percent of companies that have to follow the American Foreign Corrupt Practices Act and the UK Bribery Act, and yet 93 percent of the other companies have an anti-corruption code of conduct.²⁰¹ Older studies had shown that such guidelines were among the most important measures but less common.²⁰²

79 percent of the companies surveyed by PwC in the 2011 study also referred to seminars and trainings as a core element of their compliance program.²⁰³ According to this study, 87 percent of the companies having a compliance program carry out seminars or trainings.²⁰⁴ The 2013 study by PwC showed that 83 percent of compa-

¹⁹⁹ See KPMG, Wirtschaftskriminalität in Deutschland 2012, p. 22.

²⁰⁰ See PwC, Wirtschaftskriminalität 2011, p. 54, 70.

²⁰¹ See PwC, Wirtschaftskriminalität und Unternehmenskultur 2013, p. 40.

²⁰² See e.g. KPMG, Wirtschaftskriminalität in Deutschland 2010 (2010), p. 19 (2010: 74%; 2006: 57%); PwC, Wirtschaftskriminalität 2009 (2009), p. 56 (2009: 72%; 2007: 67%); E&Y, Wirtschaftskriminalität in Deutschland (2003), p. 31.

²⁰³ PwC, Wirtschaftskriminalität 2011, p. 46.

²⁰⁴ PwC, Wirtschaftskriminalität 2011, p. 49.

nies have some kind of anti-corruption training, including internal training sessions (69%), workshops (48%), and digital learning methods (39%).²⁰⁵ In regard to competition offenses the numbers are comparable: 73 percent of the companies have some kind of training, 55 percent workshops, and 49 percent digital learning methods.²⁰⁶

The present result (training seminars in 71 percent of the companies) does not differ substantially from the 2010 results. They are lower than the 2013 results of the special anti-corruption and competition law analysis, which is probably due to the importance of these two subjects for German companies. Also, the number of companies using electronic education is higher, at 55 percent in the present study, compared to the digital learning results for anti-corruption and competition law offenses, which might be due to the different wording of the question. Altogether, the importance of a written code of behavior and of seminars and trainings as the central elements of a compliance program according to the present survey is therefore mirrored by the aforementioned studies. However, these previous studies partly show a much higher percentage of companies having implemented such measures. This might be due to the different sample included in this report – smaller companies especially do not have comprehensive measures.

b) Use of External Experts

The majority of companies still organize the informing and training of employees themselves. However, 46 percent of the companies already seek the advice of external experts on compliance issues (*figure 32*).

Four main reasons are given for referring to external advice.²⁰⁷ The first one is to “buy in” specific legal knowledge, e.g. in the area of anti-trust law, corruption, or data protection, especially regarding the law of foreign countries. The second reason is to procure help in the preparation of training materials and courses, which includes the external development of training manuals, e-learning programs, etc. and the qualification of trainers. The third reason is the convenience of “outsourcing” the training process by buying in complete seminars (including learning materials). Finally, the fourth reason is to enlist help with technology, such as updating and improving data banks or the implementation of e-learning materials.

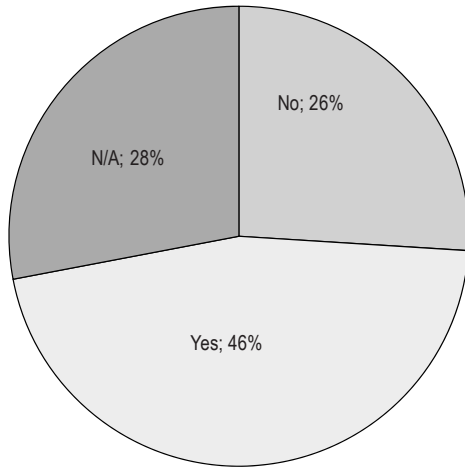
The main experts involved are law firms, followed by consultancies, auditors, and IT experts (*figure 33*).

²⁰⁵ See PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 41.

²⁰⁶ See PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 64.

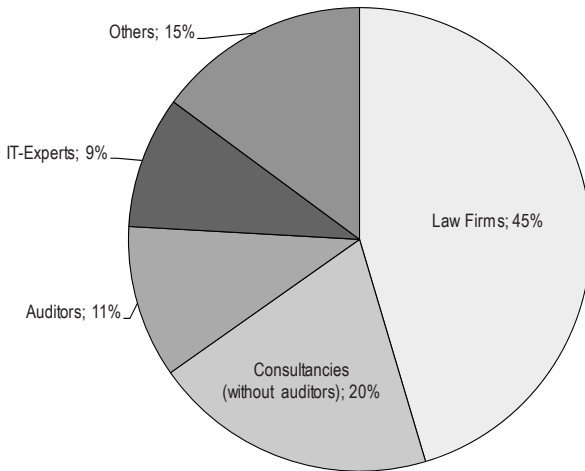
²⁰⁷ See no. 7 (questionnaire, Annex I.A.1.)/no. 20 (online questionnaire, Annex I.A.2.).

Figure 32: Involvement of external experts in compliance²⁰⁸



No. of answers: 140.

Figure 33: Types of external experts²⁰⁹

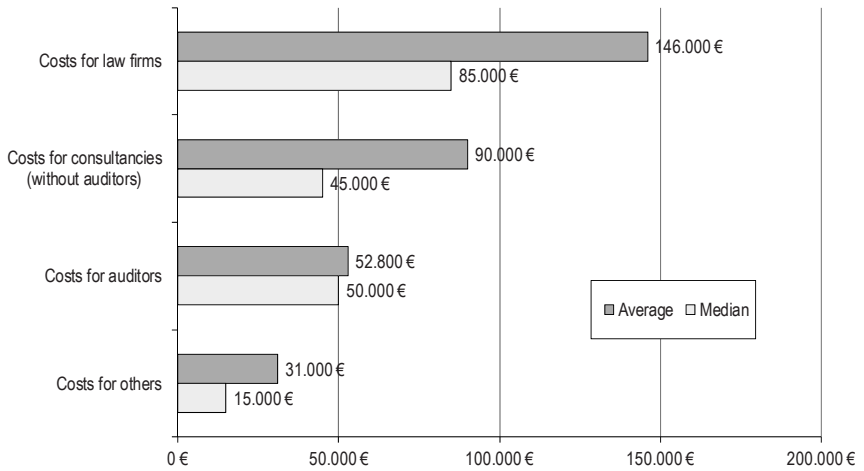


No. of answers: 39 (multiple responses allowed, so that the total can exceed 100%).

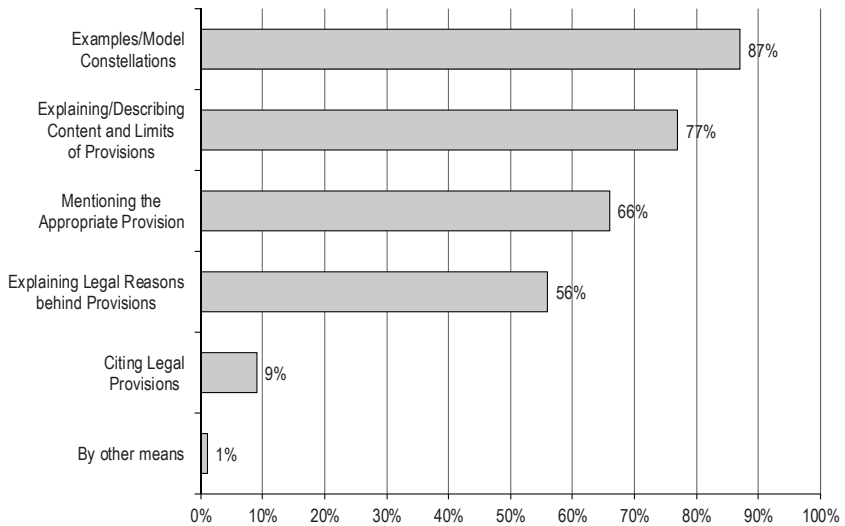
²⁰⁸ See no. 7 (questionnaire, Annex I.A.1.)/no. 19 (online questionnaire, Annex I.A.2.).

²⁰⁹ See no. 7 (questionnaire, Annex I.A.1.)/no. 21 (online questionnaire, Annex I.A.2.).

Figure 34: Costs for external experts



No. of answers: 22 companies.

Figure 35: Methods of teaching legal content²¹⁰

No. of answers: 100 (multiple responses allowed, so that the total can exceed 100%).

²¹⁰ See no. 7 (questionnaire, Annex I.A.1.)/no. 23 (online questionnaire, Annex I.A.2.).

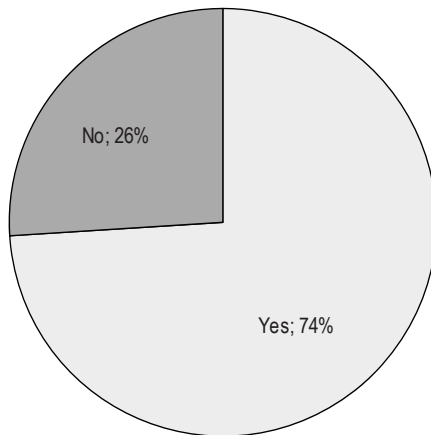
Only a few companies (22) specified the costs for external experts.²¹¹ The majority of these companies spent less than 50,000 EUR per year on consultancies, auditors, or IT experts. Yet, for legal advice from law firms, they were prepared to pay more than 50,000 EUR or even more than 100,000 EUR (*figure 34*).

c) Education Techniques

A central part of the training of employees deals with the content and limits of legal regulations. The majority of the companies does not merely present the relevant regulations but instead explains the regulations together with their application to the workplace. 87 percent of the companies work with examples or model constellations that are drawn from the workplace of the employees. 77 percent present the content and the limits of the regulations, whereas only nine percent cite the legal text itself. This indicates that the companies are using modern teaching methods, which could also be due to the involvement of external experts (*figure 35*).

Almost three quarters of the companies that have a compliance manual or another relevant document employ measures to control whether employees have read and understood the manual or documents (*figure 36*).

*Figure 36: Implementation of means of controlling learning success*²¹²



No. of answers: 95.

²¹¹ See no. 7 (questionnaire, Annex I.A.1.)/no. 22 (online questionnaire, Annex I.A.2.): 13 companies specified the costs for law firms, 6 for consultancies (without) auditors, 5 for auditors and 7 costs for other external experts.

²¹² See no. 7 (questionnaire, Annex I.A.1.)/no. 24 (online questionnaire, Annex I.A.2.).

Common methods of control are (compliance) audits, confirmation in writing or by signature, questionnaires, and tests. Only a small number of companies count on voluntary feedback and interviews about learning success. Others measures used include evaluation of the requests from a helpline, (automatic) analyses of computer based training programs, and feedback from trainers. One company provides for a certification (*figure 37*).

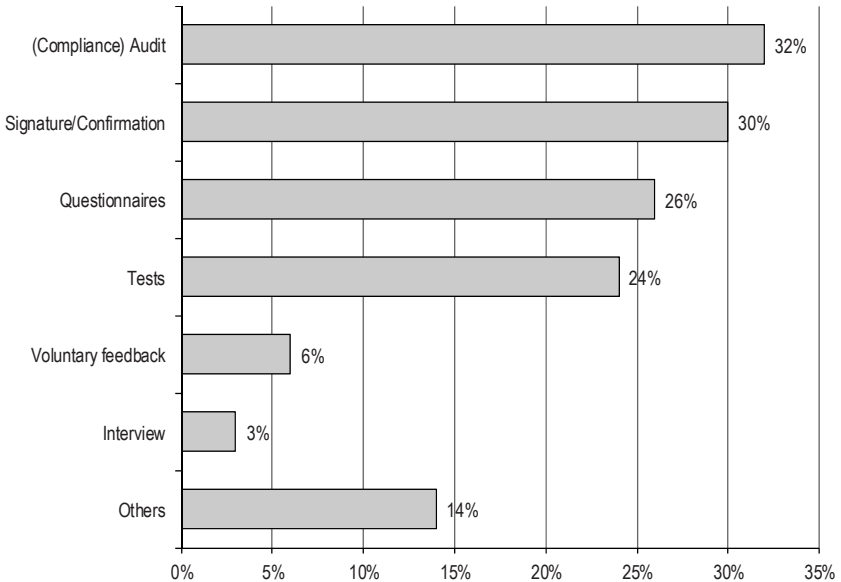
2. Measures to Detect Irregular or Unethical Behavior

a) Types of Measures

aa) Results

The companies were asked which measures they use to detect irregularities (especially crimes). Internal audits are the most important measure implemented by 69 percent of all companies (equaling 100 percent of companies with detection measures). Two thirds provide for a compliance officer or a compliance department.

Figure 37: Single means of controlling learning success²¹³



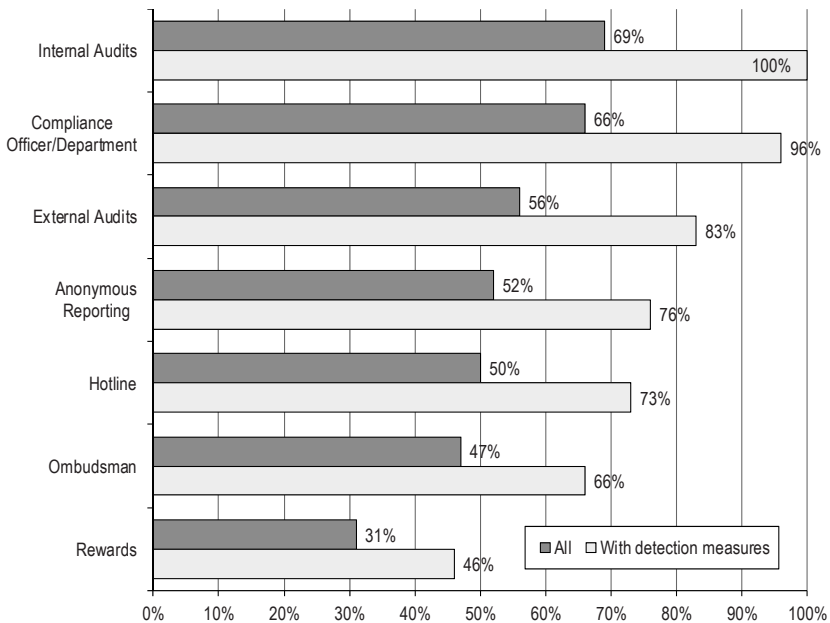
No. of answers: 66.

²¹³ See no. 7 (questionnaire, Annex I.A.1.)/no. 25 (online questionnaire, Annex I.A.2.).

ment. This indicates the strong influence of the compliance discussion in recent years. External audits are in third place. More than half of the companies have guarantees for anonymous and, therefore, sanction-free and confidential reporting of irregularities. Almost the same number has a special technical hotline (often-called “whistle-blowing hotline”) that does not necessarily guarantee anonymous reporting, which employees can use to report irregularities easily. Almost half of the companies have named a special person (e.g. an ombudsman) who can be contacted by employees confidentially. 30 percent even provide rewards for relevant information (figure 38).

When asked about the importance of these measures, the order is slightly different. The compliance officer/department is regarded as the most important one, followed by internal audits. External audits are seen as clearly less relevant. Guarantees for anonymous reporting are judged as more important than the

Figure 38: Detection measures (general)²¹⁴



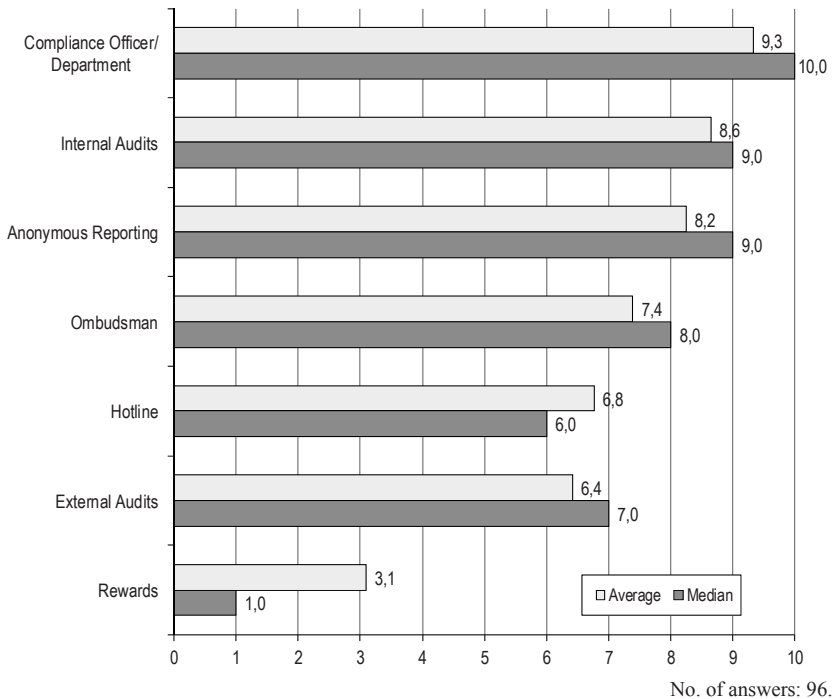
No. of answers: All/with detection measurs (140/96 companies; multiple responses allowed, so that the total can exceed 100%).

²¹⁴ See no. 8 (questionnaire, Annex I.A.1.)/no. 26 (online questionnaire, Annex I.A.2.).

existence of a whistle-blower hotline. However, the difference between the average (6.8) and the lower median²¹⁵ (6.0) shows that a number of companies have rated the measure lower than the average and are not very convinced of this approach. Almost no importance is accorded to rewards for information by the great majority of companies. The clear difference between the average (3.1) and the median (1) shows that the importance of this measure varies substantially in the answers (*figure 39*).

The results according to the size of the company indicate that only partially are there greater differences between the companies. The bigger the company, the more likely it is to have more detection measures. Small companies tend to make more use of external audits; larger ones have more internal audit units. Middle-sized companies have more hotlines and more often refer to an ombudsman than large companies (*figure 40*).

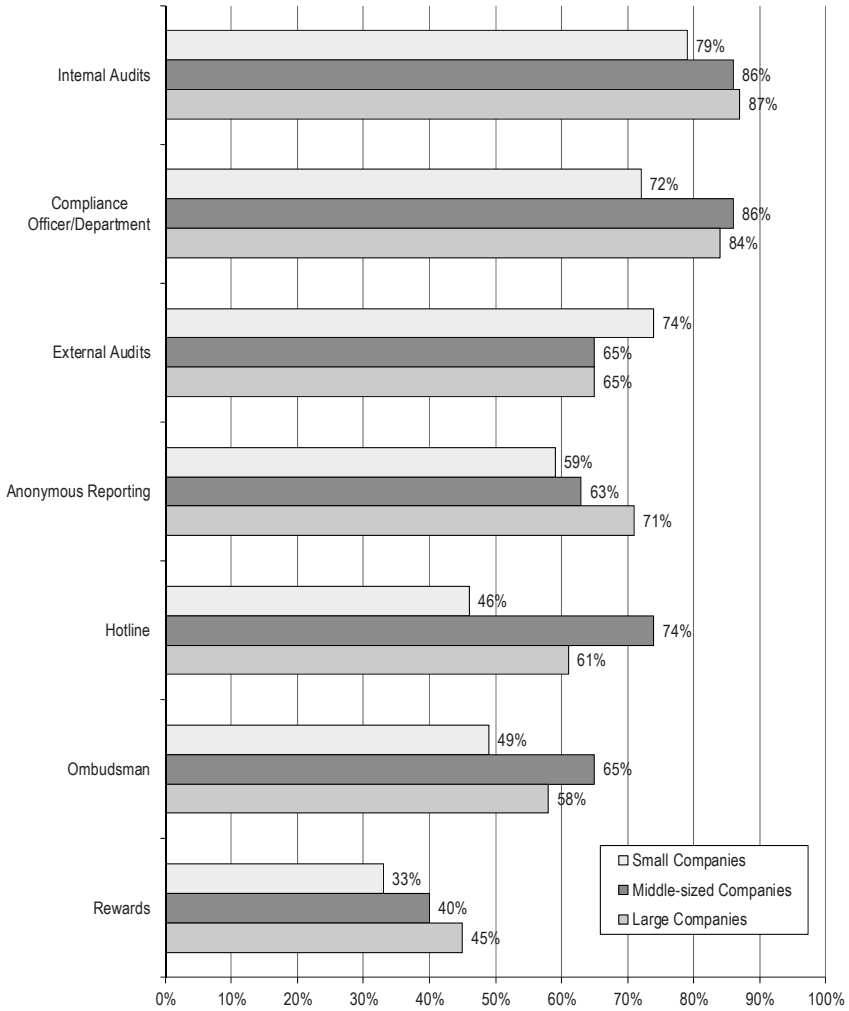
*Figure 39: Evaluation of detection measures (general)*²¹⁶



²¹⁵ For details, see supra p. 31.

²¹⁶ See no. 8 (questionnaire, Annex I.A.1.)/no. 26 (online questionnaire, Annex I.A.2.).

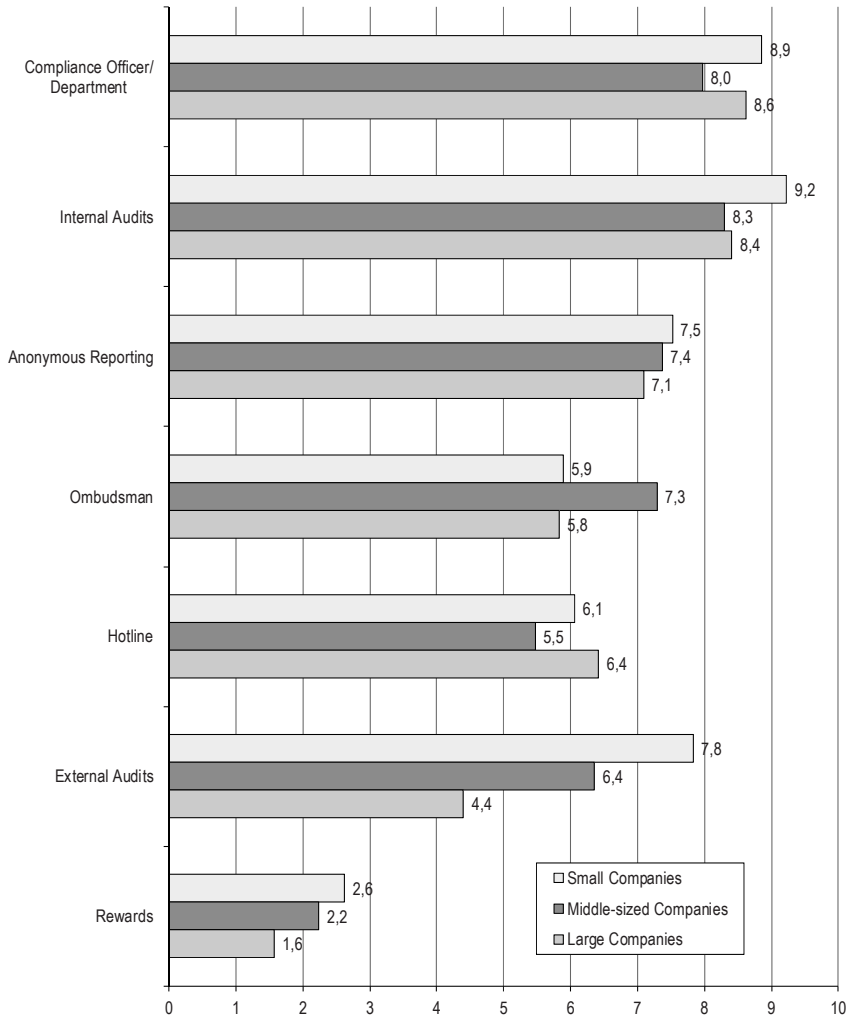
Figure 40: Detection measures (company size)



No. of answers: Large/middle-sized/small (31/43/39 companies).

The evaluation of the detection measures according to the size of the company again shows only partial differences between the companies. Smaller companies tend to judge the measures to be more important than larger companies. This is especially the case with respect to the external audits, but also with respect to internal audits and rewards (figure 41).

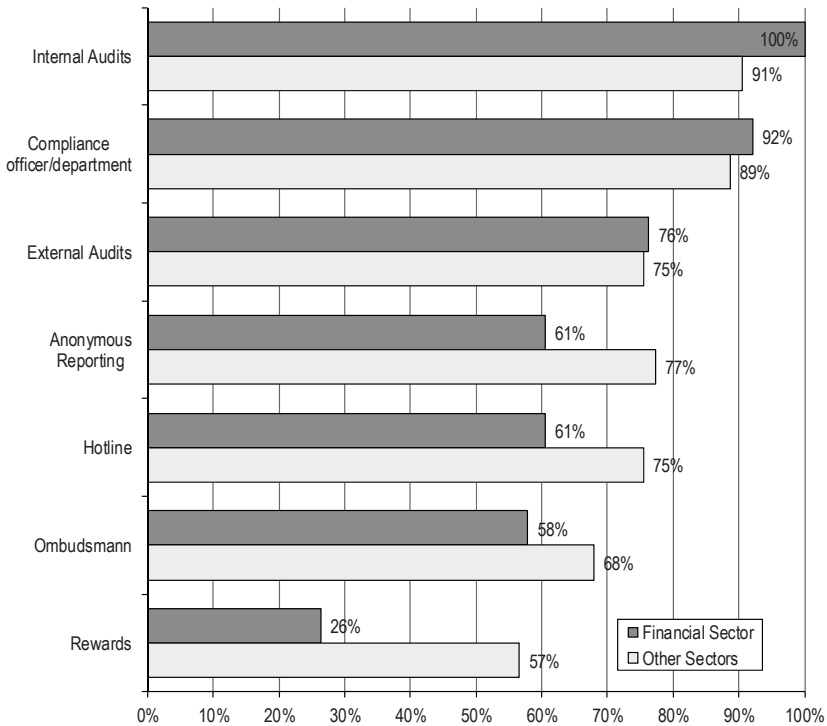
Figure 41: Evaluation of detection measures (company size)



No. of answers: Large/middle-sized/small (31/43/39 companies).

In comparison to the other sectors, the results for companies active in the financial sector show that financial services companies more often have a compliance officer/department as well as more internal (and, slightly more often, external) audits. Yet, with regard to guarantees for anonymous and sanction-free reporting, hotlines by which to report irregularities, an ombudsman to contact, and rewards are substantially less common than in other sectors (*figure 42*).

Figure 42: Detection measures (financial sector and other sectors)



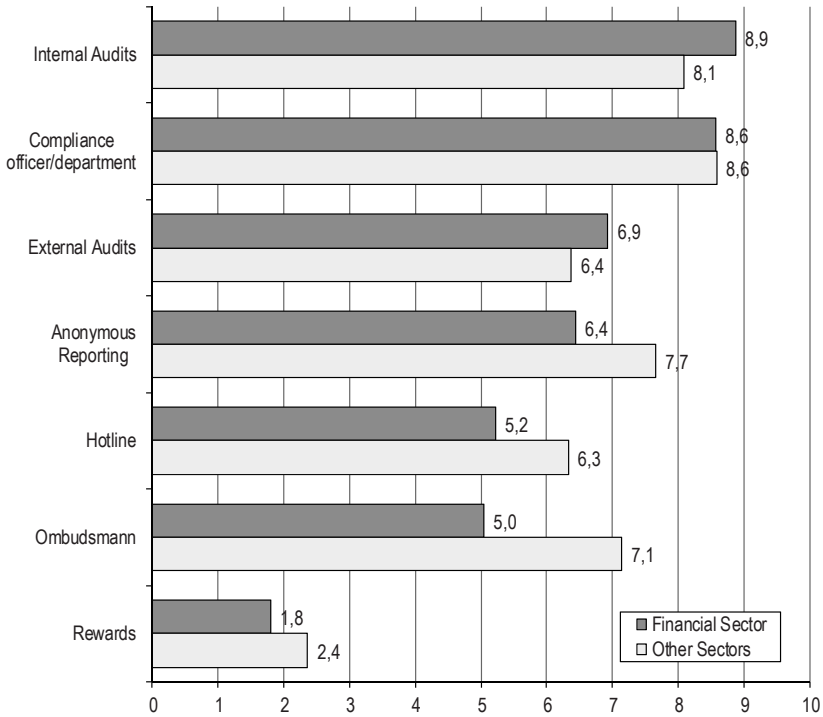
No. of answers: Financial sector/other sectors (38/54 companies).

The evaluation of the detection measures by companies in the financial sector, again compared to the evaluation of companies in other sectors, reveals a similar picture. Internal audits, compliance officers/departments, and external audits are rated higher by financial services companies. In contrast, guarantees for anonymous and sanction-free reporting, hotlines to report irregularities, an ombudsman to contact, and rewards are judged to be less relevant by the other companies (figure 43).

Beyond these aforementioned measures, companies have implemented additional control instruments.²¹⁷ Among them are standardized workflows and built-in controls such as process controls, approval workflows for critical processes, or visits to branch offices by the compliance officer. One company provides for an annual risk

²¹⁷ See no. 8 (questionnaire, Annex I.A.1./no. 27 (online questionnaire, Annex I.A.2.).

Figure 43: Evaluation of detection measures (financial sector and other sectors)



No. of answers: Financial sector/other sectors (38/54 companies).

analysis, based on a self-assessment of the operative units and then evaluated by the compliance department. Personnel measures include special interviews with employees about compliance (compliance talks) or self-check questionnaires. Companies taking such measures highly appreciate the constant dialogue between the compliance department and the operative units. Several companies regard the existence of compliance rules and teaching material in all languages spoken within the company as being a key element in the detection of irregular behavior. Insofar, the “informed employee” is valued as an important factor.

bb) Comparison with Previous Studies

The studies by consultancies show that, for the detection of incidents, internal audits are one of the most frequently used and important measures. According to the 2012 study by *KPMG*, internal audits were the most important structural meas-

ure in order to detect economic crime (40 percent of cases).²¹⁸ Similarly, the 2011 study by PwC came to the conclusion that 87 percent of the companies used internal audits as a measure of compliance to detect and control economic crime.²¹⁹ The survey carried out by *Ernst & Young* in 2011 points out that checks by means of an internal control system are the most important measure taken (by 70.5 percent of companies), followed by internal audits (52.5%).²²⁰ According to the 2012 study by *KPMG*, other types of control mechanisms are used, for example, interviews of employees (83 percent of companies) or background investigations (60%).²²¹

The 2013 study by *PwC* shows that, in the special area of anti-corruption measures, 73 percent of companies that have to follow the American Foreign Corrupt Practices Act and the UK Bribery Act and 66 percent of other companies regularly monitor compliance with an internal anti-corruption policy.²²² The same study also shows that 54 percent of the companies are aware of the general auditing standard for compliance (IDW PS 980)²²³ and 35 percent have already undergone certification.²²⁴

Concerning hotlines, the data by *Euler Hermes* from 2008 illustrates that less than 15 percent of the companies have an anonymous reporting system.²²⁵ Other studies before 2008²²⁶ came to comparable results. In contrast, according to the 2011 study by *PwC*, 41 percent of the companies already have a hotline for confidential reporting,²²⁷ whereas the 2013 study by *PwC* states that 37 percent of the companies have a reporting system for corruption.²²⁸ The 2013 study also shows that incentives for reporting incidents are not favored by the majority of companies.²²⁹ Pursuant to a 2011 study by *Alvarez & Marsal*, the most important measures within companies are whistle-blowing hotlines and consultation desks.²³⁰ Between about 35 and over 80 percent (depending on the size of the company) of the companies have a whistle-blower hotline.

²¹⁸ KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 18. More important were only accidental discoveries and information by employees.

²¹⁹ PwC, *Wirtschaftskriminalität 2011*, p. 69.

²²⁰ E&Young, *Enabling Compliance. Welche Rolle spielt Technologie?* (2011), p. 25.

²²¹ KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 19.

²²² PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 40.

²²³ See supra p. 21.

²²⁴ PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 76.

²²⁵ Euler Hermes, *Wirtschaftskriminalität – Die verkannte Gefahr*, p. 20.

²²⁶ See e.g. E&Y, *Wirtschaftskriminalität in Deutschland (2003)*, p. 31; KPMG, *Studie 2006 zur Wirtschaftskriminalität in Deutschland*, p. 27; KPMG, *Wirtschaftskriminalität in Deutschland 2003/04*, p. 17.

²²⁷ PwC, *Wirtschaftskriminalität 2011*, p. 70.

²²⁸ PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 84.

²²⁹ See, also for details, PwC, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 85.

²³⁰ Alvarez & Marsal, *Compliance. Studie zur Strategie und Organisation 2011*, p. 16.

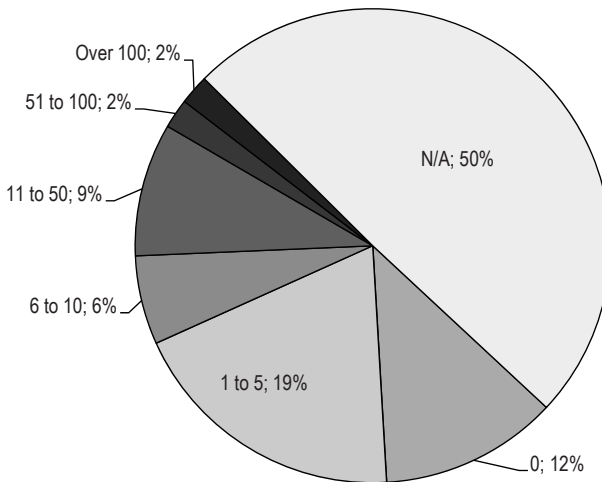
These studies are in line with the findings of the present survey insofar as internal audits are among the most important measures by which to detect crimes. Hotlines for reporting have become much more common in recent years. The present result, that almost half of the companies have a hotline system, is mirrored by the studies. The high percentage of hotlines in large companies in the *Alvarez & Marsal* study is supported by the analysis of the DAX 30 companies below, according to which 65 percent have a reporting system.

b) Reported Incidents

When asked about the number of cases reported per year, only about half of the companies responded. 12 percent of all companies answered that there had been no incidents. Another fourth reported up to 10 incidents. Only 13 percent answered that more than 10 cases had been revealed (*figure 44*).

Additionally, the companies were asked how many reported cases had been committed for the benefit of the company. Although not many companies gave numbers (only one third), the vast majority of the answers (about 77 percent of the companies that provided figures) clearly show that the reported incidents were not committed for the benefit of the company (*figure 45*).

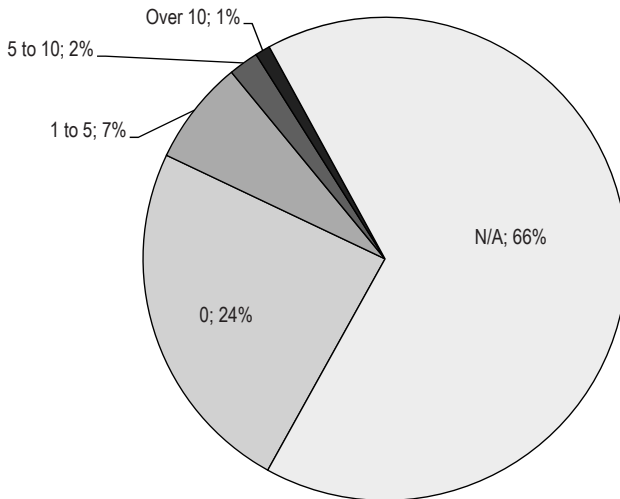
*Figure 44: Reported incidents*²³¹



100%: 140 companies.

²³¹ See no. 8 (questionnaire, Annex I.A.1.)/no. 28 (online questionnaire, Annex I.A.2.).

Figure 45: Cases for the benefit of the company (general)²³²



100%: 140 companies.

Most incidents occurred in the financial sector (accounting for 43 percent of all responding companies), followed at a distance by the manufacturing sector (16%), and the energy & resources sector (14%). However, as the distribution according to sector is similar to the distribution of the participating companies,²³³ one cannot draw the conclusion that the financial sector is specifically prone to the commission of crimes. Yet, as the percentage of reported incidents in the financial sector is 9 percentage points higher than the percentage of participating companies from the financial sector, one can conclude that incidents in this sector are reported more often than in other sectors (*figure 46*).²³⁴

The results according to the size of the company show that fewer incidents are reported in smaller companies than in larger ones (*figure 47*). The picture is even clearer concerning for the benefit of the company: 96 percent of the small compa-

²³² See no. 8 (questionnaire, Annex I.A.1./no. 29 (online questionnaire, Annex I.A.2.).

²³³ See *infra* p. 152.

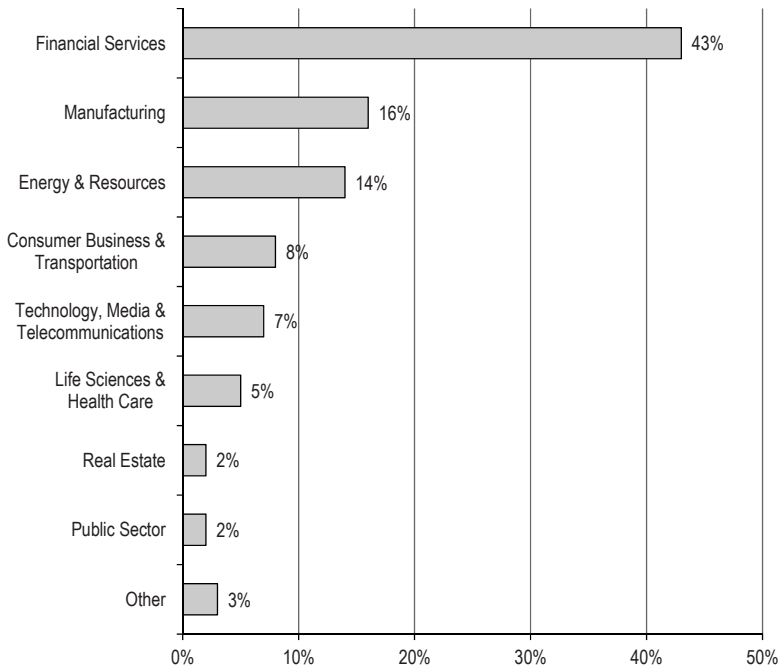
²³⁴ The sample was too small to enable a reliable analysis of incidents committed for the benefit of the company, so that only the results will be given here. 2 of 38 reported incidents in the financial sector were for the benefit of the company; 4 of 14 in the manufacturing sector, 6 of 12 in the energy & resources sector, 2 of 4 in the life science & health care sector, 1 in 7 in the consumer business & transportation sector. No cases for the benefit of the company were reported for the technology sector, media & telecommunication sector, real estate sector, and the public and other sectors.

nies have no reported incidents in which the company profits, whereas in large companies the percentage is down to 50 percent (*figure 48*). This effect might be explained by the fact that a larger number of employees goes hand in hand with a higher number of cases.²³⁵

c) Number of Detection Measures and Influence of Reported Incidents

The analyses also looked more closely at the detection measures that can be considered “reporting mechanisms” and at the influence of reported incidents on detection measures.²³⁶ Four measures that enhance voluntary reporting by employees

Figure 46: Reported incidents (main sector of activity)



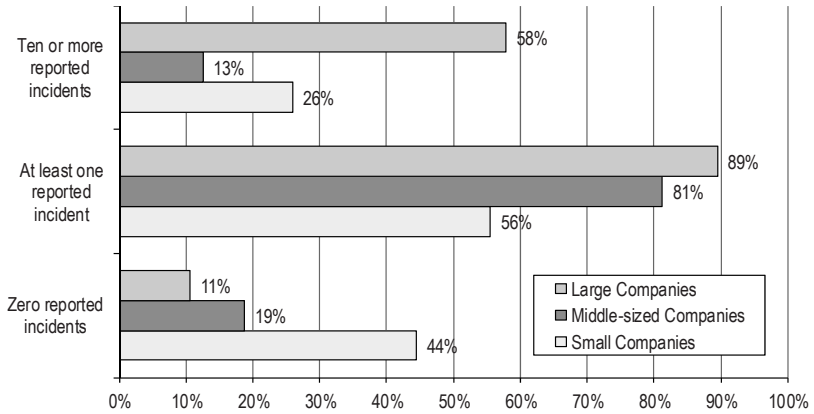
No. of answers: 88 companies.

²³⁵ The sample was too small to enable a reliable analysis of incidents per 1000 employees, for instance. However, a trend could be identified: the smaller the company is, the higher the percentage of reported cases per 1000 employees.

²³⁶ See no. 8 (questionnaire, Annex I.A.1.)/no. 26 (online questionnaire, Annex I.A.2.) for the question on detection measures and no. 8 (questionnaire, Annex I.A.1.)/no. 28 (online questionnaire, Annex I.A.2.) for the question on reported incidents.

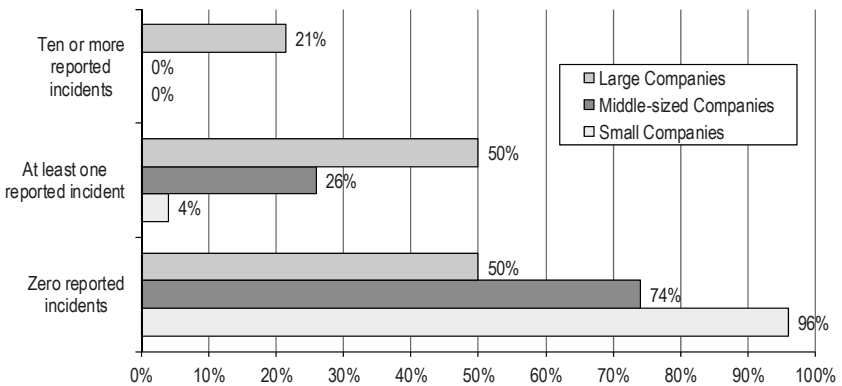
were considered “reporting mechanisms”: the ombudsman, hotlines, anonymous and sanction-free reporting, as well as rewards for reporting. The evaluation focused on the question of whether the companies stating reported incidents employ different detection measures than those that do not state reported incidents. 39 percent of the companies that have no reported incidents do not employ any of the aforementioned reporting mechanisms, whereas this accounts for only 5 percent of

Figure 47: Reported incidents (company size)



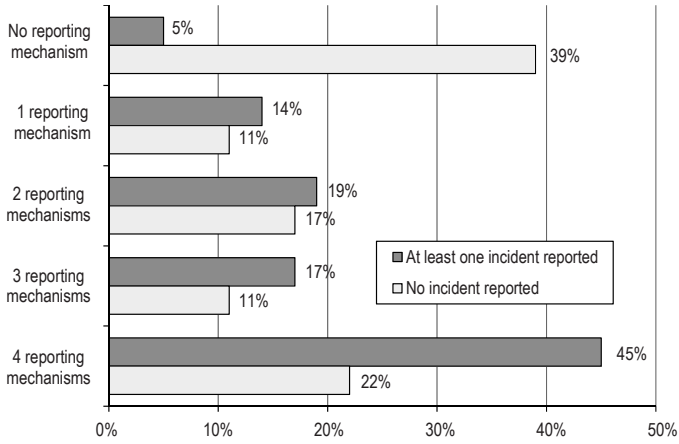
No. of answers: Large/middle-sized/small (19/33/27 companies).

Figure 48: Cases benefiting the company (company size)



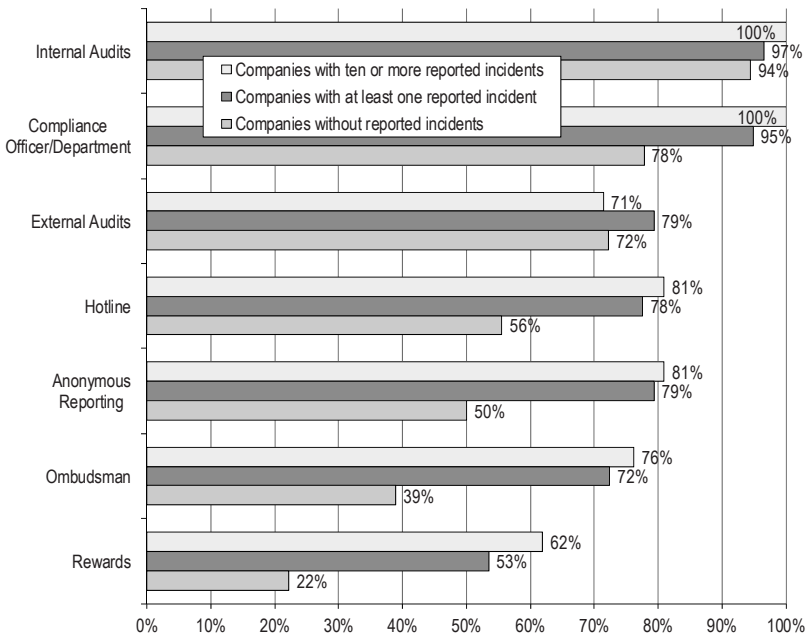
No. of answers: Large/middle-sized/small (17/27/25 companies).

Figure 49: Influence of reported incidents on number of reporting mechanism



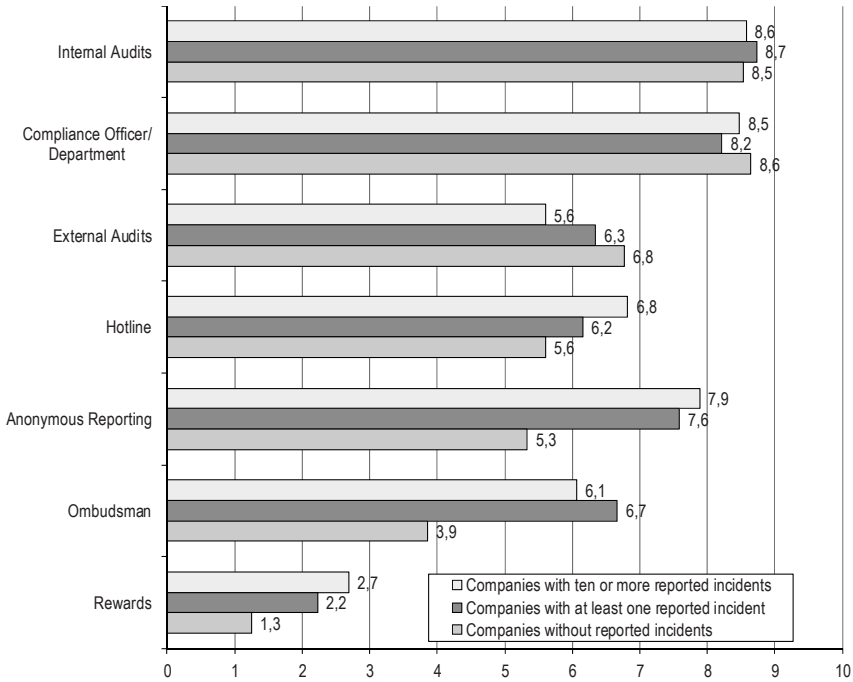
100%: Companies without reported incidents/with at least one reported incident (18/58 companies).

Figure 50: Influence of reported incidents on single detection measures



100%: Companies without reported incidents/with at least one reported incident/with ten or more reported incidents (18/58/21 companies).

Figure 51: Influence of reported incidents on evaluation of detection measures



Number of companies without reported incidents/with at least one reported incident/with ten or more reported incidents (18/58/21 companies).

companies where at least one incident was reported. Likewise, the percentage of companies having one, two, three, or four reporting mechanisms is higher in companies with reported incidents (figure 49).

According to the cases reported, further analysis showed that companies with reported cases have not only implemented a larger number of reporting mechanisms but have also established a compliance department or the position of a compliance officer more often than companies without any reported cases. Exceptions are internal and external audits, where the difference between the companies is not so great. The percentage of companies that have taken up detection measures is slightly higher in companies with more than ten reported cases than in companies with one or more reported cases. Insofar, the higher the percentage of implemented measures is, the more often incidents occurred within a company. Yet, the fundamental difference between the companies seems to be whether there was an incident at all, whereas the number of incidences does not play a comparable role (figure 50).

The aforementioned results are supported by the evaluation of the importance of the detection measures. All companies regard internal audits and a compliance officer/department to be the two most important measures. External audits are judged to be more important by companies without reported cases. Yet, as far as the four “reporting mechanisms” are concerned, companies with reported incidents rate them much higher than companies without any cases (*figure 51*). Hence, companies only implement and value these “reporting mechanisms” when something has already happened.

3. Organizational Measures and Internal Sanctions in Case of Infringements

a) Organizational Measures

The interviewees were asked as to what organizational measures they apply if employees infringe legal regulations.²³⁷ The answers made clear that the overwhelming majority of companies has no standardized routine to deal with such incidents but often decide on a case-to-case basis. If companies follow a routine, it is often not part of the compliance program. The following aspects were pointed out in the answers.

Among the first steps are: informing the responsible department and initiating the examination of the incidents. Sometimes a specific chain of information exists and a concept for communicating the incident. Internal auditors, the legal department, human resources, and the security department are often informed in addition to the compliance department, the employee’s supervisor and top management. Some companies form a special task force and check whether external legal advice is necessary. During this process, companies also analyze whether state authorities need to be informed about the incident and if sanctions against the employee should be initiated.

Additionally, the companies review their compliance program if the incidents are due to any structural failures of the program. This includes the revision of processes and the organization of control instruments. If necessary, the program is adjusted. This step also comprises adjusting training measures in order to accommodate the incident and ensuring that the personnel responsible is correctly trained.

Altogether, there seems to be no common routine that has been generally accepted and integrated into a comprehensive compliance concept. The answers instead give the impression that the development of a coherent reaction system to incidents is still at the beginning. One reason might be that the companies would like to remain flexible in addressing incidents individually. Also, it might create problems to find a general solution for the different kinds of possible incidents.

²³⁷ See no. 9 (questionnaire, Annex I.A.1.)/no. 30 (online questionnaire, Annex I.A.2.).

b) Sanctions

aa) Types of Sanctions

(1) Results

The interviewees were asked as to what internal sanctions they apply if employees infringe legal regulations.²³⁸ The answers showed that companies have developed standardized routines that are integrated into a compliance system only in some cases. Yet, in contrast to the organizational measures, the companies apply more or less the same type of sanctioning system.

The reason seems to be German labor law that has developed a highly complex reaction system for the employer in case of misbehavior on the part of employees. The different legal possibilities under German labor law that have been developed in the last decades include:²³⁹

- *Internal measures*: private conversation; oral reprimand (“Ermahnung”); participation in compliance seminars or trainings; entry in the employee’s personnel file without evaluation;
- Claim for *damages* or claim for *restitution*;
- *Sanctions*: formal warning (“Abmahnung”); fine; exclusion from internal benefits; transfer (change of place, time and/or type and scope of the employee’s job); contractual penalty (if part of the contract); reduction of remuneration (only possible in some cases); suspension; refusal of pension benefits; cancellation agreement; dismissal.

Many companies emphasized in their answers concerning the use of sanctions that no general rule applies, as sanctions can only be dealt with on a case-by-case basis. Several companies also stressed their “zero tolerance” approach in cases of serious infringements. Among the less serious measures mentioned are the common measures allowed by German labor law such as informing the employee, the obligation to take part in further training, the generally oral reprimand (“Ermahnung”) including a policy reminder of the company’s standards and rules as well as the formal warning (“Abmahnung”), which is included in the employee’s personnel file.

More serious sanctions include bonus cuts, temporary suspension from work, suspension from promotion, transfer of the employee to a new position, publicizing the incident or claiming damages. The ultimate sanction is the dismissal of the employee, sometimes by way of an amicable separation (in order to avoid public legal proceedings). This corresponds to the legal options foreseen by German labor law described above.

²³⁸ See no. 9 (questionnaire, Annex I.A.1.)/no. 31 (online questionnaire, Annex I.A.2.).

²³⁹ See e.g. *Böhm*, Non-Compliance und Arbeitsrecht, p. 241; *Mengel*, Compliance und Arbeitsrecht, chap. 5 para. 1 et seq.; *Schaub*, Arbeitsrechtshandbuch, § 52 para. 5.

(2) Comparison with Previous Studies

These results are backed by other studies. The *PwC* survey from 2010 points out that 83 percent of the companies decide on the consequences of compliance infringements on an individual basis.²⁴⁰ 66 percent follow a zero tolerance policy. According to the 2012 study by KPMG, companies, in the majority of cases, refer to measures of employment law (64%), followed by criminal law (49%) and civil law (39%).²⁴¹ According to *Ernst & Young*, internal consequences by the companies following compliance infringements were most often seminars and trainings for the respective employees (45%), followed by changing technical routines such as access authorization for software (39.1%) and increased supervision such as the four-eyes principle (29%).²⁴² Specifically asked about the consequences of economic crime, the companies in the 2011 *PwC* survey most often mentioned dismissal in case of internal offenders (83%) and termination of the business relationship in case of economic crime committed by third parties (70%).²⁴³ Insofar, the full spectrum of measures is used.

bb) Importance of Different Sanctions

(1) Results

The companies were also asked to evaluate the general importance of their internal sanctions on a scale of 1 to 10 (ranking from “not important” to “very important”).²⁴⁴ The average ranking was 7.7 (median: 8).²⁴⁵ Insofar, sanctions are regarded as important but are not of utmost relevance.

In equal measure, the companies were asked to evaluate – on a scale of 1 to 10 (ranking from “never” to “always”) – whether they inform the police or the prosecution service about infringements of criminal law by employees.²⁴⁶ The average ranking was 6.7 (median: 7)²⁴⁷ and is therefore lower than the average ranking for all sanctions. Thus, the companies seem not to report all cases but tend to report incidents to public authorities rather than not to report.

²⁴⁰ PwC, *Compliance und Unternehmenskultur* (2010), p. 29.

²⁴¹ KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 20.

²⁴² E&Y, *Enabling Compliance. Welche Rolle spielt Technologie?* (2011), p. 23.

²⁴³ PwC, *Wirtschaftskriminalität 2011*, p. 67.

²⁴⁴ See no. 9 (questionnaire, Annex I.A.1.)/no. 32 (online questionnaire, Annex I.A.2.).

²⁴⁵ Number of answers: 94.

²⁴⁶ See no. 9 (questionnaire, Annex I.A.1.)/no. 33 (online questionnaire, Annex I.A.2.).

²⁴⁷ Number of answers: 81.

(2) Comparison with Previous Studies

This result is in line with the outcome of other studies: The 2012 study by *KPMG* showed that, in 49 percent of cases, the companies refer to criminal law measures.²⁴⁸ According to the 2011 survey by *PwC*, 53 percent of the companies react by bringing a criminal charge against internal offenders, and 60 percent of the companies decide on a criminal charge against third-party offenders.²⁴⁹ In the 2010 study, 69 percent of the companies reported filing a criminal charge against the offender.²⁵⁰ The study by *Alvarez & Marsal* points out that the most common consequences of dealing with compliance infringements are delivery to the law enforcement authorities as well as dismissal or warning.²⁵¹

4. Special Commitment of Top Management

The involvement of top management in elaborating or fostering compliance issues is often seen as an important part of a good compliance program. Hence, the companies were asked to evaluate top management commitment on a scale of 1 to 10 (ranking from “not involved” to “strongly involved”).²⁵² The average ranking was 7.3 (median: 8).²⁵³ Top management therefore seems to be substantially involved but could be more involved.

The interviewees were also asked to evaluate the visibility of the personal commitment of top management in compliance issues for the majority of the employees (also on a scale of 1 to 10, ranking from “not visible” to “highly visible”).²⁵⁴ The average ranking was 7.1 (median: 8), slightly below the above result.²⁵⁵ The interviewees, in many cases belonging to top management, evidently regard compliance efforts to be widely known and perceived among the employees.

The picture is different if one looks at the answers differentiating between compliance officers, employees in leading positions, and members of the executive board (each compared to the other answers). Compliance officers rank the involvement and the visibility of top management slightly lower than the rest of the respondents. In contrast, employees in leading positions (including members of the executive

²⁴⁸ KPMG, *Wirtschaftskriminalität in Deutschland 2012*, p. 20.

²⁴⁹ PwC, *Wirtschaftskriminalität 2011*, p. 67.

²⁵⁰ PwC, *Compliance und Unternehmenskultur (2010)*, p. 29.

²⁵¹ Alvarez & Marsal, *Compliance. Studie zur Strategie und Organisation 2011*, p. 23.

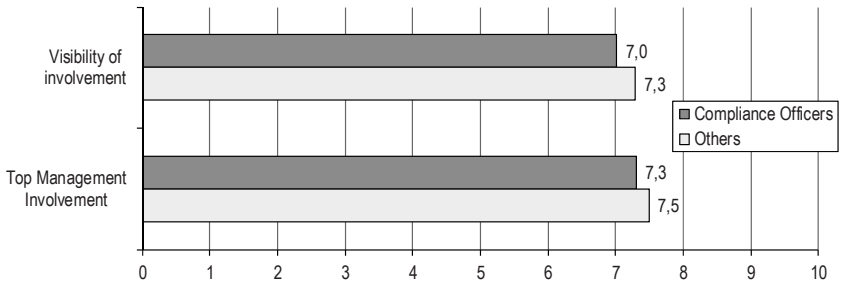
²⁵² See no. 10 (questionnaire, Annex I.A.1./no. 34 (online questionnaire, Annex I.A.2.).

²⁵³ Number of answers: 101.

²⁵⁴ See no. 10 (questionnaire, Annex I.A.1./no. 35 (online questionnaire, Annex I.A.2.).

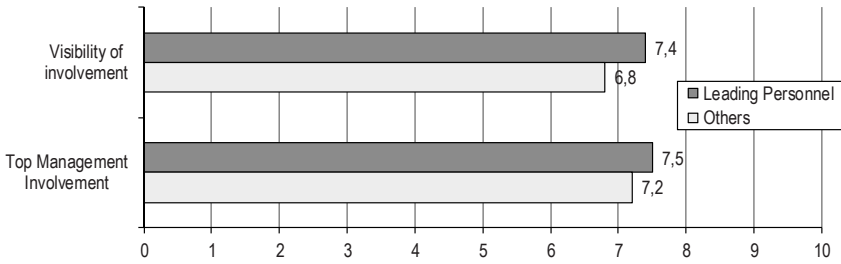
²⁵⁵ Number of answers: 101.

Figure 52: Evaluation (compliance officers)



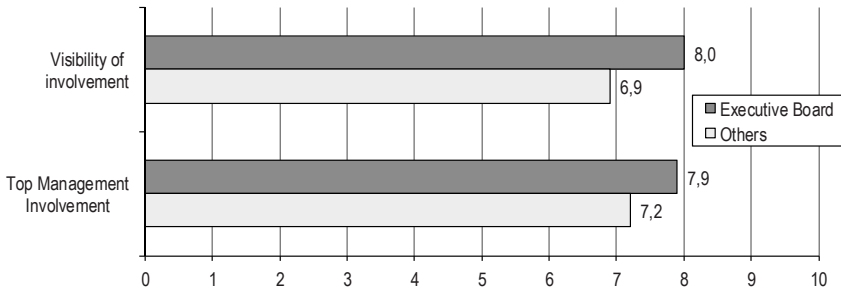
No. of answers: Compliance officers/others (54/46).

Figure 53: Evaluation (leading personnel)



No. of answers: Leading personnel/others (53/47).

Figure 54: Evaluation (executive board)



No. of answers: Executive board/others (20/80).

board and non-executive board CCOs, CFOs, and Chief Audit Executives) rank it higher than the other respondents. If one only looks at the results of members of the executive board, the discrepancy in relation to the ranking of the other respondents is even greater. Obviously, top management tends to judge its own activities to be better than they are perceived by other employees in the company (*figures 52, 53 and 54*).

When asked about the personal activities of top management concerning compliance, the companies mentioned a variety of different undertakings.²⁵⁶ The most important aspect is communication by top management. This means first communicating a clear message concerning compliance (mission statement). As “tone from the top”, it includes stressing the importance of compliance for the company and genuine support for compliance from the management of the company (active promotion of compliance). Second, it comprises top management’s own communication activities, e.g. speeches at events, internal and external presentations, regular talks with the secondary management level, and regular talks with other employees. Several companies also refer to letters or video messages to employees on the subject.

In second place after communication is the involvement of top management in preventive measures. This includes personal involvement in the training process, the production of reports on compliance, active participation in the compliance committee, the exchange of information with the supervisory board and with other departments within the company, and the development and revision of compliance standards.

In third place is the personal involvement of top management in the control and sanctioning process. This includes the approval of important decisions, regular and unscheduled controls, review and follow-up of internal audits, supervision of protocol routines, supervision of the investigation of incidents, and enforcement of sanctions in cases of serious violations.

5. Culture and Values

a) Culture and Crime

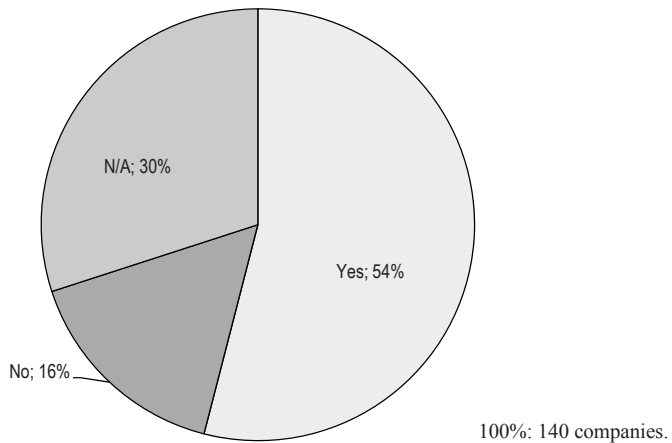
The cultures and values of employees contribute to the corporate climate. The questionnaire therefore inquired about attitudes towards corruption, fraud, and theft, as well as the handling of “gifts” by the company. The interviewees were asked to evaluate on a scale of 1 to 10 (ranking from “tolerated” to “not tolerated at all”) to what degree *gifts or small bribes* (e.g. 500 EUR) are tolerated or clearly

²⁵⁶ See no. 10 (questionnaire, Annex I.A.1.)/no. 36 (online questionnaire, Annex I.A.2.).

rejected by the majority of employees for the sake of the company.²⁵⁷ The average ranking was 8.7 (median: 10).²⁵⁸ There was no big gap between small and middle-sized companies, whereas large companies tolerate gifts and bribes less.²⁵⁹ Using the same scale, the interviewees were to evaluate the acceptance of *minor thefts or fraud* (e.g. 500 EUR) against the company.²⁶⁰ The average ranking was 9.4 (median: 10).²⁶¹ There was no significant difference between small, middle-sized and large companies, large companies being slightly less tolerant of these actions.²⁶² The interviewees therefore assume that the average employee clearly refrains from criminal acts for the sake of the company and from damaging the company by criminal acts for his personal gain.

The companies were then asked whether they have defined a specific value limit up to which gifts for employees are accepted. More than half of the companies have such a limit, only 16 percent answered that they had not set up rules (*figure 55*).

*Figure 55: Value limits for gifts*²⁶³



²⁵⁷ See no. 11 (questionnaire, Annex I.A.1.)/no. 37 (online questionnaire, Annex I.A.2.).

²⁵⁸ Number of answers: 100.

²⁵⁹ Small companies (35 answers): 8.6 (average), 10 (median); middle-sized companies (37 answers): 8.5 (average), 10 (median); large Companies (28 answers): 9.1 (average), 10 (median).

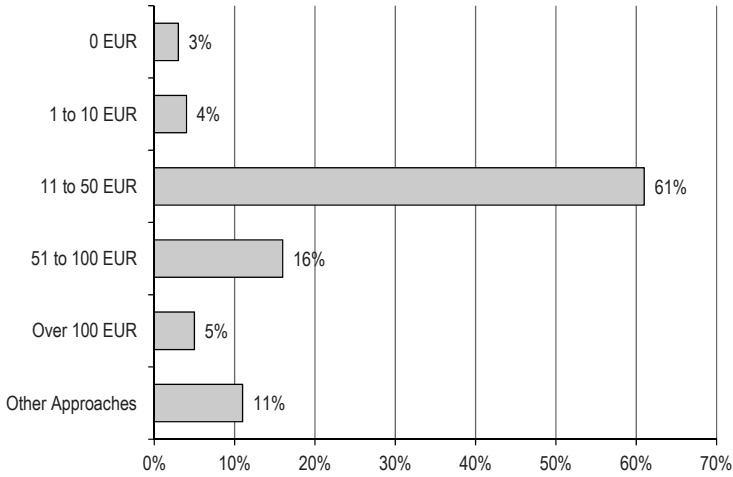
²⁶⁰ See no. 11 (questionnaire, Annex I.A.1.)/no. 37 (online questionnaire, Annex I.A.2.).

²⁶¹ Number of answers: 96.

²⁶² Small companies (35 answers): 9.5 (average), 10 (median); middle-sized companies (37 answers): 9.3 (average), 10 (median); large Companies (28 answers): 9.3 (average), 10 (median).

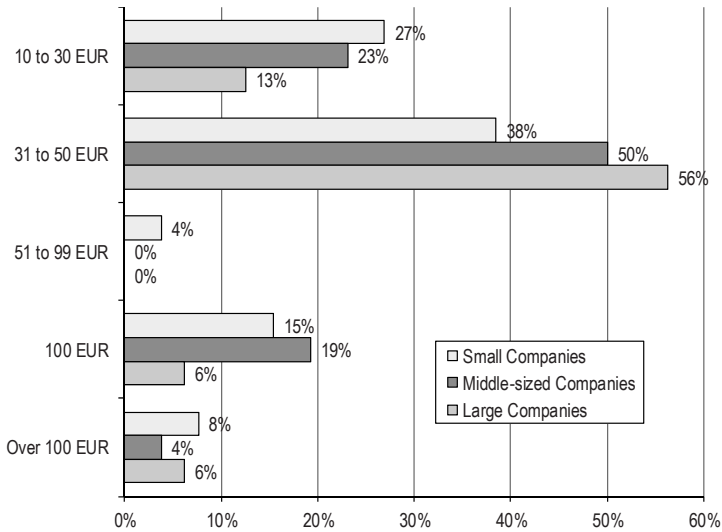
²⁶³ See no. 11 (questionnaire, Annex I.A.1.)/no. 38 (online questionnaire, Annex I.A.2.).

Figure 56: Accepted limits for gifts (general)²⁶⁴



No. of answers: 75.

Figure 57: Accepted limits for gifts (company size)



No. of answers: Large/middle-sized/small (13/25/24 companies).

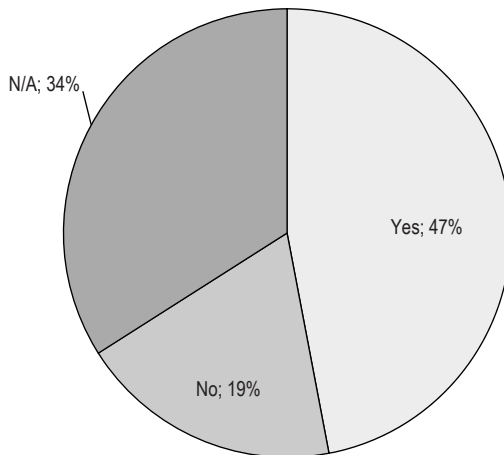
²⁶⁴ See no. 11 (questionnaire, Annex I.A.1.)/no. 39 (online questionnaire, Annex I.A.2.).

The majority of companies have defined clear limits for the acceptance of gifts. Only a very small minority has a “zero tolerance” policy, the majority (65%) tolerates gifts with a value up to 50 EUR. On average, the companies allow gifts having a value up to 59.8 EUR (median: 50 EUR). Some companies do not have a fixed limit but instead have different thresholds for reportable gifts (that merely have to be reported) or for those subject to authorization. In other companies, their acceptance depends on the employee’s salary. One company, for example, allowed gifts up to 1% of the gross monthly salary, one up to the tax exemption limit. One company allowed gifts up to 50 EUR in general, but only up to 25 EUR if the recipient is a public office holder (Amtsträger) and only up to 10 EUR if the recipient is a state official (Beamter). Some companies indicated that more valuable gifts are possible but only after approval (*figure 56*).

If one looks at the results according to the size of the companies, more small companies than large companies have a limit up to 30 EUR whereas large companies more often have a limit between 31 and 50 EUR (*figure 57*).

When asked about the existence of a specific procedure in order to check whether certain gifts are allowed or not, almost half of the companies reported having such a measure in place. These companies are, for the most part, the same ones that have also defined limits for the acceptance of gifts (*figure 58*).

*Figure 58: Procedure for determining allowable gifts*²⁶⁵



100%: 140 companies.

²⁶⁵ See no. 11 (questionnaire, Annex I.A.1.)/no. 40 (online questionnaire, Annex I.A.2.).

b) Social Values and Activities

The companies were also asked about how important it is for them not only to consider applicable laws and the company's financial goals but also to foster additional "moral" rules and values (e.g. preventing child labor, implementing anti-discrimination rules, or protecting the environment in foreign subsidiaries). They were to evaluate the importance of such aims for their own company on a scale of 1 to 10 (ranking from "not important" to "very important").²⁶⁶ The average ranking was 7.7 (median: 8) indicating that such goals are considered quite an important part of the companies' policies.²⁶⁷

When asked about the respective actions taken by the companies, they mentioned a number of different activities.²⁶⁸ The most common one is the inclusion of these topics in the corporate code of conduct or corporate manual. Several companies are partners of the UN Global Compact Initiative,²⁶⁹ the BME,²⁷⁰ or BSCI.²⁷¹ Some are certified according to ISO 14001 or according to OHSAS 18001. In addition, employees are trained in these areas, and top management serves to exemplify the aims and values – top down. One company makes the management regularly sign the latest code of conduct.

Several companies take action with regard to their suppliers, some also in regard to other business partners. This includes informing and training the suppliers on the topic, making acceptance of company values by the suppliers a precondition for business, providing for third-party due diligence, as well as for controls on the premises of the suppliers to monitor whether the rules are being followed. In a number of companies, specific attention is paid to environmental issues. Actions taken include improvement of energy management, energetic modernization of buildings and CO₂-management. The main differences between small and large companies concerns the establishment of a CSR department and the setting up of a corporate governance program (*figure 59*).

In addition, the companies were asked if they make special contributions to the wellbeing of society (such as donations to schools or other social activities).

²⁶⁶ See no. 11 (questionnaire, Annex I.A.1.)/no. 41 (online questionnaire, Annex I.A.2.).

²⁶⁷ Number of answers: 95.

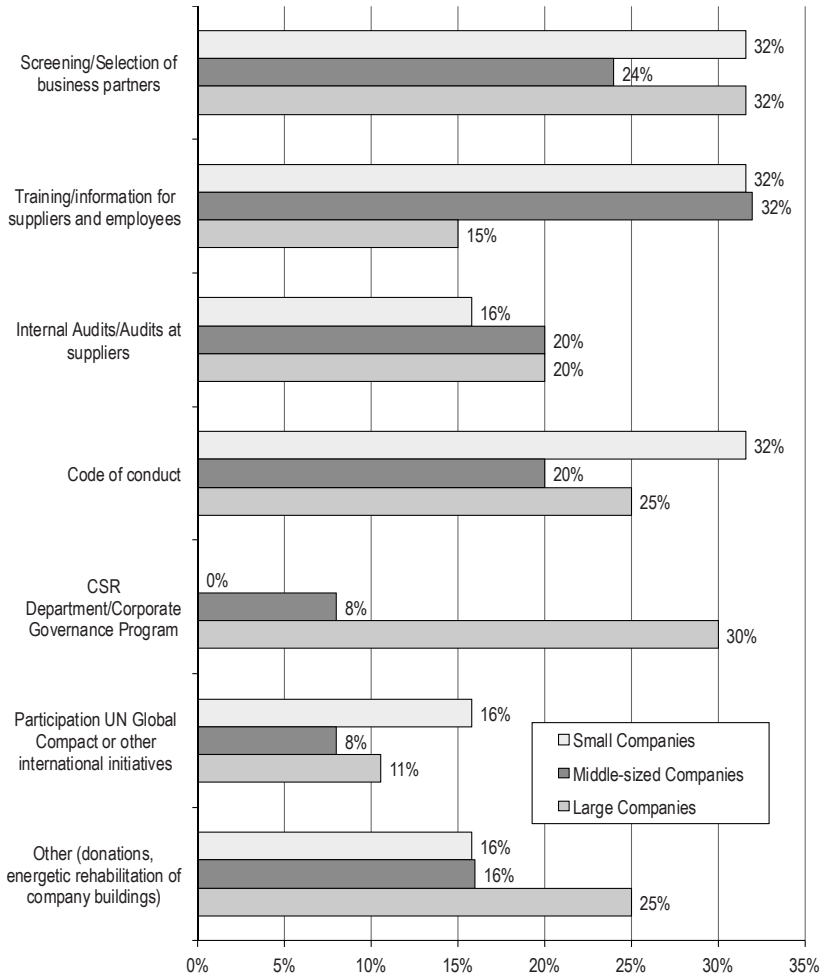
²⁶⁸ See no. 11 (questionnaire, Annex I.A.1.)/no. 42 (online questionnaire, Annex I.A.2.). Number of answers: 65.

²⁶⁹ See the website of the initiative: <http://www.unglobalcompact.org>.

²⁷⁰ See the website of the BME (Bundesverband Materialwirtschaft, Einkauf und Logistik – Association Materials Management, Purchasing and Logistics): <http://www.bme.de/BME-Compliance-Initiative.compliance.0.html>.

²⁷¹ See the website of the Business Social Compliance Initiative (BSCI) which was launched in 2003 by the Foreign Trade Association (FTA): <http://www.bsci-intl.org>.

Figure 59: Social activities (company size)



No. of answers: Large/middle-sized/small (19/25/19 companies).

60 percent of all companies surveyed (88 percent of the responding companies) are also socially active, only eight percent of the companies (12% of the respondees) stated not having included such activities in their company policy (figure 60).

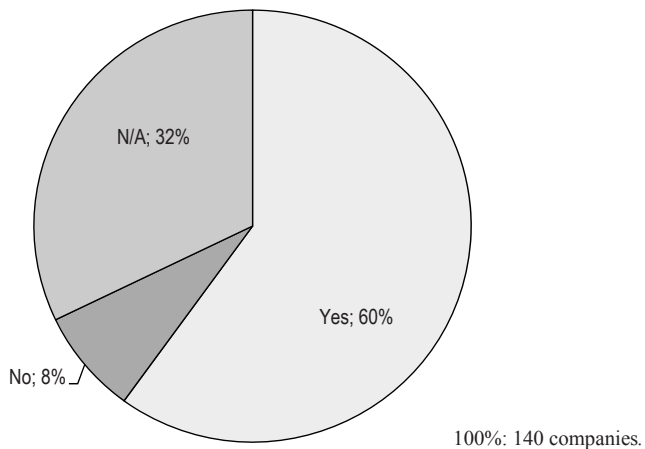
The results according to the size of the companies show that all large companies make such contributions to society whereas only 86 percent of the middle-sized companies and 78 percent of the small companies do (figure 61).

When asked about the actions taken by companies, they described a great variety of different activities.²⁷² Most common are donations to charities and associations (“Vereine”) of all kinds. They are often connected with activities in one of the following five fields: social work, education, culture, the environment, and sports. There is sometimes a link with the companies’ respective fields of business but, in many cases, there is no close one. The larger the company, the more likely that it has founded its own association, foundation, or financial fund to conduct the activities.

The main activity within the field of social work is supporting social organizations and institutions, very often in regard to children but also, for instance, in regard to disabled persons. This includes support for individual projects (e.g. theater performances by and for children), for ongoing projects (e.g. the integration of disabled children into “kindergarten” or integration of the elderly into society) or for schools or hospitals. Besides funding, equipment is often sponsored (e.g. computers) or employees are given time off during working hours to work for these projects (time off for social activities). Some companies sponsor employees who take up certain social activities. One company does not give Christmas presents to customers but instead donates this money to a charity.

The second field of activity (education) places more emphasis on enabling learning or providing an institutionalized learning environment rather than on the social

Figure 60: Contributions of companies to the wellbeing of society²⁷³

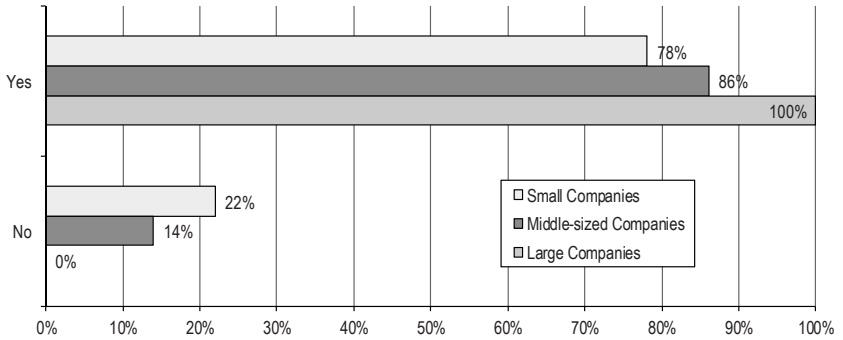


²⁷² See no. 11 (questionnaire, Annex I.A.1.)/no. 44 (online questionnaire, Annex I.A.2.). Number of answers: 72.

²⁷³ See no. 11 (questionnaire, Annex I.A.1.)/no. 43 (online questionnaire, Annex I.A.2.).

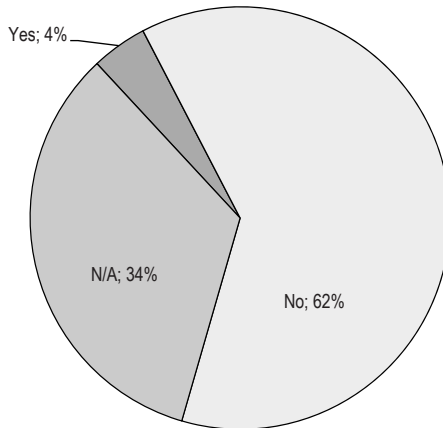
inclusion of certain groups (that are targeted by the aforementioned activities). It includes supporting museums (financing “science days”), universities (scholarship programs, supporting certain chairs) or associations and corresponding programs. The third field covers cultural activities, including support for all common projects and institutions, especially concerning the arts and music, e.g. by funding an

Figure 61: Special contributions (company size)



No. of answers: Large/middle-sized/small (25/36/32 companies).

Figure 62: Donations of companies to political parties²⁷⁴



100%: 140 companies.

²⁷⁴ See no. 11 (questionnaire, Annex I.A.1.)/no. 45 (online questionnaire, Annex I.A.2.).

orchestra or a festival. The fourth field comprises activities specifically dealing with the protection of the environment; the last field covers sports, including individual events (especially competitions) as well as the long-term projects of sports associations.

Finally, the companies were asked if they support political parties, especially by means of contributions. The answers were quite clear. Only four percent support parties, whereas 62 percent refrain from supporting political parties. Thus, companies undertake numerous activities in order to support society, but contributions to political parties do not seem to be acceptable or advisable for the majority (*figure 62*).

c) Comparison with Previous Studies

The number of empirical studies on the importance of the “tone of the top”, its perception by employees, as well as the importance of cultures and values within the company are very limited. *Steßl* showed that a positive relationship with the superior (not necessarily top management) has a positive effect on the prevention of corruption, whereas ambivalent behavior on the part of the superior (formally acting ethically but actually behaving illegally) fosters corruption.²⁷⁵ An overall ethical climate (affective commitment) also has a significant positive effect on the prevention of corruption.

The 2013 study by *PwC* briefly highlighted the importance of top management involvement and “ethical leadership” in the context of preliminary results from an ongoing study.²⁷⁶ The study emphasized the importance of the tone from the top for a successful compliance program. In most of the surveyed companies, the employees believe their top managers do not tolerate bribes as a legitimate practice (95%) and adhere to company guidelines (96%).²⁷⁷ However, the study also showed that, even when the tone from the top influences the acceptance of an anti-corruption program, the “ethical/unethical leadership” of the immediate superior is more important in most cases.²⁷⁸ Also, surprisingly, the connection between a culture of integrity and effective compliance measures seems to be rather weak.²⁷⁹ The present study only touched upon these aspects so that no comparison is possible. The questions must be left open for future research.

²⁷⁵ *Steßl*, *Effektives Compliance Management* (2012), p. 197.

²⁷⁶ The research is being conducted under the supervision of Professor *Kai-D. Bussmann* (Martin Luther University Halle-Wittenberg). See also *Trunk*, in: *Dölling/Jehle, Täter. Taten. Opfer* (2013), p. 421.

²⁷⁷ *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 50.

²⁷⁸ *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 55.

²⁷⁹ *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 55.

6. Other Components of Compliance Programs

The companies were asked which additional compliance measures they have taken up that had not been mentioned in the questionnaire.²⁸⁰ The answers refer primarily to control measures, risk analysis, and (internal) information and implementation structures.

The following additional *control measures* were mentioned:

- Integration of compliance into the internal control system (Internes Kontrollsystem – IKS²⁸¹);
- Establishment and use of electronic systems to verify an employee’s compliance with applicable international rules (such as terrorist lists, economic embargoes);
- General four-eye principle;
- Checklists;
- Establishment of specific processes in sensitive areas, such as business partner screening in M & A activities;
- Approval catalogs for specific business locations and types of business (e.g. agency contracts, consulting contracts, tenders) through the Compliance Committee, the Chief Compliance Officer, or Local Compliance Officer;
- Third-party due diligence.

The answers concerning *risk analysis* reveal the creation of a specific compliance risk analysis process, as a rule with extensive communication activities. They also stress the identification of company-specific risks (risk assessment) and monitoring of the results found. This includes a systematic review of all business units in regard to specific compliance risks.

The responses concerning (internal) information and implementation structures include:

- Creation of a lasting debate on compliance and raising employee awareness;
- Creation of an “honor codex”;
- Third party schooling;
- Participation in “collective actions”;²⁸²
- “Tone at the middle”;
- Integration of compliance in leadership development;

²⁸⁰ See no. 12 (questionnaire, Annex I.A.1.)/no. 46 (online questionnaire, Annex I.A.2.). Number of answers: 44 of which 8 stated that no further measures are provided for in the companies.

²⁸¹ See art. 46 of the Solvency II – Guideline (2009/38/EG) that regards compliance as part of the internal control system.

²⁸² For further information see e.g. *Pieth* (ed.), *Collective Action: Innovative Strategies to Prevent Corruption* (2012).

- Meeting compliance requirements as part of personal achievements of the employee (“persönliche Zielerreichung”) in the annual talks with management (“Personalgespräch”);
- Annual confirmation of compliance with the code of conduct.

One company even reported that some incidents are communicated externally to the media in order to deter potential “copycats” from performing similar acts.

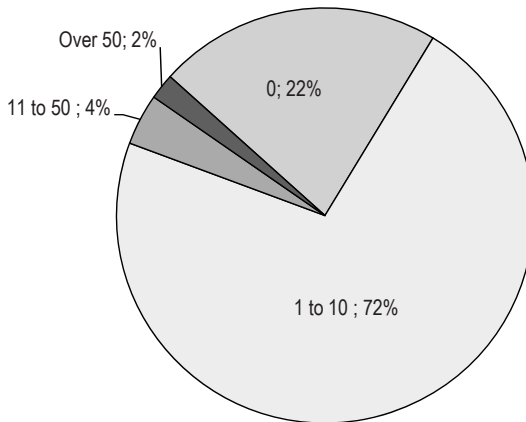
D. Compliance Investigations

1. Victimization

a) Victimization of Company

First, the companies were asked how many cases per year came to their attention in which the company was assumedly the victim of a crime such as fraud.²⁸³ They were asked to differentiate with respect to crimes by employees (*figure 63*) and by third parties (*figure 64*). Almost one fourth could not report any crimes by employees and even one third no crimes by third parties. The majority (72 percent concerning crimes of employees and 55 percent concerning crimes by third parties) had to deal with 1 to 10 cases per year. Only a few companies reported several cases

*Figure 63: Offenses committed by employees per year*²⁸⁴

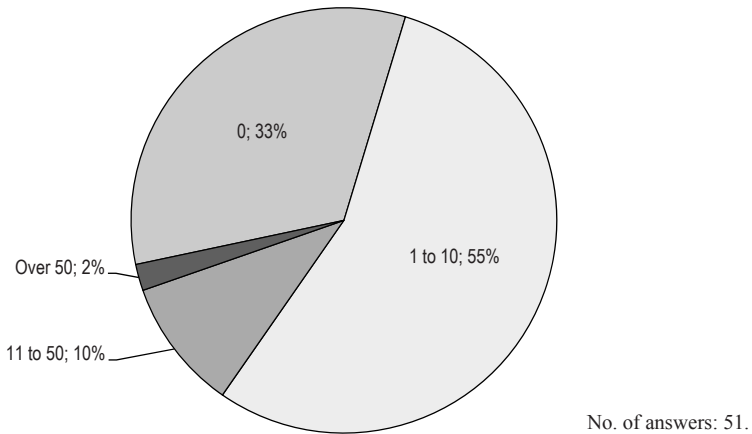


No. of answers: 68.

²⁸³ See no. 13 (questionnaire, Annex I.A.1./no. 47, 48 (online questionnaire, Annex I.A.2.).

²⁸⁴ See no. 13 (questionnaire, Annex I.A.1./no. 47 (online questionnaire, Annex I.A.2.).

Figure 64: Offenses committed by third parties per year²⁸⁵



per year. A rare exception is, for example, an insurance company that had more than 100,000 possible fraud cases by policyholders.

Concerning the type of offense committed, theft and unlawful appropriation (sec. 246 StGB) are the most common crimes, followed by fraud. Corruption ranks third but is of less importance than the aforementioned crimes. Breaches of anti-trust law only make up a small percentage of all cases. There is no big difference in ranking between the commission of crimes by employees (*figure 65*) and third parties (*figure 66*), except for breach of trust (Untreue, sec. 266 StGB), which can only be committed by employees and ranks in fourth place.

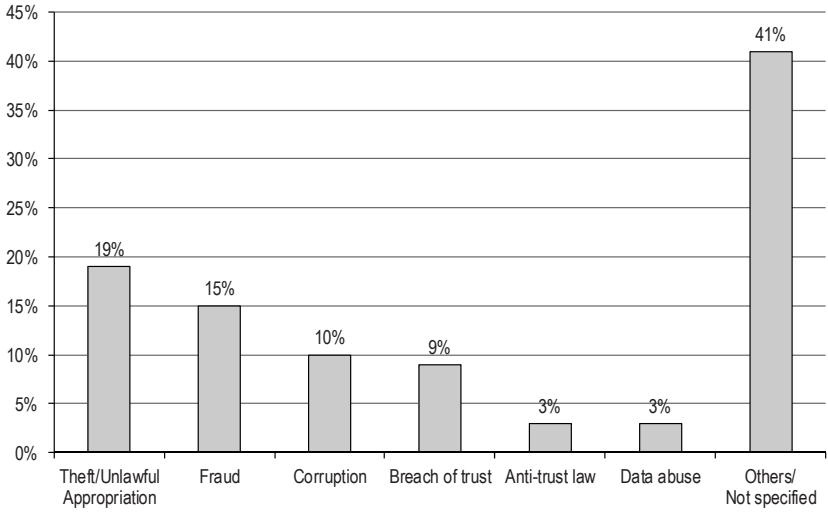
b) Victimization of Third Parties

The companies were not only asked about the number of cases in which they had been the victims but also about the number of cases per year in which employees committed offenses against other companies, consumers, or the state (e.g. by bribing or defrauding customers). 67 percent of the responding companies could not report any cases; 32 percent reported up to ten cases (*figure 67*).

These figures show that criminal acts attributed to the company (and often opening the door for a sanction according to sec. 30 OWiG) are far less common than cases in which the company was the victim of criminal acts by employees or third parties.

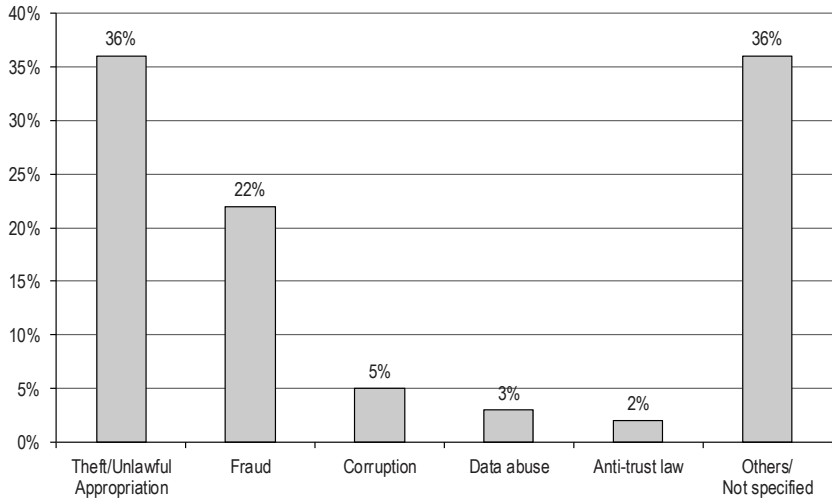
²⁸⁵ See no. 13 (questionnaire, Annex I.A.1.)/no. 47 (online questionnaire, Annex I.A.2.).

Figure 65: Type of offense committed by employees²⁸⁶



No. of answers: 52.

Figure 66: Type of offense committed by third parties²⁸⁷



No. of answers: 36.

²⁸⁶ See no. 13 (questionnaire, Annex I.A.1.)/no. 48 (online questionnaire, Annex I.A.2.).

²⁸⁷ See no. 13 (questionnaire, Annex I.A.1.)/no. 48 (online questionnaire, Annex I.A.2.).

c) Relevance of Economic Crime

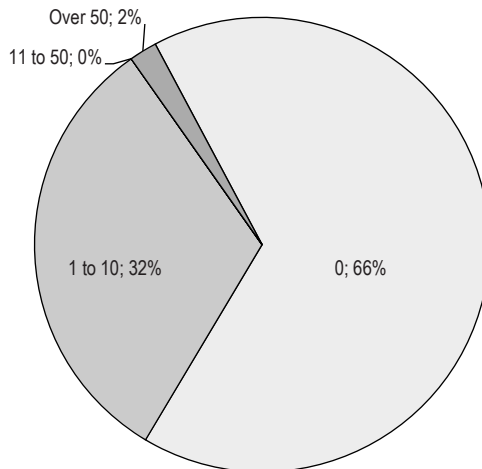
aa) Relevance of Economic Crime in General

The companies were asked in the second questionnaire to evaluate the relevance of economic crime against companies in Germany and that of crime committed from within companies in Germany on a scale of 1 to 10 (ranking from “not important” to “important”). Crimes committed against companies were regarded to be slightly more important than crimes originating from companies (*figure 68*).

bb) Relevance of Economic Crime for own Company

Additionally, the companies were asked to evaluate the relevance of economic crime against their own company and that of crime committed from within their own company on a scale of 1 to 10 (ranking from “not important” to “important”). Crimes committed against the company were regarded as more important than crimes originating within the company. In both cases, the relevance of criminality in the company was clearly seen as less important compared to the situation in Germany in general (*figure 69*).

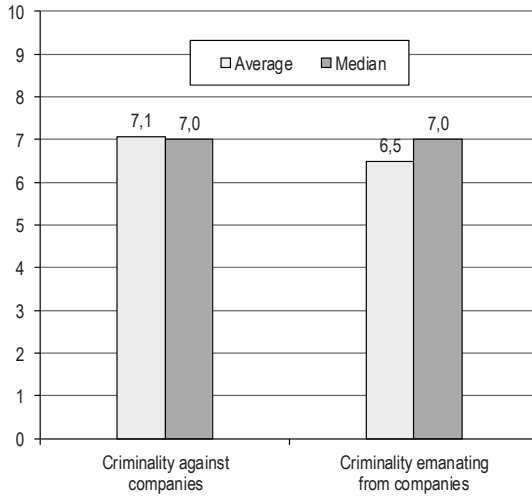
Figure 67: Offenses committed against third parties²⁸⁸



No. of answers: 66.

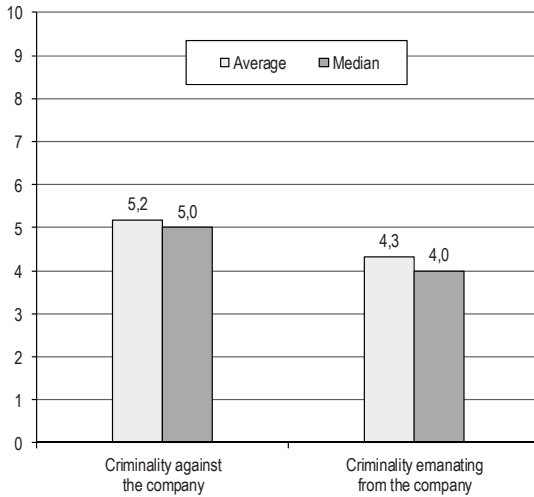
²⁸⁸ See no. 14 (questionnaire, Annex I.A.1.)/no. 49 (online questionnaire, Annex I.A.2.).

Figure 68: Relevance of economic crime in general²⁸⁹



No. of answers: 136 companies.

Figure 69: Relevance of economic crime for own company²⁹⁰



No. of answers: 137 companies.

²⁸⁹ See no. 13 of the questionnaire (Annex I.B.).

²⁹⁰ See no. 13 of the questionnaire (Annex I.B.).

d) Comparison with Previous Studies

According to the data collected by *PwC*, the above result concerning the types of offenses committed by employees and third parties is in line with the data of the 2010, 2011, and 2013 studies.²⁹¹ 34 percent of the responding companies reported damages due to at least one case of property violations in 2013 (32 percent in 2011), 10 percent (17 percent in 2011) due to infringements of a patent or a trademark, and 6 percent due to corruption (12 percent in 2011)²⁹². Only 4 percent (5 percent in 2011) were affected by money laundering, 2 percent (5 percent in 2011) by industrial espionage, and 2 percent (3 percent in 2011) by wrongful balancing of accounts (“Falschbilanzierung”).²⁹³ 6 percent of the companies were damaged by competition offenses.²⁹⁴ The most harmful incidents for the companies are property offenses, industrial espionage, and competition offenses.²⁹⁵

The analysis by *PwC* shows a downward trend in companies affected by criminal acts from 2009 to 2013 (with the exception of property offenses that increased from 2011 to 2013 but are still below the figures of 2009), a question not examined in the context of the present survey.²⁹⁶ The 2013 *PwC* report also asked the companies about suspicious cases. 51 percent reported at least one case in 2013 (59 percent in 2011). 27 percent of the companies reported property violations, 15 percent corruption incidents, 11 percent competition law and patent or trademark incidents. This is in line with the results of the present survey concerning the most common types of investigated incidents: corruption, competition law offenses, and different forms of property violations are in the top three places.

Pursuant to the survey by *KPMG* from 2012, theft and unlawful appropriation were the most frequently reported incidents (65 percent of all companies), followed by fraud or embezzlement (37%), and theft or misuse of data (31%). The least frequently reported incidents were money laundering (3%) and financial reporting (3%).²⁹⁷ The most important crimes for the companies were also theft or unlawful appropriation and fraud or embezzlement. Of least importance was wrongful financial reporting.²⁹⁸

²⁹¹ *PwC*, *Compliance und Unternehmenskultur* (2010), p. 41; *PwC*, *Wirtschaftskriminalität 2011*, p. 17; *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 17.

²⁹² *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 35.

²⁹³ *PwC*, *Wirtschaftskriminalität 2011*, p. 17.

²⁹⁴ *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 60.

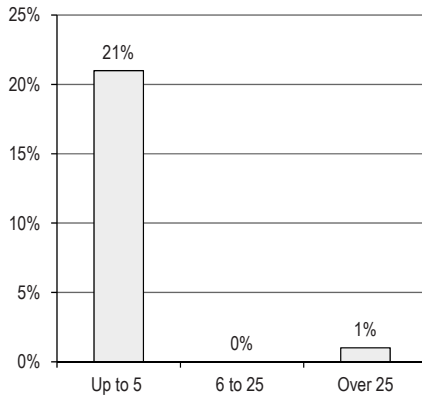
²⁹⁵ See in detail the partly differing results from *PwC*, *Wirtschaftskriminalität 2011*, p. 22 et seq.; *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 68.

²⁹⁶ *PwC*, *Wirtschaftskriminalität und Unternehmenskultur 2013*, p. 18, p. 35 (corruption), p. 60 (competition offenses).

²⁹⁷ *KPMG*, *Wirtschaftskriminalität in Deutschland 2012*, p. 11.

²⁹⁸ *KPMG*, *Wirtschaftskriminalität in Deutschland 2012*, p. 12.

Figure 70: Number of compliance investigations²⁹⁹



100%: 140 companies.

These surveys and the present study show that most of the harm done to the companies by economic crime derives from property violations such as theft and unlawful appropriation. In contrast, only a handful of the companies ever had to deal with money laundering.

2. Carrying Out Compliance Investigations

a) Number and Types of Investigated Incidents

In order to determine the scope of compliance investigations, the companies were asked whether there had been internal criminal or administrative criminal investigations against the company within the past five years. Only 29 percent of the companies could report such investigations, 34 percent stated that there were none, and the rest did not give an answer.³⁰⁰ On average, 7.7 cases were reported, yet the median³⁰¹ is only 3, as one company reported 150 cases. In this regard, if a company was affected, it statistically (based on the median) had to deal with three cases in five years (*figure 70*).

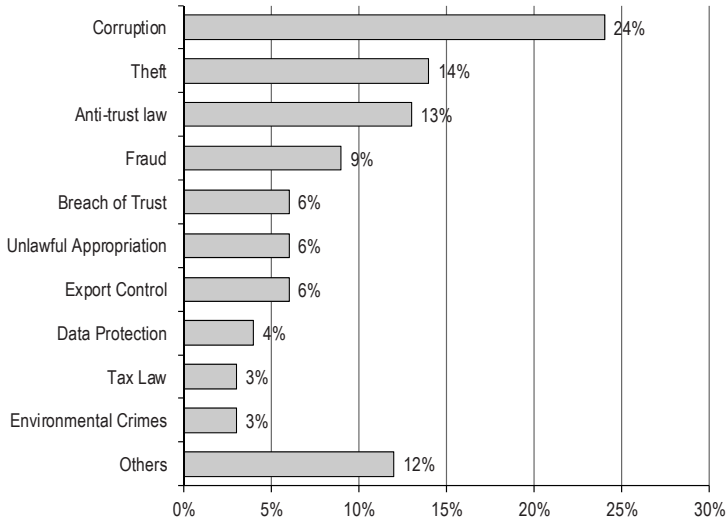
The investigations in the majority of cases concerned corruption (24%). In second and third place are theft and anti-trust cases (14 and 13%), followed by fraud incidents (9%) (*figure 71*).

²⁹⁹ See no. 15 (questionnaire, Annex I.A.1.)/no. 51 (online questionnaire, Annex I.A.2.).

³⁰⁰ See no. 15 (questionnaire, Annex I.A.1.)/no. 50 (online questionnaire, Annex I.A.2.).

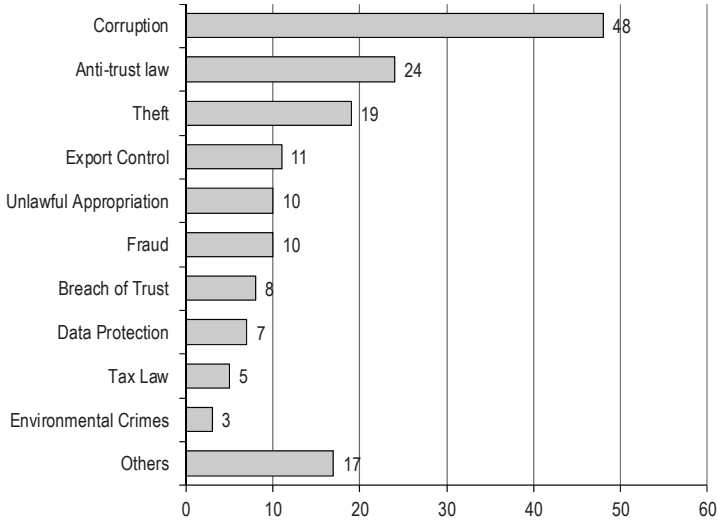
³⁰¹ For details, see *supra* p. 31.

Figure 71: Types of investigated incidents identified³⁰²



No. of answers: 37 (multiple answers allowed).

Figure 72: Practical relevance of investigated incidents³⁰³



No. of answers: 37.

³⁰² See no. 15 (questionnaire, Annex I.A.1.)/no. 52 (online questionnaire, Annex I.A.2.).

³⁰³ See no. 15 (questionnaire, Annex I.A.1.)/no. 52 (online questionnaire, Annex I.A.2.).

The questionnaire asked the companies to name the three most important incidents investigated (*figure 72*). This allowed the incidents to be weighed by their significance for the companies.³⁰⁴ In this regard, corruption is again clearly in first place, anti-trust law is in second place. This result is similar to answers from the companies about the significance of topics covered by corporate compliance programs (*figure 13*), even though anti-trust law is not clearly separate from the other topics.

b) Investigative Support by Means of Compliance Structure

The companies were asked to evaluate – on a scale of 1 to 10 (ranking from “no support” to “high support”) – whether their compliance program, with its rules and mechanisms, had effectively supported the investigations.³⁰⁵ The average ranking was 6.7 (median: 7).³⁰⁶ Thus, the compliance program is considered to be of some help, but it is not considered to be a substantial help for the investigations.

The interviewees were also asked in what way the program had been helpful.³⁰⁷ Besides the various detection measures that helped discovering an incident (see *supra figures 38, 39*), three main aspects were mentioned: (1) the program made investigations and cooperation easier by clarifying responsibilities for the investigations and by coordinating internal and external investigators, (2) documentation helped investigations, and (3) clear compliance rules and standards helped allocate responsibility and prove the infringements of rules.

Yet most of the responses showed that the majority of compliance programs do not provide for clear rules, responsibilities, and procedures in infringement cases. It seems that the programs are primarily aimed at preventing and also at discovering incidents, but they are not very helpful in systematically investigating these incidents. This can explain why the programs did not receive a higher rating in regard to effectively supporting investigations.

This result is also supported by the fact that, despite the compliance program, the majority of companies has specific rules and/or procedures outside the compliance program for dealing with infringements and conducting investigations. The interviewees were asked if rules exist on how compliance investigations have to be performed and by whom.³⁰⁸ 54 percent of all companies acknowledged such rules; only 14 percent stated not having them.³⁰⁹

³⁰⁴ For the method used, see above S. 30.

³⁰⁵ See no. 15 (questionnaire, Annex I.A.1.)/no. 53 (online questionnaire, Annex I.A.2.).

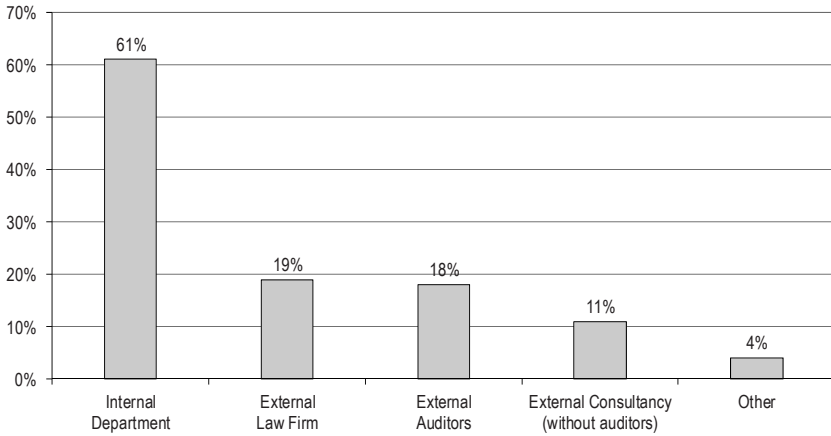
³⁰⁶ Number of answers: 41.

³⁰⁷ See no. 15 (questionnaire, Annex I.A.1.)/no. 54 (online questionnaire, Annex I.A.2.). Number of answers: 31.

³⁰⁸ See no. 15 (questionnaire, Annex I.A.1.)/no. 55 (online questionnaire, Annex I.A.2.).

³⁰⁹ Number of answers: 93.

Figure 73: Responsible investigators³¹⁰



No. of answers: 140 (multiple responses allowed, so that the total can exceed 100%).

c) Responsible Investigators

The companies were asked who conducts the relevant investigations in cases of suspected infringements. The investigations are mainly (61%) performed by the company's own personnel. In about 40 percent of the cases companies also ask external law firms or auditors either for assistance or to conduct the investigations (figure 73).

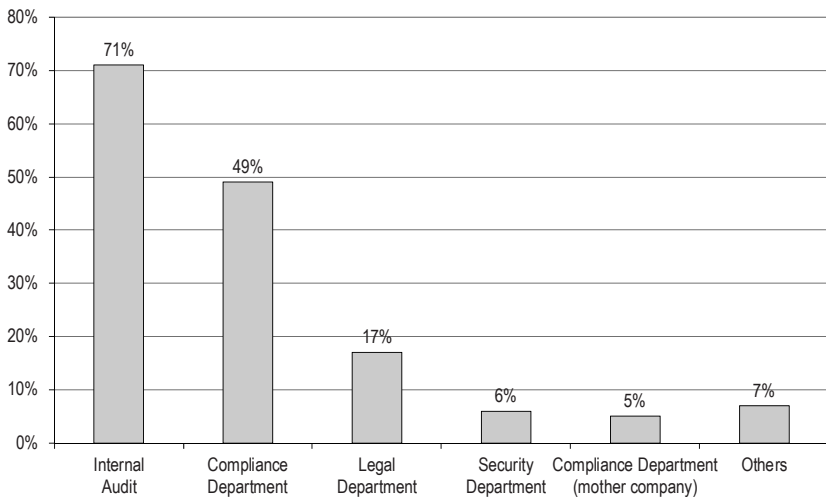
If an internal department conducts, supports or coordinates the investigations, the internal auditing unit is responsible in most cases. In almost half of the companies, the compliance department heads the investigations; in corporate groups, the compliance department of the mother company is often responsible. The legal department is sometimes involved but does not play a major role (figure 74).

The analysis in regard to the size of the companies, also taking into account the different departments involved, shows that internal audit alone conducts the investigations in most companies, regardless of size. In about 30 percent of the companies investigations are carried out in cooperation with the compliance department, again without major differences between small, middle-sized, and large companies (figure 75).

The main reason why external experts are involved is their better expertise (63%). The better objectivity of external investigators is also a main reason for a lot of companies (49%). In many cases, the companies also lack the necessary inter-

³¹⁰ See no. 15 (questionnaire, Annex I.A.1.)/no. 56 (online questionnaire, Annex I.A.2.).

Figure 74: Internal department responsible for investigations (general)³¹¹



No. of answers: 86 (multiple responses allowed, so that the total can exceed 100%).

nal resources (42%). Of little importance as major criteria for involving external experts are expectations to create a better image for the company or the expectations of state authorities to involve external experts (*figure 76*).

The analysis in regard to the size of the companies shows some major differences between the companies. Large companies employ externals mainly for better expertise and lack of internal resources, indicating that they do not have a sufficient number of own experts. The expectations of state authorities are also of more importance than in small and middle-sized companies. Better objectivity does not play a vital role for large companies and better image for the company none at all. In contrast, for small and middle-sized companies, better objectivity plays a major role, which might be due to the more personal environment in such companies (*figure 77*).

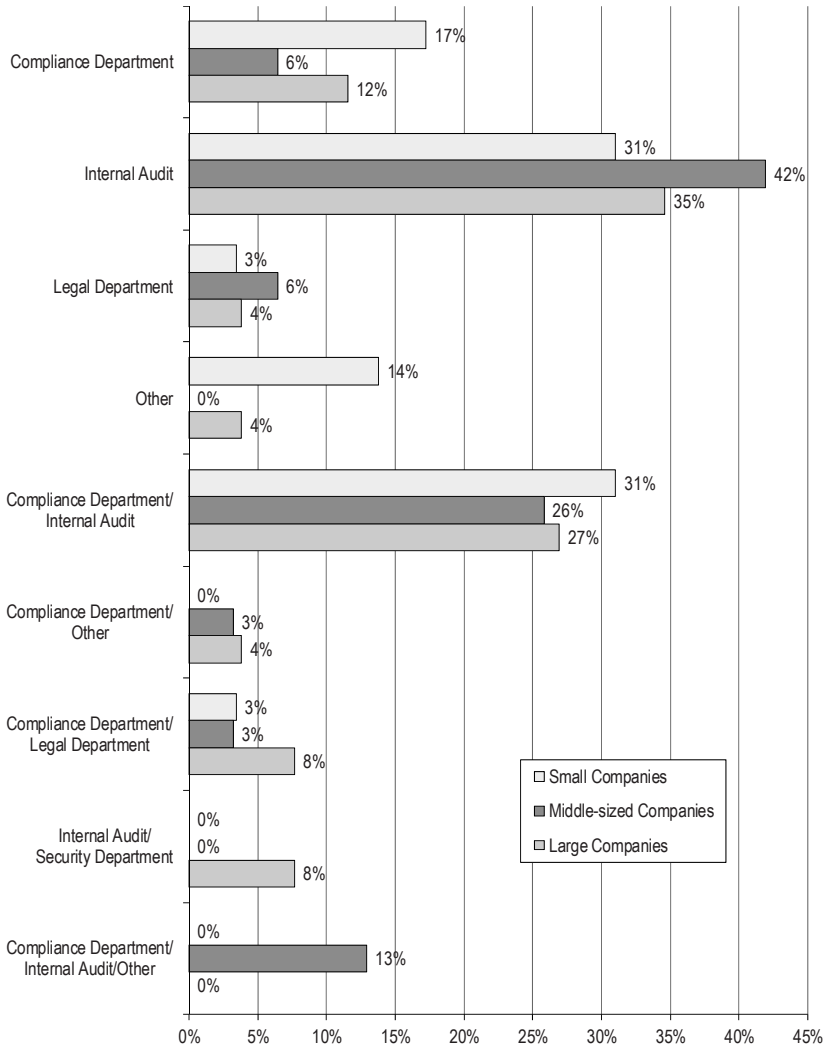
d) Costs of External Experts Involved in Internal Investigations

The questionnaire also asked the companies to quantify the costs of external advice for the support of internal investigations within the last five years.³¹² Only 21 companies responded, so that merely tendencies can be given. The main costs are

³¹¹ See no. 15 (questionnaire, Annex I.A.1.)/no. 57 (online questionnaire, Annex I.A.2.).

³¹² See no. 15 (questionnaire, Annex I.A.1.)/no. 59 (online questionnaire, Annex I.A.2.).

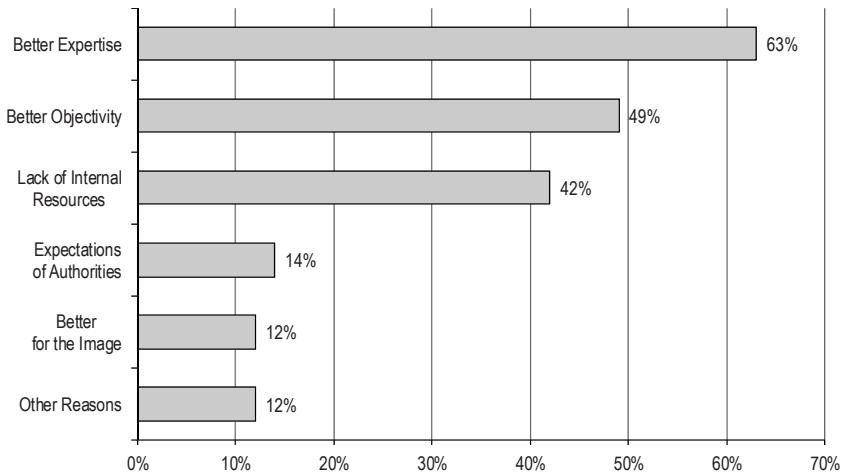
Figure 75: Internal departments responsible for investigations (company size)



No. of answers: Large/middle-sized/small (26/31/28 companies).

caused by legal advice. They are often at least several hundred thousand EUR; costs exceeding one million EUR are not unusual, the maximum given was 15 million EUR. Costs for auditors and other consultancies are lower: several tens of thousands EUR in the majority of the cases, over one hundred thousand EUR in individual cases.

Figure 76: Reasons for seeking external advice in investigation (general)³¹³



No. of answers: 57 (multiple responses allowed, so that the total can exceed 100%).

3. Employees and Investigations

The cooperation of employees is a major criterion for successful compliance investigations. Obviously, if employees are involved in illegal acts, they are caught between their personal interests and those of the company. The questionnaire therefore asked the companies if they expect their employees to fully cooperate during investigations.³¹⁴ 64 percent of all companies said that they expect such cooperation (making up 99 percent of the responding companies). Remarkably, only one company (about 1 percent of all and of the responding companies) negated such an expectation. 36 percent of all companies merely abstained from answering.

a) Employee Protection

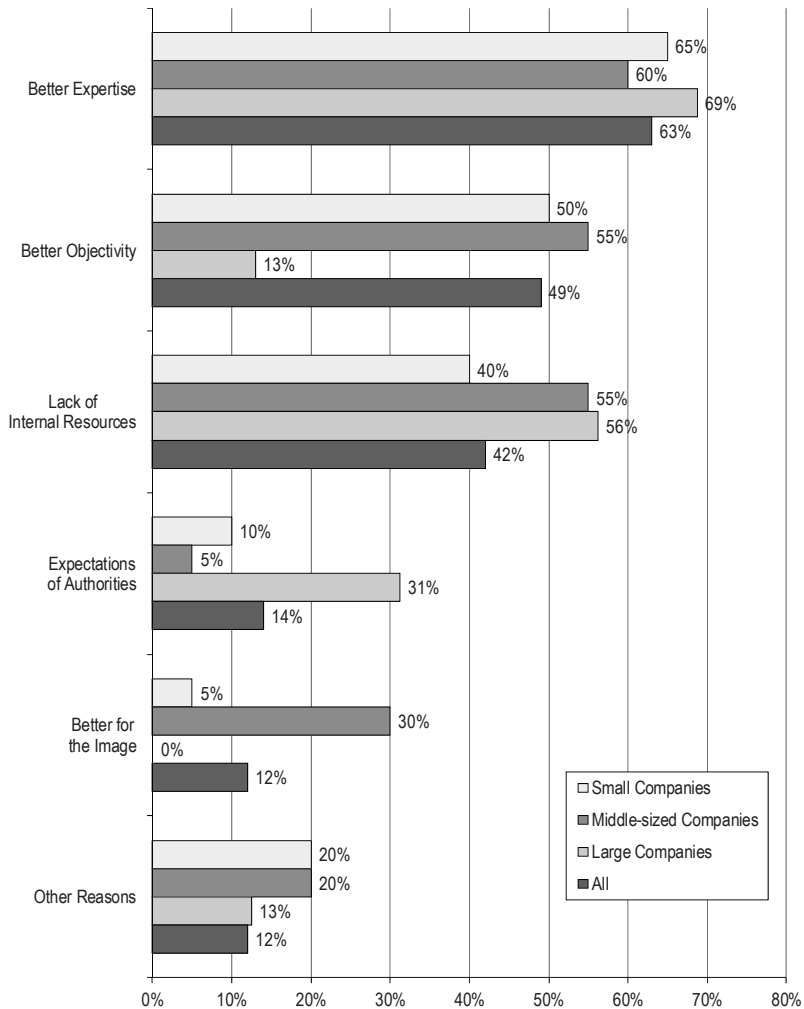
When asked whether the companies had taken precautions for the case that an employee has to admit his personal involvement in illegal acts, 30 percent of all companies (53 percent of the responding companies) answered in the affirmative and 27 percent (47 percent of the responding ones) answered in the negative.³¹⁵

³¹³ See no. 15 (questionnaire, Annex I.A.1.)/no. 58 (online questionnaire, Annex I.A.2.).

³¹⁴ See no. 15 (questionnaire, Annex I.A.1.)/no. 60 (online questionnaire, Annex I.A.2.).

³¹⁵ See no. 15 (questionnaire, Annex I.A.1.)/no. 61 (online questionnaire, Annex I.A.2.).

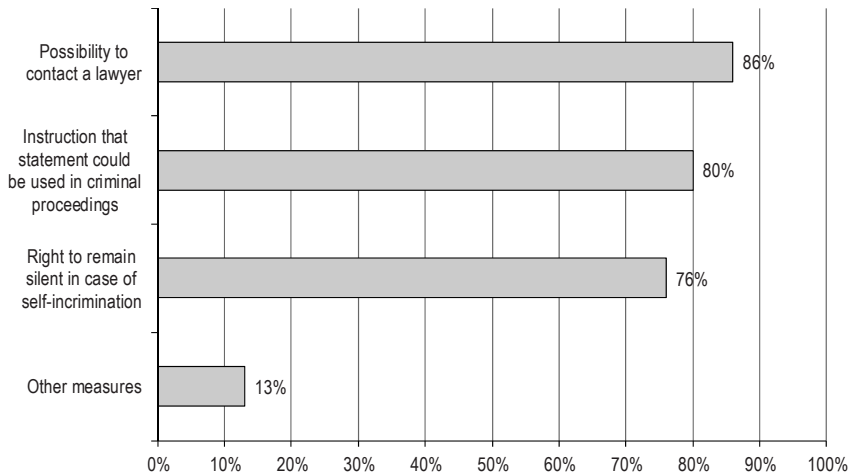
Figure 77: Reasons for seeking external advice in investigations (company size)



No. of answers: All/Large/middle-sized/small (57/16/20/20 companies).

Almost 86 percent of the aforementioned companies that have taken precautions offer the possibility to contact a lawyer. 80 percent provide for the instruction of the employee that his statement might be used against him in criminal proceedings and 76 percent that he can remain silent if he were to incriminate himself. Several companies also mentioned the possibility of contacting the workers' council (Betriebsrat) (figure 78).

Figure 78: Measures for protecting interviewed employees (general)³¹⁶



No. of answers: 42 (multiple responses allowed, so that the total can exceed 100%).

The results according to the size of the company (surprisingly) show that not only the large companies have taken up protection measures. In comparison, the percentage of small companies (and, with the exception of the possibility to contact a lawyer, also middle-sized companies) exceeds the percentage of large companies providing such measures. However, the number of answers is too small in order to give a representative picture (*figure 79*).

b) Amnesty Programs

The interviewees were asked whether the company had set up an amnesty program for cooperative employees if compliance investigations had been carried out during the past five years. An amnesty program guarantees that employees are not sanctioned by the company if they actively help by investigating incidents and cooperate with the company.³¹⁷ 18 percent of the responding companies affirmed having set up such a program. Larger companies (32%) have an amnesty program more often than middle-sized (10%) or small companies (11 percent; *figure 80*).

³¹⁶ See no. 15 (questionnaire, Annex I.A.1.)/no. 62 (online questionnaire, Annex I.A.2.).

³¹⁷ See e.g. *Kahlenberg/Schwinn, CCZ 2012*, p. 81; *Moosmayer, Compliance*, p. 100 et seq.

Figure 79: Measures for protecting interviewed employees (company size)

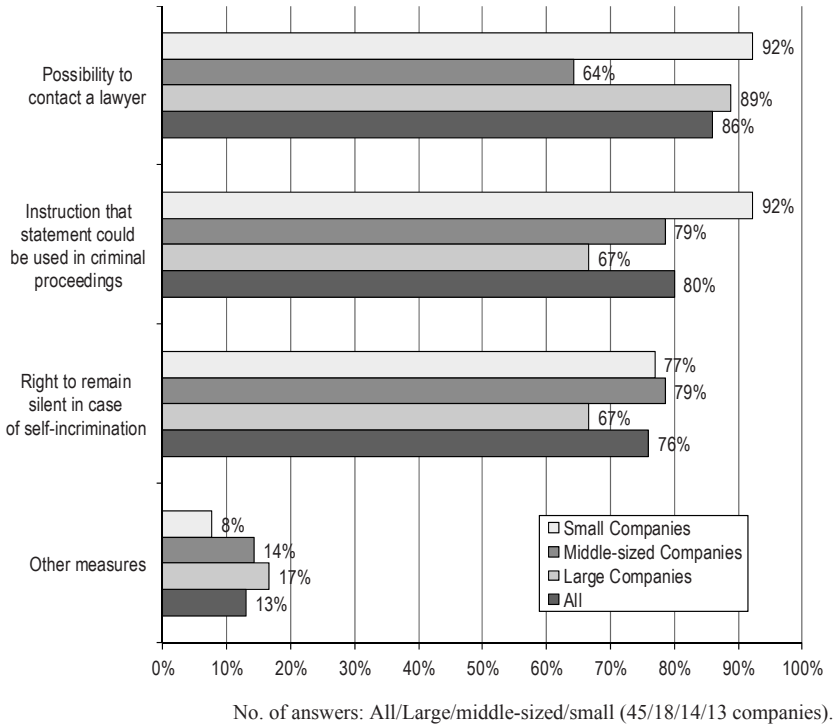
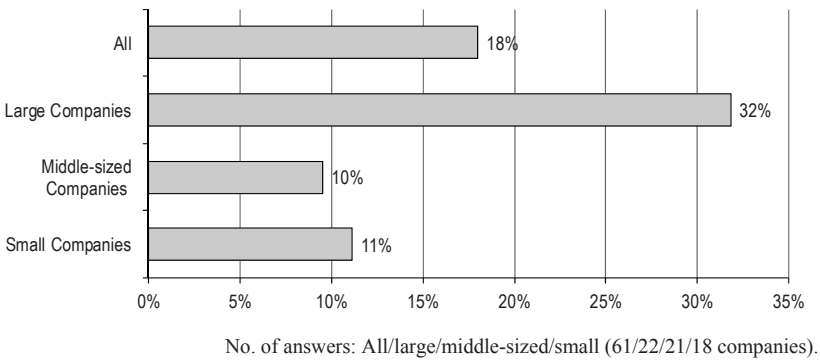
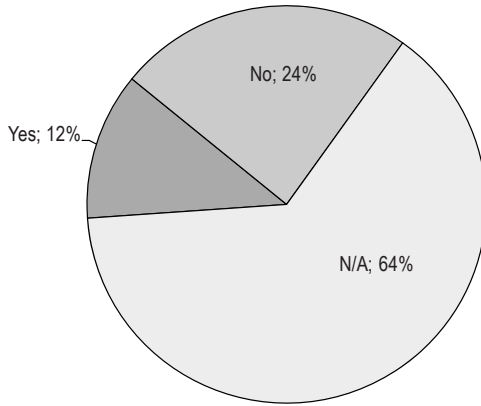


Figure 80: Amnesty programs for employees (company size)³¹⁸



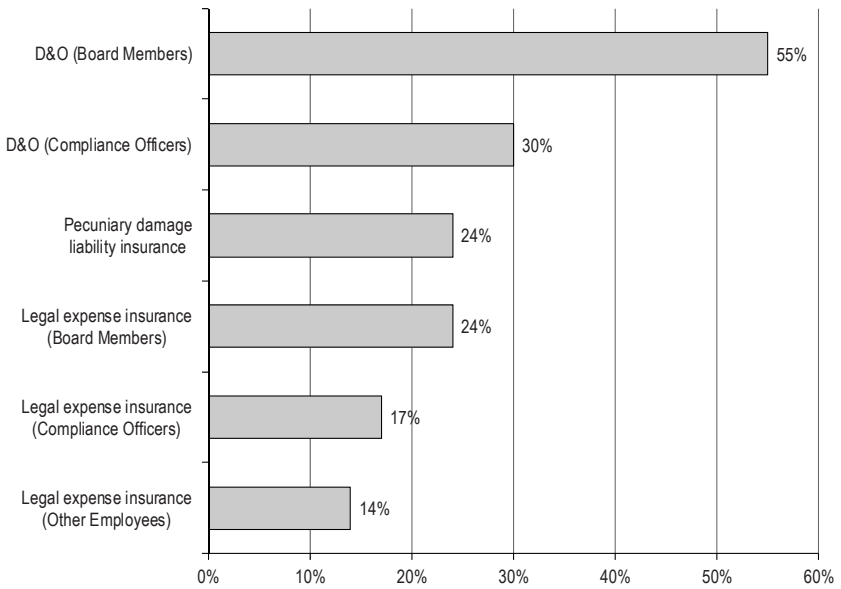
³¹⁸ See no. 15 (questionnaire, Annex I.A.1.)/no. 63 (online questionnaire, Annex I.A.2.).

Figure 81: Costs of legal advice covered by the company³¹⁹



100%: 140 companies.

Figure 82: Insurance provided by the company³²⁰



No. of answers: 140 (multiple responses allowed, so that the total can exceed 100%).

³¹⁹ See no. 15 (questionnaire, Annex I.A.1.)/no. 64 (online questionnaire, Annex I.A.2.).

³²⁰ See no. 15 (questionnaire, Annex I.A.1.)/no. 66 (online questionnaire, Annex I.A.2.).

c) Costs of Legal Advice for Employees

The companies were asked if they bear the costs of the legal advice caused by an employee due to internal investigations against the company and the employee in question. 12 percent of all companies do; 24 percent do not (*figure 81*). All but one of the companies that cover the expenses do so for board members; 88 percent of these companies (11 percent of the total number of companies) also cover the expenses for employees who are not board members.³²¹

4. Insurance

The companies were asked if they have insurance coverage in cases of infringements of legal regulations. 55 percent have a Directors-and-Officers (D&O) insurance for board members. 30 percent also have a D&O insurance for compliance officers who are not members of the board. Less common is legal expense insurance for criminal law (“Straf-Rechtsschutzversicherung”). 24 percent have such a system for board members, 17 percent for compliance officers who are not members of the board, and 14 percent for other employees. 24 percent of the companies have a pecuniary damage liability insurance (“Vermögensschadenshaftpflichtversicherung“) (*figure 82*).

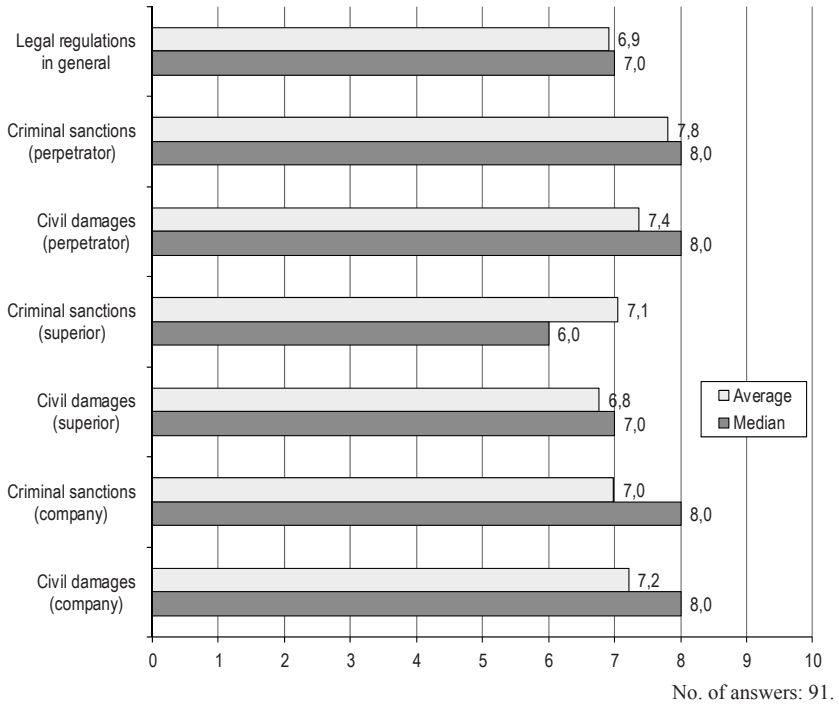
II. Evaluation of Compliance Measures**A. Effectiveness of Legal Regulations for Crime Prevention**

Lawmakers, practitioners, and academics controversially discuss which measures can foster compliance with legal and ethical rules in companies. The interviewees were therefore asked how effective they consider various measures in the legal system and within the companies to be for the prevention of illegal behavior by their employees.

The questionnaire asked the interviewees to evaluate the effectiveness of these measures for the prevention of illegal behavior of employees on a scale of 1 to 10 (ranking from “not effective” to “effective”). The following results show that the respondents did not rate the measures very differently as, on average, there are only small differences. However, legal regulations in general were not judged to be very

³²¹ See no. 15 (questionnaire, Annex I.A.1.)/no. 65 (online questionnaire, Annex I.A.2.). It is likely that companies only cover costs of legal advice for incidents employees commit in favor of the company and not for incidents against the companies. Yet, the questionnaire did not ask for more details, so that this question was not clearly answered.

Figure 83: Evaluation of legal measures (general)³²²

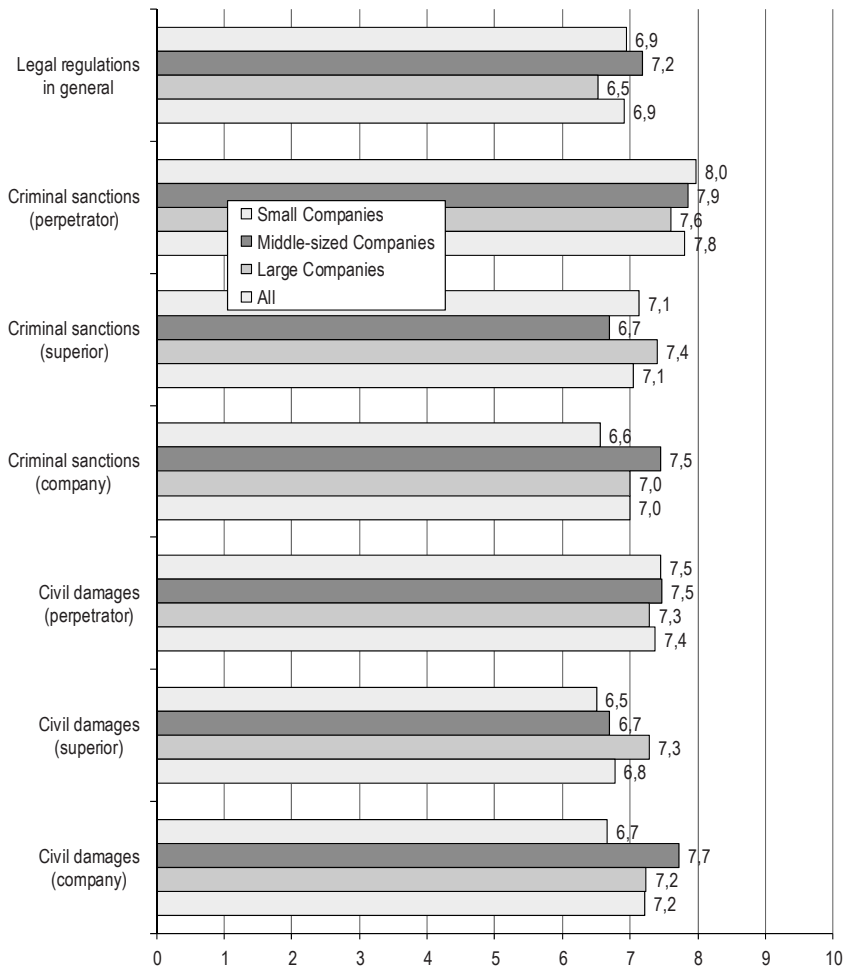


effective and were rated as less effective than other sanctions.³²³ Legal regulations with sanctions against individuals and the company were basically regarded as being more effective. In detail, the ranking is as follows: Criminal law sanctions against the perpetrator were regarded as being the most effective action, followed by rules on civil damages against the perpetrator. Civil law damages against the company, which are regarded to be slightly more effective than criminal law sanctions against the company, rank third. Criminal sanctions against the company are also seen as less effective than criminal sanctions against the superior of the employee because of inadequate supervision. In last place, according to the interviewees, are civil damages against the superior of the employee because of inadequate supervision (*figure 83*).

³²² See no. 16 a) (questionnaire, Annex I.A.1./no. 67 (online questionnaire, Annex I.A.2.).

³²³ The only exception concerns civil damages against the superior that was rated lower than legal regulations in general.

Figure 84: Evaluation of legal measures (company size)



No. of answers: All/large/middle-sized/small (91/25/34/32 companies).

The significance test (t-test)³²⁴ reveals that the differences between the measures are not significant in the majority of cases.³²⁵ There are only two exceptions: One is the criminal liability of the perpetrator, which is significantly different from legal measures in general, criminal sanctions against the superior and the company, as

³²⁴ For details, see supra p. 32 and infra p. 233.

³²⁵ For the tables, see infra p. 234.

well as civil sanctions against the superior.³²⁶ Also, the difference to civil damages against the company is marginally significant, and the difference to civil sanctions against the perpetrator is slightly above the marginal significance value.³²⁷ Insofar, these results show that the criminal responsibility of perpetrators is put in first place in comparison to the other measures. The second exception – where the difference is very significant – is the higher rating given to civil damages against the perpetrator compared to civil damages against the superior.³²⁸ Yet there are no significant differences of these two measures (civil damages against the perpetrator and civil damages against the superior) compared to civil damages against the company.

The results according to the size of the company show partial differences between the companies. All companies agree that criminal sanctions against the perpetrator are the most important measure. Also, they all place civil sanctions against the perpetrator in second or third place. Apart from that, middle-sized companies regard civil and criminal sanctions against companies to be more important, whereas small and large companies regard them to be less important. Large companies also put more emphasis on criminal and civil sanctions against the superior (*figure 84*).

B. Effectiveness of Compliance Efforts for Crime Prevention

The questionnaires asked the companies (1.) to describe the creation and improvement of their compliance programs in detail as well as (2.) to evaluate the effectiveness of their measures.

1. Implementation and Revision of Compliance Measures

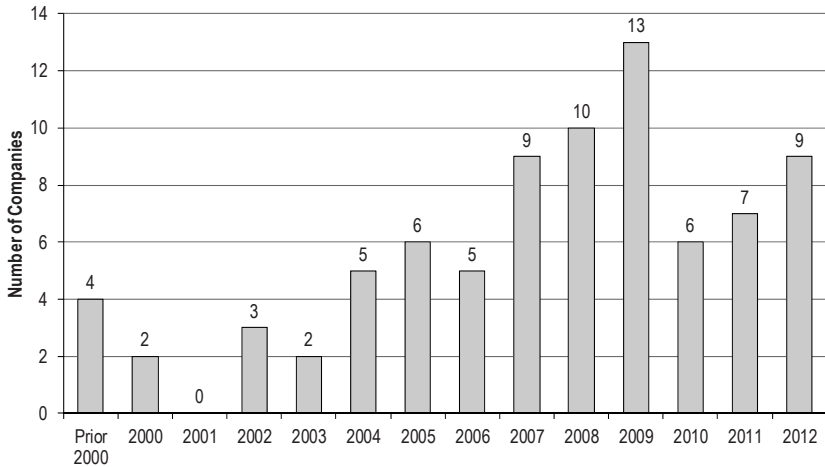
The first questionnaire asked the companies to give the year in which the compliance program was created (a.), to provide details on improvements to the program (c.) and on plans to change the program (f.). The second questionnaire also

³²⁶ Criminal sanctions against the perpetrator & legal regulations in general (p-value: .000***); criminal sanctions against the perpetrator & criminal sanctions against the superior (p-value: .001**); criminal sanctions against the perpetrator & criminal sanctions against the company (p-value: .012*); criminal sanctions against the perpetrator & civil sanctions against the superior (p-value: .004**).

³²⁷ Criminal sanctions against the perpetrator & civil sanctions against the company (p-value: .098†); criminal sanctions against the perpetrator & civil sanctions against the perpetrator (p-value: .106).

³²⁸ Civil sanctions against the perpetrator & civil sanctions against the superior (p-value: .005**).

Figure 85: Year in which compliance program was created³²⁹



No. of answers: 81.

asked for the reasons for setting up a compliance program (b.) and to weigh the benefit against the cost of the compliance program (e.).

a) Year of Creation

The majority of companies developed their compliance program after 2001. A first peak was in 2005 and a second one in 2009. The first peak might be due to the effect of the compliance discussion that originated in the USA after the Enron and Worldcom scandals, which took some time to be fully recognized in Europe. The second peak is probably due to the corruption cases in the Siemens company that led to a big compliance “wave” in Germany (figure 85).

b) Reasons for Taking Up Compliance Measures

The second questionnaire asked the companies about the reasons for dealing with the topic “compliance”. The companies mainly cited “risk minimization” (88%), closely followed by “legal requirements” (84%). In third place (78%), the interviewees cited “good corporate governance” and therefore a more moral incentive. Other reasons were given far less often (figure 86).

³²⁹ See no. 17 (questionnaire, Annex I.A.1..)/no. 69 (online questionnaire, Annex I.A.2.).

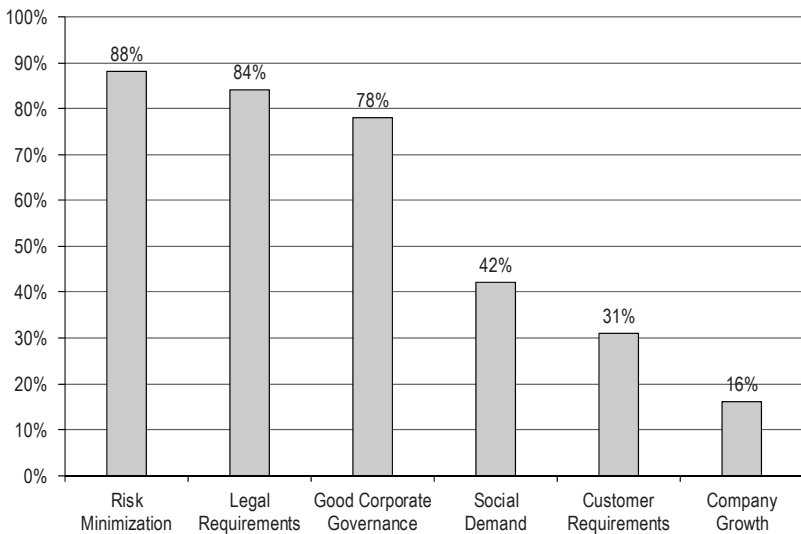
c) Improvement of the Compliance Program

aa) Results of Study

The companies were also asked when and how often they have substantially improved their compliance program. Sixteen percent of the responding companies stated that they improve their program on a permanent basis, so that no specific years can be given. 84 percent have improved their compliance program once after creation, another 25 percent twice and a further 15 percent even three times. The first revisions started in 2006, most of the revisions have taken place since 2010 (*figure 87*).

The main reason for revising the compliance program was the modification of legal regulations (69%). Other important aspects were investigations against the company itself and external advice (each 31%). As compliance has become a popular topic in the public eye, open dialog also contributes substantially towards motivating change (30%) followed by investigations against other companies (26%). Of less importance are the results of an internal review (16%) or hopes to improve the image of the company (12%) (*figure 88*).

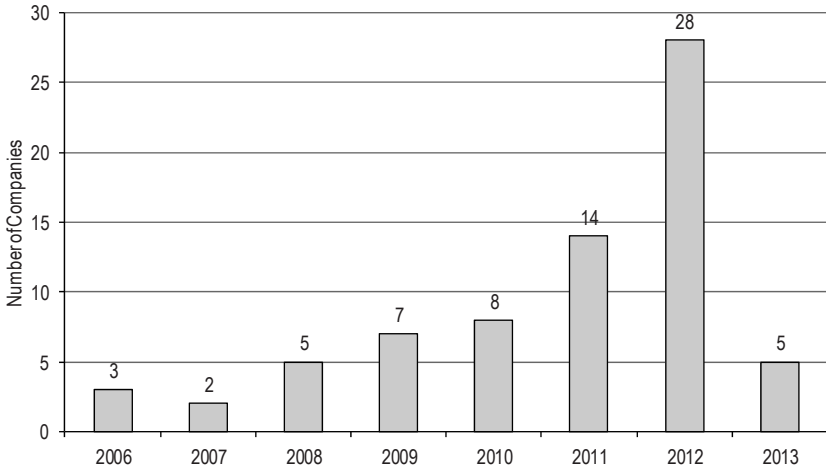
Figure 86: Reasons for taking up compliance measures³³⁰



No. of answers: 134 companies (multiple responses allowed, so that the total can exceed 100%).

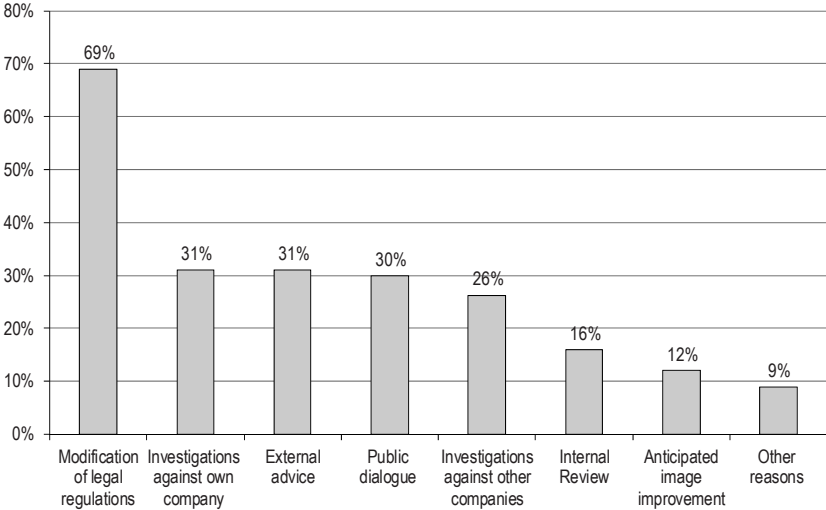
³³⁰ See no. 2 of the questionnaire (Annex I.B.).

Figure 87: Year in which compliance program was substantially improved³³¹



No. of responding companies: 61.

Figure 88: Reasons for improving compliance programs³³²



No. of answers: 67 (multiple responses allowed, so that the total can exceed 100%).

³³¹ See no. 17 (questionnaire, Annex I.A.1.)/no. 70 (online questionnaire, Annex I.A.2.).

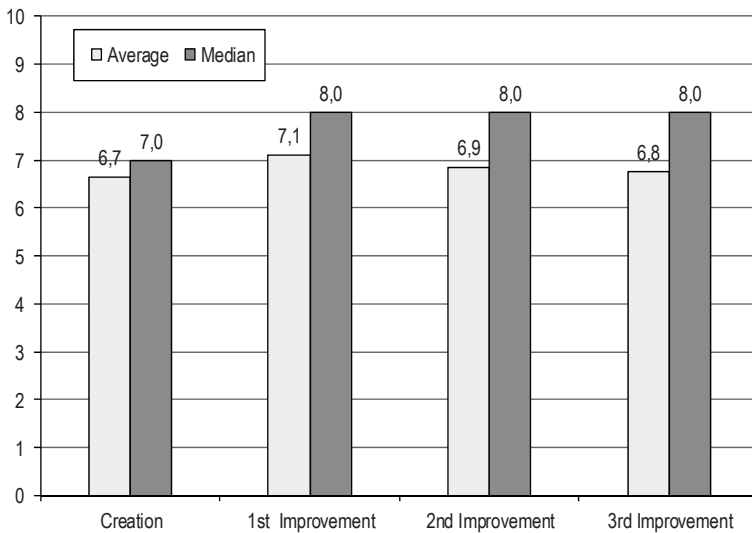
³³² See no. 17 (questionnaire, Annex I.A.1.)/no. 72 (online questionnaire, Annex I.A.2.).

bb) Comparison with Previous Studies

The results of the present study differ slightly from other studies. According to the 2007 study by PwC, 55 percent of the companies introduced their compliance program as a result of external advice, only 43 percent because of national legislation, yet another 41 percent due to pressure by the media, and only 29 percent because of investigations.³³³ The 2010 study by PwC also showed that publicly traded companies introduced a compliance program more often than other companies; if they are traded not only in Germany but also in the USA, the number is even higher.³³⁴

The 2013 report by PwC asked the companies without a compliance program about possible reasons that might convince the executive board to introduce a compliance program in the years to come.³³⁵ 62 percent mentioned the external advice of law firms and auditors, 59 percent image issues and risks of criminal liability, 55 percent criminal incidents and risks of civil liability, 45 percent public dialog,

Figure 89: Evaluation of programs on prevention and detection of offenses³³⁶



No. of answers: 67.

³³³ See PwC, *Wirtschaftskriminalität* 2007, p. 34.

³³⁴ See PwC, *Compliance und Unternehmenskultur* (2010), p. 14.

³³⁵ See PwC, *Wirtschaftskriminalität und Unternehmenskultur* 2013, p. 28.

³³⁶ See no. 15 (questionnaire, Annex I.A.1.)/no. 71 (online questionnaire, Annex I.A.2.).

44 percent pressure from business partners and 40 percent ongoing or upcoming criminal proceedings.

These results are not directly comparable to the present survey but show some similarities to the present results. Risk minimization, external advice, and investigations against the own company as well as against other companies are the main reasons given for having taken up compliance measures or for the intention to do so. For companies already having set up a compliance program, legal requirements are another decisive factor.

d) Evaluating Creation and Improvement of Compliance Programs

Finally, the companies were asked to evaluate on a scale of 1 to 10 (ranking from “little change” to “a lot of change”) whether the creation and/or the revision(s) of the compliance program improved the prevention and detection of illegal acts within the company. The results indicate that implementation and revision are regarded to have brought about some change, but the responses expressed some reluctance and did not state that a clear change has taken place. The second improvement is rated lower than the first, and the third is rated even lower than the second. The revisions do not seem to have brought about a significant change in the program (*figure 89*).

e) Cost-benefit Ratio

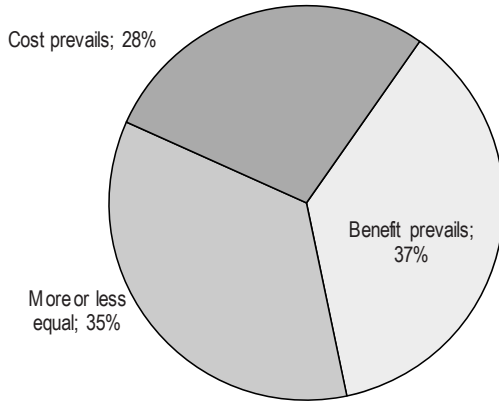
aa) Results of Study

The companies were also asked whether either the costs or the benefits of compliance management prevail. A majority (37%) answered that the benefits prevail, 35 percent consider the costs and benefits to be more or less equal, whereas 28 percent perceive the costs to be dominant (*figure 90*).

The results for companies according to size show a major difference between large/middle-sized and small companies. The majority of large and middle-sized companies find that benefits prevail, whereas small companies maintain that costs prevail (*figure 91*).

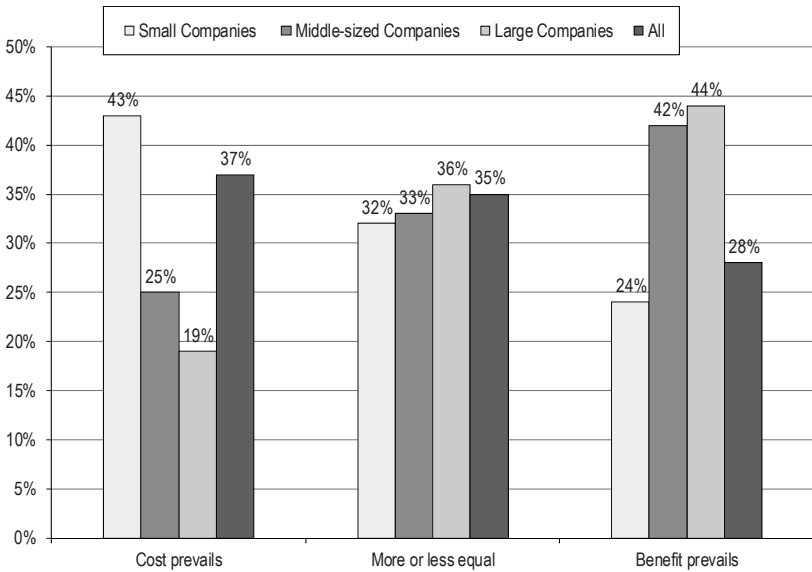
In the financial sector, where a substantial number of organizational requirements exist, almost one third of the companies (32.6%) remark that the costs prevail; the same number (32.6%) state that the benefits prevail, and a slightly higher number (34.8%) see no difference between costs and benefits (no of answers: 43 companies).

Figure 90: Cost-benefit ratio (general)³³⁷



100%: 137 companies.

Figure 91: Cost-benefit ratio (company size)



No. of answers: All/large/middle-sized/small (137/36/57/37 companies).

³³⁷ See no. 9 of the questionnaire (Annex I.B.).

bb) Comparison with Previous Studies

No directly comparable data on the cost-benefit ratio of compliance programs exists, as this has not been addressed by previous studies. The *PwC* survey of 2013, however, inquired why companies not having introduced a compliance program had reservations about doing so. Especially small companies with less than 1000 employees claim that the efforts outweigh the advantages of a compliance program (72%) and that it is too bureaucratic (54%). 46 percent of larger companies claim there is a lack of advantages, and 44 percent of companies with 1000 to 5000 employees (45 percent with more than 5000 employees) purport that compliance programs are too bureaucratic. For companies with 1000 to 5000 employees, the cost factor is the main criterion for not having a compliance program (50%), followed by larger companies (45%) and companies with less than 1000 employees (43%). These results show that especially small companies are skeptical about implementing compliance measures because they do not see a prevailing advantage, regardless of whether they already implemented compliance measures or not.

f) Plans to Change Compliance Program

aa) Results of Study

The companies were also asked if they have plans to change their compliance program.³³⁸ Sixteen percent of the interviewees (10 companies) reported that they are developing the program on an ongoing basis.³³⁹ Another 26 percent of the participating companies (37 companies) have plans to improve the program, whereas 33 percent (46 companies) have no such plans.³⁴⁰

Measures to improve the program include especially the following:³⁴¹

- Enlarging the compliance department;
- Bundling tasks and competences within the compliance department;
- Integrating the requirements of the mother company;
- Widening the scope of the compliance program, e.g. including money laundering, data protection or protection of the environment;
- Better training of employees;
- Improvement of electronic components (e.g. IT compliance, electronic whistleblower systems);

³³⁸ See no. 17 (questionnaire, Annex I.A.1.)/no. 74 (online questionnaire, Annex I.A.2.).

³³⁹ See *supra* p. 118.

³⁴⁰ Number of answers: 83.

³⁴¹ See no. 17 (questionnaire, Annex I.A.1.)/no. 75 (online questionnaire, Annex I.A.2.). Number of answers: 39.

- More effective control mechanisms;
- Definition of key performance indicators;
- Better documentation;
- Integration of compliance measures into internal control systems and management control systems.

bb) Comparison with Previous Studies

The 2011 study by PwC also shows that companies are planning to improve their compliance system. 79 percent of the companies with a compliance program intend to further develop their training and seminars, 70 percent want to improve their risk management and 62 percent say they will improve their monitoring and reviewing.³⁴² The percentage of companies planning reforms in the PwC study is higher than in the present survey. As many companies already improved their programs in 2011 and 2012, the development may have slowed down.

2. Effectiveness of Compliance Measures

a) *Evaluation of Effectiveness of Compliance Measures*

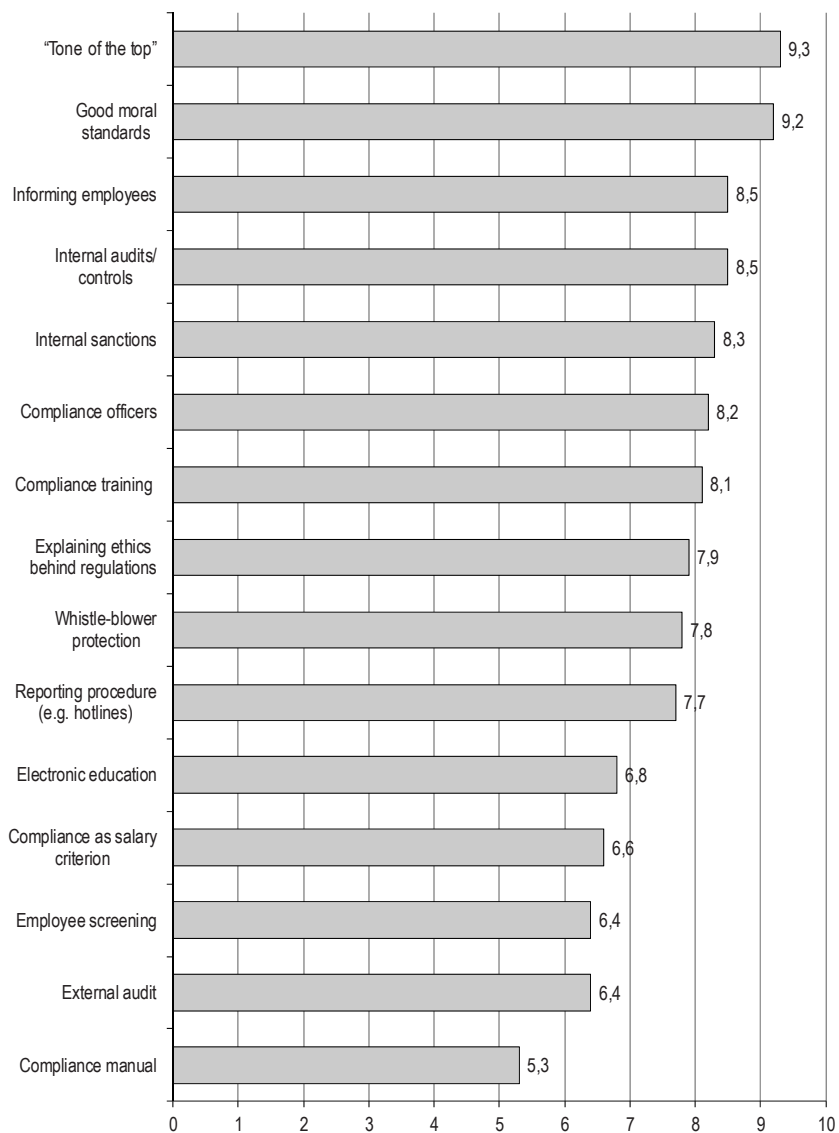
The companies were asked to evaluate the effectiveness of the different elements of their compliance measures in preventing illegal behavior of employees on a scale of 1 to 10 (ranking from “not effective” to “effective”).

The involvement of top management in compliance issues (“tone of the top”) was regarded to be the most effective measure, followed by the creation of good ethical standards within the company, which is supported by collaborators and top management. Informing the employees about legal regulations and sanctions is listed as the next effective course of action. Internal audits and controls are in fourth place, coming before an internal sanction system within the company, the appointment of compliance officers, and compliance training seminars (*figure 92*).

Next, measures are mentioned that are regarded as still being effective but already clearly less so than the ones in first place. These are the explanation of ethical reasons behind the legal regulations for employees to follow, the special protection of whistle-blowers (including providing confidentiality), as well as procedures for reporting irregularities and problems, e.g. hotlines. In contrast, electronic education (e.g. CD-ROM, e-mail, online training), compliance as a criterion for salary incentives (bonuses, etc.), and the screening of employees prior to hiring are not seen as very effective measures. Ultimately, external audits and comprehensive compliance manuals are regarded to be the least effective measures (*figure 92*).

³⁴² PwC, Wirtschaftskriminalität 2011, p. 51.

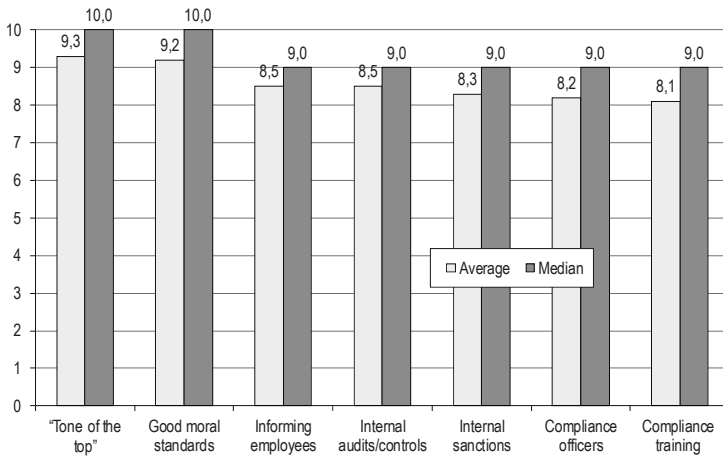
Figure 92: Evaluation of effectiveness of compliance measures (overview – average)³⁴³



No. of answers: 92.

³⁴³ See no. 16 b) (questionnaire, Annex I.A.1.)/no. 68 (online questionnaire, Annex I.A.2.).

Figure 93: Evaluation of effectiveness of compliance measures (detail I – average/median)³⁴⁴



No. of answers: 92.

The comparison of the statistical average and the median³⁴⁵ shows the same results at both ends of the scale. Yet several measures in between have a higher median, which illustrates that there was no consensus about the evaluation among the interviewees. One example is how whistleblower protection is perceived (average: 7.8; median: 9). This phenomenon might be due to great differences in the implementation of such measures within the companies (figures 93, 94).

The average results according to the size of the company show that there are no major differences between the companies as to the different measures. Small companies value internal and external audits more than the others, a result already seen in regard to the evaluation of detection measures.³⁴⁶ They also rate employee screening much higher. Middle-sized companies put more emphasis on the explanation of the ethics behind the legal rules, and large companies stress electronic education and compliance training slightly more. Altogether, however, the overall results of the companies are remarkably homogenous (figure 95).

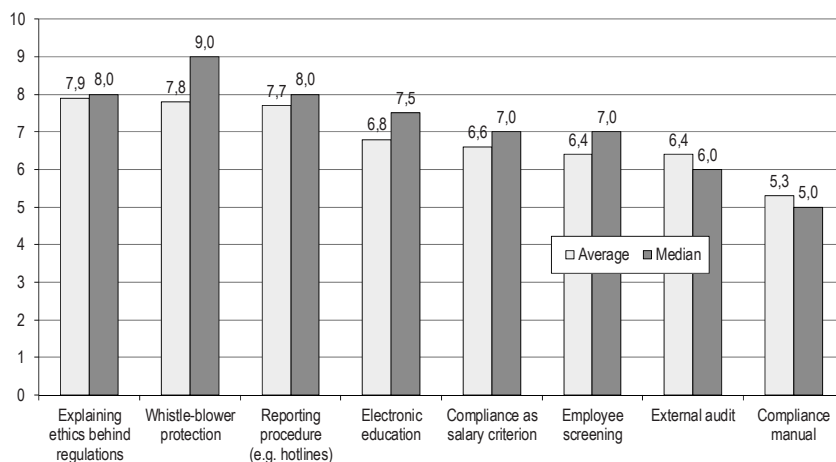
The comparison between listed and non-listed companies shows that there are no major differences as regards the effectiveness of compliance measures. Among the few exceptions: non-listed companies value internal audits more highly than listed

³⁴⁴ See no. 16 b) (questionnaire, Annex I.A.1.)/no. 68 (online questionnaire, Annex I.A.2.).

³⁴⁵ For details, see supra p. 31.

³⁴⁶ See supra p. 69.

Figure 94: Evaluation of effectiveness of compliance measures
(detail II – average/median)³⁴⁷



No. of answers: 92.

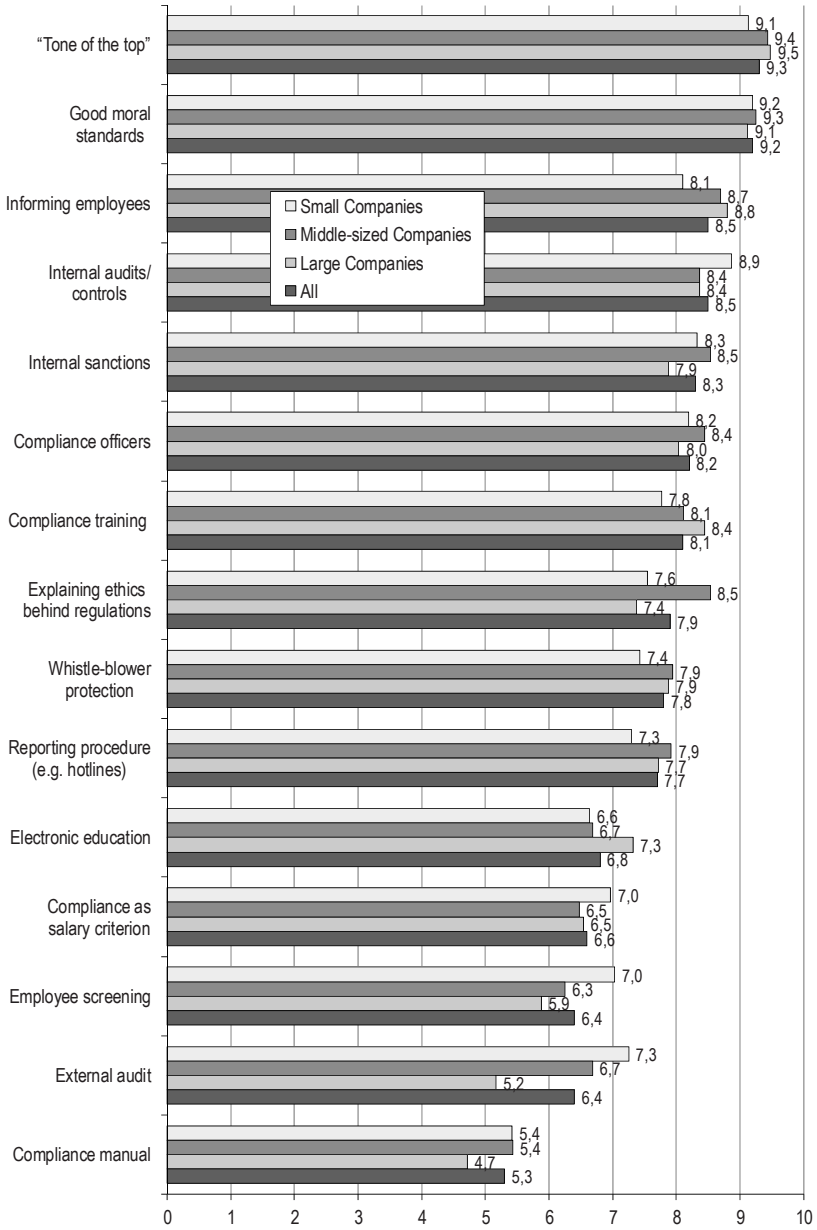
companies; conversely, external audits are rated higher by listed companies. Non-listed companies regard a compliance manual to be more important than listed ones, whereas listed place more value on electronic education. These results confirm the findings in regard to measures for information and education.³⁴⁸ A clear difference is also seen concerning compliance as a salary criterion, which is valued much more highly by non-listed companies (figure 96).

The evaluation of the effectiveness of compliance measures by leading personnel (including members of the executive board and non-executive board CCOs, CFOs, and Chief Audit Executives) and the executive board do not differ substantially from the rest of the respondents and in comparison to the average results. Leading personnel rate electronic education and compliance trainings higher than other employees. Vice versa, they consider the protection of whistleblowers and procedures for reporting irregularities to be less effective. Members of the executive board also regard these two measures to be less effective than the other respondents. Interestingly, they also regard explaining the ethical reasons behind regulations more critically than the others. The greatest difference in the evaluation of the executive board in comparison to the other respondents is in regard to compliance as a salary criterion, which is rated significantly lower (figures 97, 98).

³⁴⁷ See no. 16 b) (questionnaire, Annex I.A.1./no. 68 (online questionnaire, Annex I.A.2.).

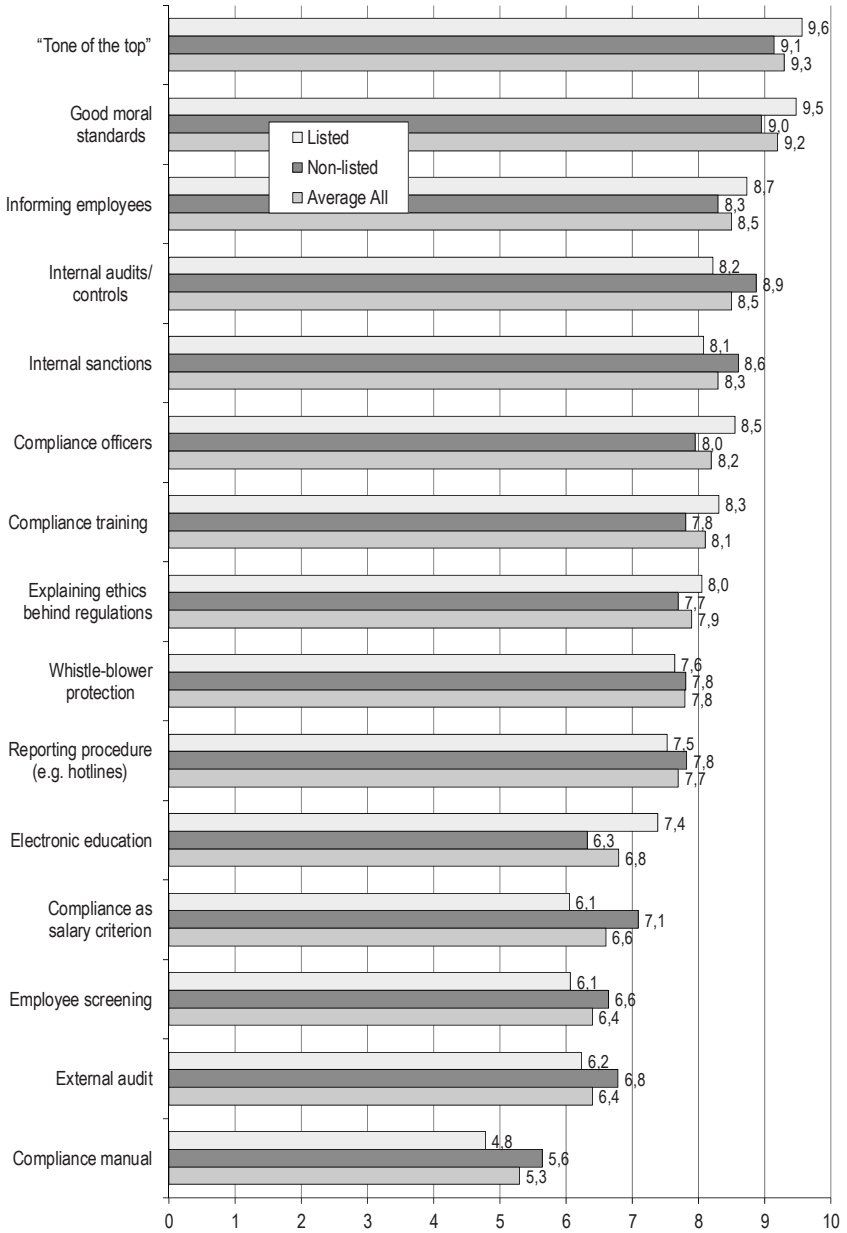
³⁴⁸ See supra p. 59 et seq.

Figure 95: Evaluation of effectiveness of compliance measures (company size)



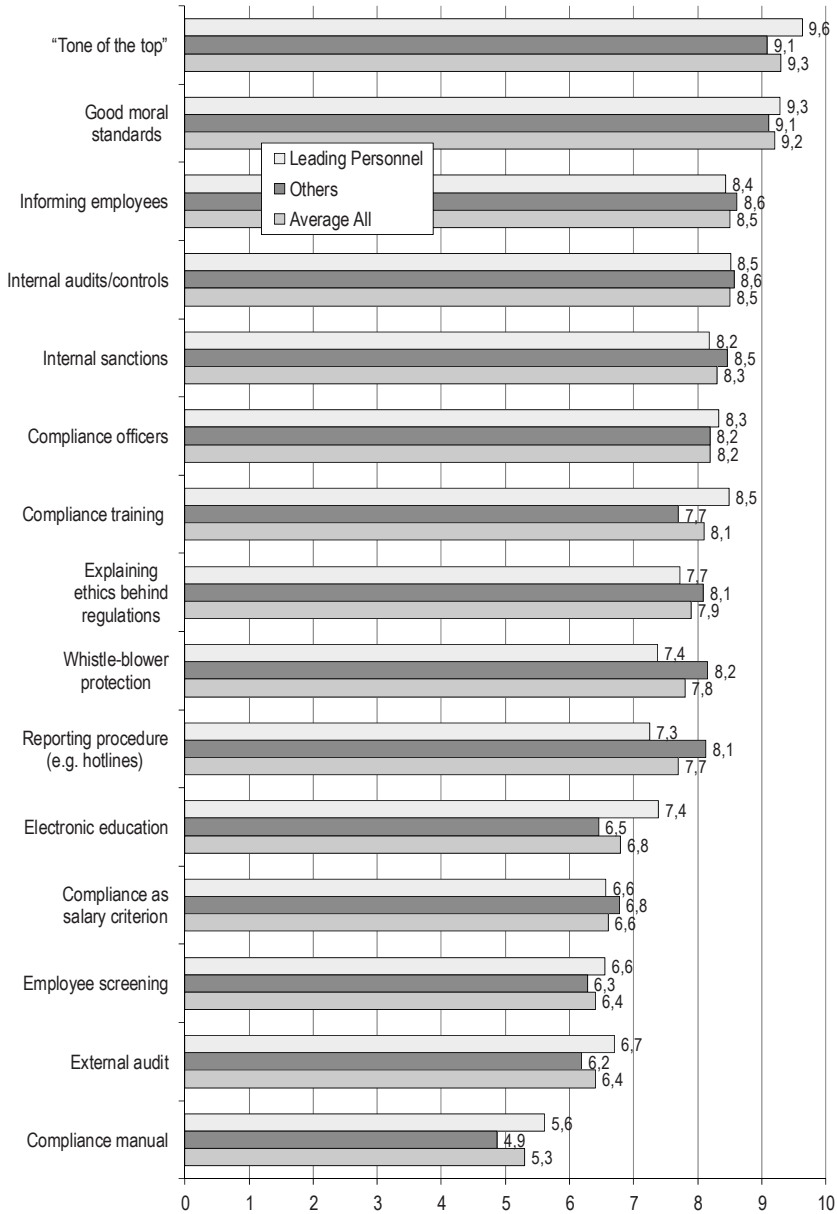
No. of answers: All/large/middle-sized/small (92/25/36/31 companies).

Figure 96: Evaluation of effectiveness of compliance measures (listing)



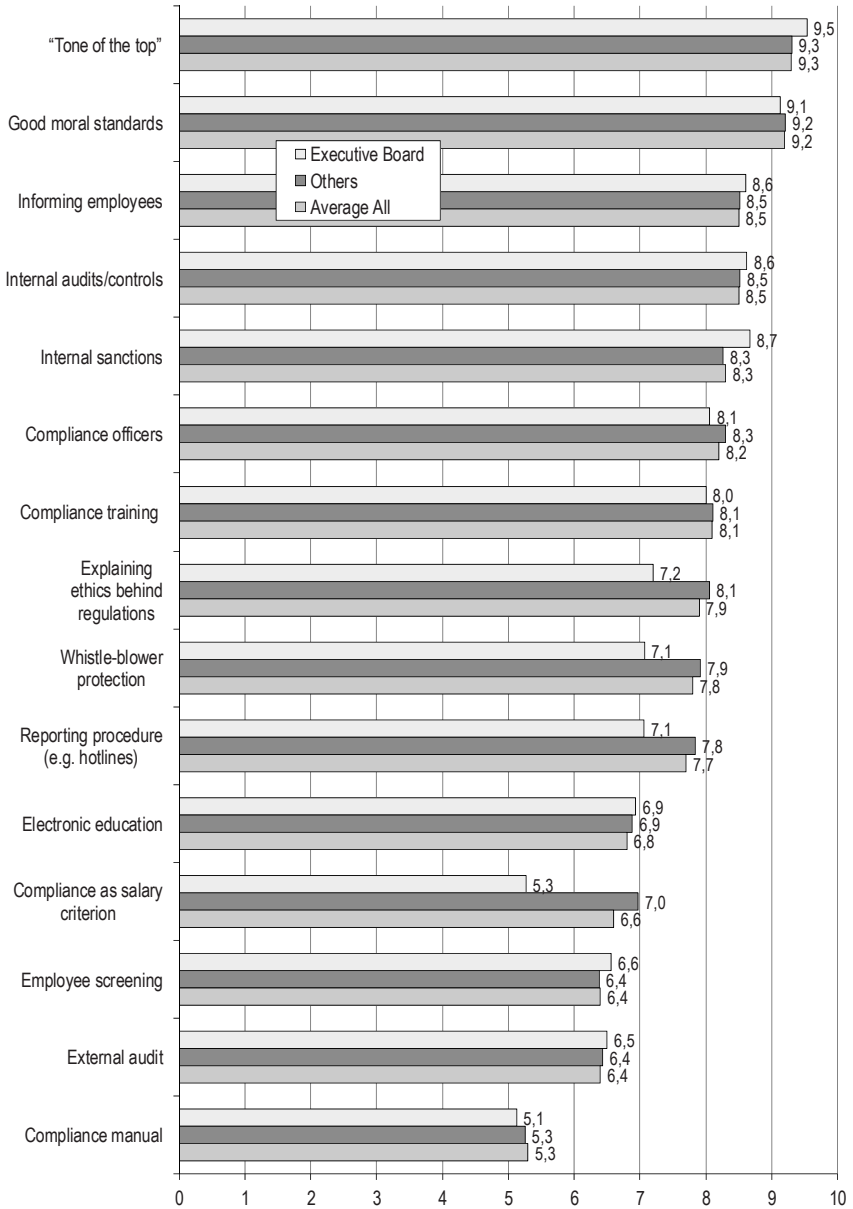
No. of answers: Non-listed/listed (45/47/92).

Figure 97: Evaluation of effectiveness of compliance measures (leading personnel)



No. of answers: Leading personnel/others/all (45/47/92).

Figure 98: Evaluation of effectiveness of compliance measures (executive board)



No. of answers: Executive board/others/all (19/77/92 companies).

b) Evaluation of Overall Effectiveness of Compliance Programs

The interviewees were also asked to evaluate the overall effectiveness of their present compliance program for the prevention and detection of crimes on a scale of 1 to 10 (ranking from “not effective” to “very effective”).³⁴⁹ The average ranking was 7.0 (median: 7). The interviewees thus regard their program as quite effective but not as very effective.

c) Comparison with Previous Studies

The above-mentioned studies of consultancies have also partially dealt with the effectiveness of compliance programs. In the 2007 study by *PricewaterhouseCoopers*, 80 percent of the companies with an anti-corruption program regarded it to be effective.³⁵⁰ A similar assessment was already made in the 2003 survey by *Ernst & Young* in which 74 percent of the companies judged their preventive efforts against economic crime to be effective.³⁵¹

Apart from these self-assessments, the studies by *PricewaterhouseCoopers* under the supervision of *Bussmann* show that companies with a good corporate culture more often have preventive measures in place and are less often affected by economic crime compared to companies without such a culture and such measures.³⁵²

Yet measuring effectiveness by the number of crimes detected within companies has to take into account that more active companies often have to deal with a higher number of crimes than other companies. This is due to a reduced dark field and complicated calculations.³⁵³

However, despite this reservation, the overall effectiveness of compliance programs has been affirmed, which is in line with the basically positive evaluation of compliance measures in this survey. As these studies did not evaluate individual measures, a comparison with the differentiating survey at hand is not possible.

³⁴⁹ See no. 17 (questionnaire, Annex I.A.1./no. 73 (online questionnaire, Annex I.A.2.). Number of answers: 87.

³⁵⁰ See PwC, *Wirtschaftskriminalität 2007*, p. 30 et seq., 45.

³⁵¹ E&Y, *Wirtschaftskriminalität in Deutschland (2003)*, p. 32.

³⁵² PwC, *Compliance und Unternehmenskultur (2010)*, p. 40 et seq.; PwC, *Wirtschaftskriminalität 2007*, p. 30. See also *Bussmann*, in: Löh/Burkatzki (eds.), *Wirtschaftskriminalität*, p. 111 (125 et seq.); *Bussmann/Salvenmoser*, *Der Wert von Compliance und Unternehmenskultur*, CCZ 2008, pp. 192–196.

³⁵³ See PwC, *Wirtschaftskriminalität 2007*, p. 37.

C. Possible Incentives for Creating Compliance Programs

The last part of the first questionnaire dealt with possible approaches for stimulating the creation and implementation of compliance programs. It first asked the interviewees to name their motivation, their motives, for creating compliance programs (1.) before they were asked to evaluate two different sets of strategies that could foster the implementation of compliance programs. The questionnaire differentiated between a direct enforcement strategy creating legal obligations to implement a compliance program (2.) and an indirect enforcement strategy creating various legal incentives (3.).

1. Motives for Creating Compliance Programs

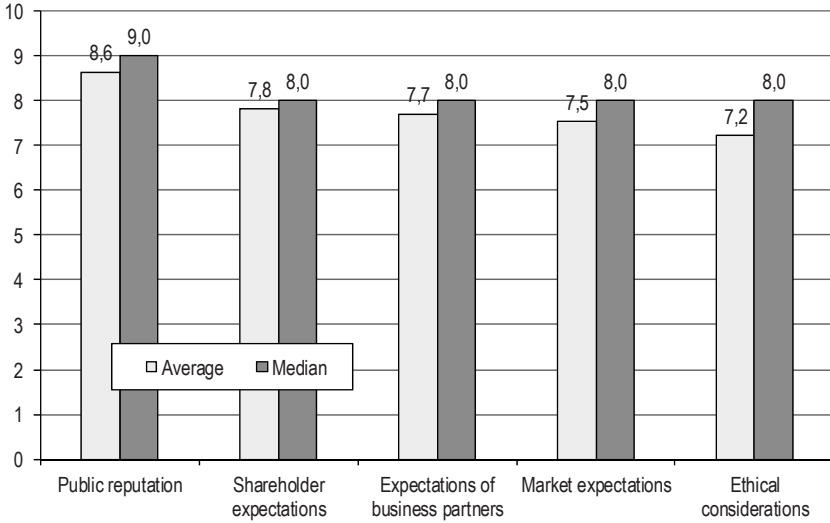
When asked about the importance of the following general motives for creating a compliance program, almost the same percentage of companies considered the following criteria to be relevant: ethical considerations (65%), the reputation of the company with regard to public opinion (65%), expectations of business partners (63%), market expectations (64%), and shareholder expectations (63%). However, a query about the importance of these aspects showed slightly greater differences. According to the responses most important is the public reputation of the companies, whereby ethical considerations on average are evaluated as less important. As the median³⁵⁴ concerning ethics is the same as those concerning shareholder expectations, the expectations of business partners, and market expectations (exactly 8), the lower average number in this case reveals that the evaluation was much more controversial among the companies than anticipated (*figure 99*).

The results according to the size of the company show that smaller companies do not differ substantially from bigger ones as regards the evaluation of creating compliance programs. Ethical considerations and public reputation play a less important role. In regard to shareholder, market, and business partner expectations, small companies do not differ much from large ones. Yet middle-sized companies consider market and business partner expectations to be less important than the other companies (*figure 100*).

The analysis differentiating between answers from companies listed on the stock exchange and companies not listed shows that there are only subtle differences in the evaluation. Hence, the listing of the surveyed company is not a decisive criterion (*figure 101*).

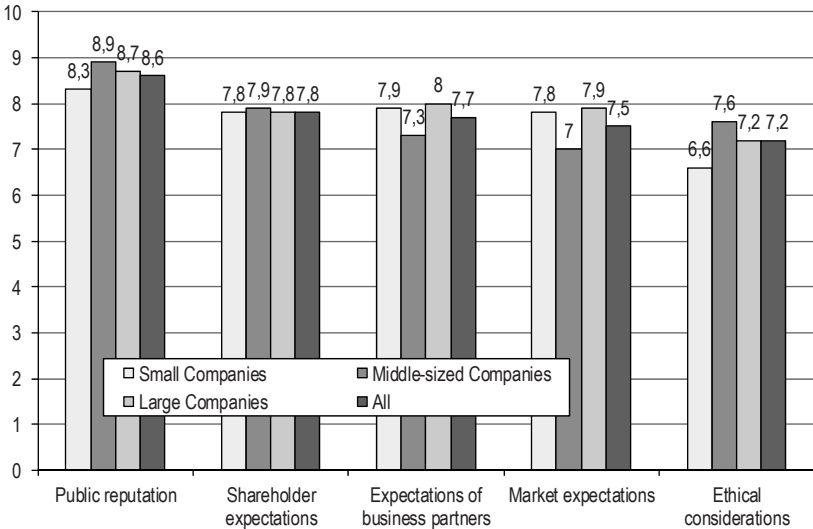
³⁵⁴ For details, see *supra* p. 31.

Figure 99: Motives for creating a compliance program (general)³⁵⁵



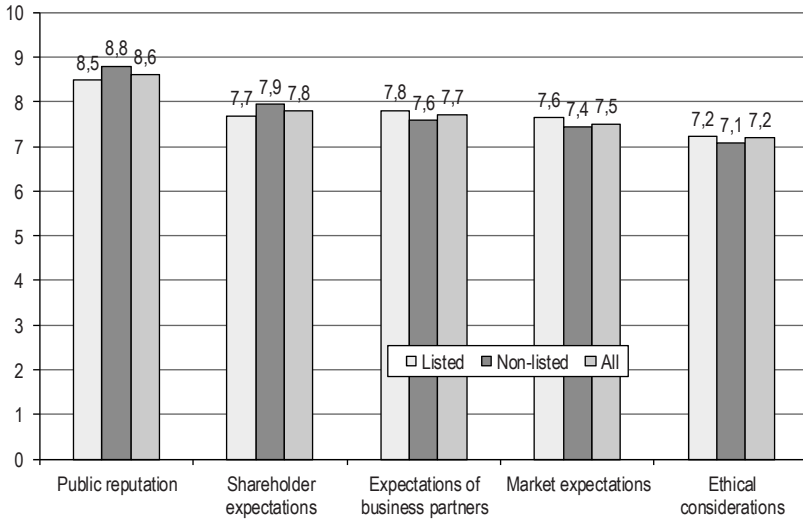
No. of answers: 91

Figure 100: Motives for creating a compliance program (company size)



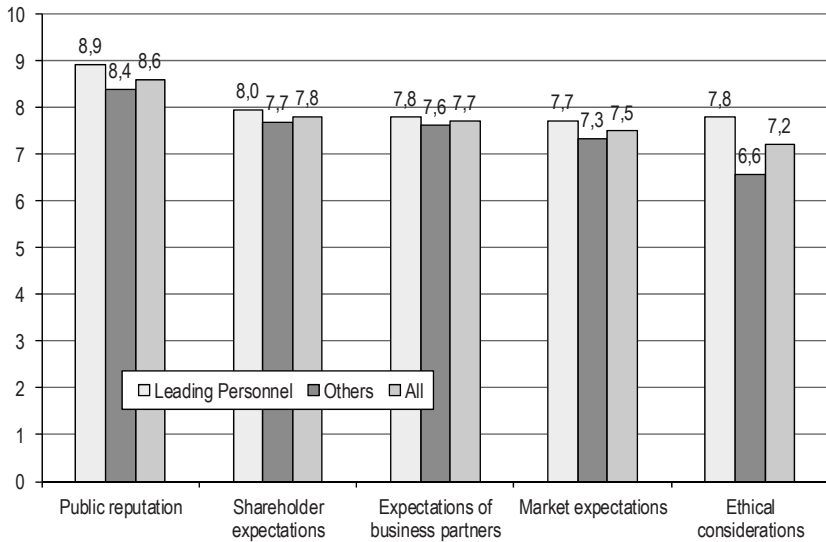
³⁵⁵ See no. 18 a) (questionnaire, Annex I.A.1.)/no. 76 (online questionnaire, Annex I.A.2.).

Figure 101: Motives for creating a compliance program (listing)



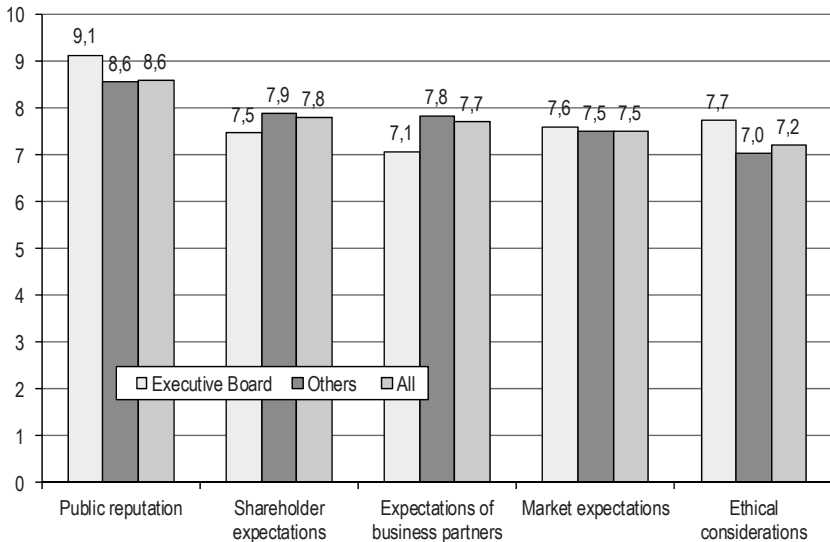
No. of answers: Listed/Non-listed/All (42/48/91 companies).

Figure 102: Motives for creating a compliance program (leading personnel)



No. of answers: Leading personnel/others/all (43/46/89).

Figure 103: Motives for creating a compliance program (executive board)



No. of answers: Executive board/others/all (15/74/89).

The evaluation by leading personnel (including members of the executive board and non-executive board CCOs, CFOs, and Chief Audit Executives) and the executive board alone shows that both groups put more emphasis on public reputation and ethical considerations than the average employee. The executive board (surprisingly) does not regard shareholder expectations and the expectations of business partners to be as important as the average employee. In contrast, the larger group of leading personnel regards shareholder expectations and the expectations of business partners to be even more important than the average employee does (figures 102,103).

2. Direct Enforcement Strategies by Creating Legal Compliance Duties

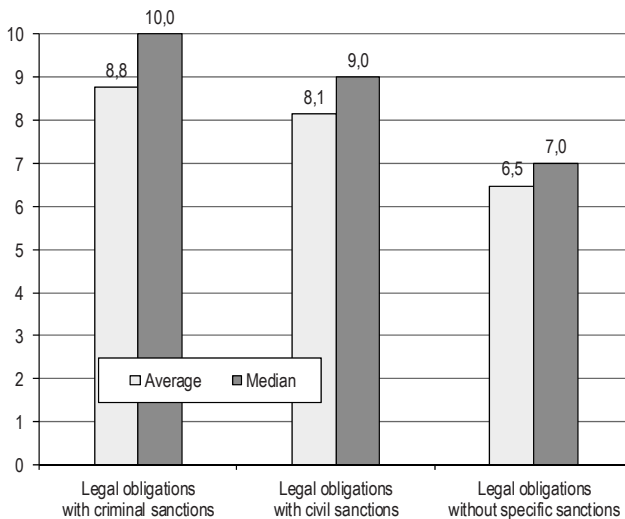
The companies were also asked to evaluate the relevance of different legal regulations and incentives on the motivation of companies to implement a compliance program for the prevention and detection of crimes. In Germany specific legal obligations to introduce single compliance measures exist only in some sectors (e.g. in the sector of securities trading). Against this background, the companies were first asked to judge different possible strategies that provide for a legal requirement to introduce compliance programs (*direct enforcement strategies*). They were given the choice between a legal obligation to implement compliance obligations without any sanctions in the case of non-implementation and a legal obligation to imple-

ment compliance obligations with a criminal or a civil sanction in the case of non-implementation.

The answers show that legal obligations with sanctions are regarded to be considerably more effective than legal obligations without sanctions. Hence, the lowest incentive would be offered by a legal obligation to install a compliance program without any specific sanctions in the case of non-installment. A legal obligation with sanctions would, in contrast, be clearly more convincing. The difference between a civil and a criminal sanction is not as great compared to a regulation without sanctions, but a criminal sanction is believed to be substantially “more convincing” on average (*figure 104*).

The significance test (t-test)³⁵⁶ shows that the differences between all the measures are clearly significant.³⁵⁷ These results confirm that criminal law sanctions motivate more than civil ones and that both types of sanctions clearly motivate

*Figure 104: Direct enforcement strategies by creating legal compliance duties (general)*³⁵⁸



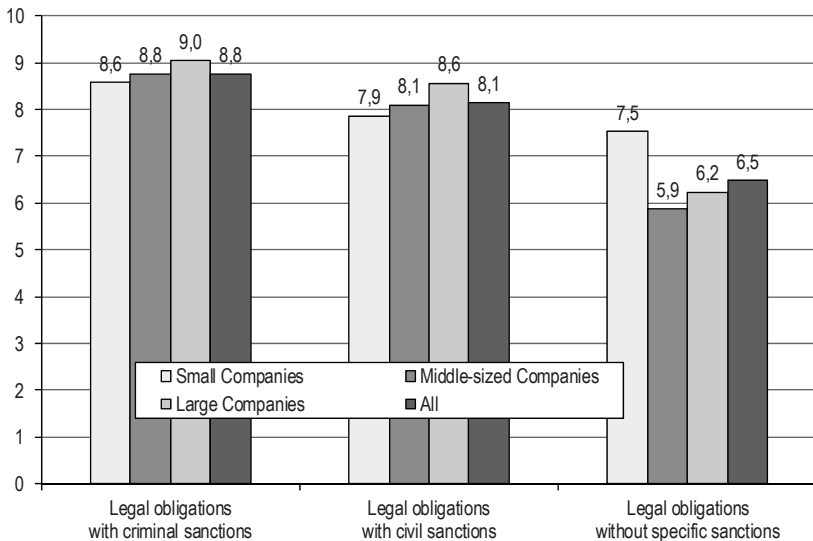
No. of answers: 89.

³⁵⁶ For details, see *supra* p. 32 and *infra* p. 233.

³⁵⁷ Legal obligation without sanctions & legal obligation with criminal sanctions (p-value: .000***); legal obligation without sanctions & legal obligation with civil sanctions (p-value: .000***); legal obligation with criminal sanction & legal obligation with civil sanctions (p-value: .000***). For the tables, see *infra* p. 236.

³⁵⁸ See no. 18 b) (questionnaire, Annex I.A.1./no. 77 (online questionnaire, Annex I.A.2.).

Figure 105: Direct enforcement strategies by creating legal compliance duties (company size)



No. of answers: All/large/middle-sized/small (89/25/34/30 companies).

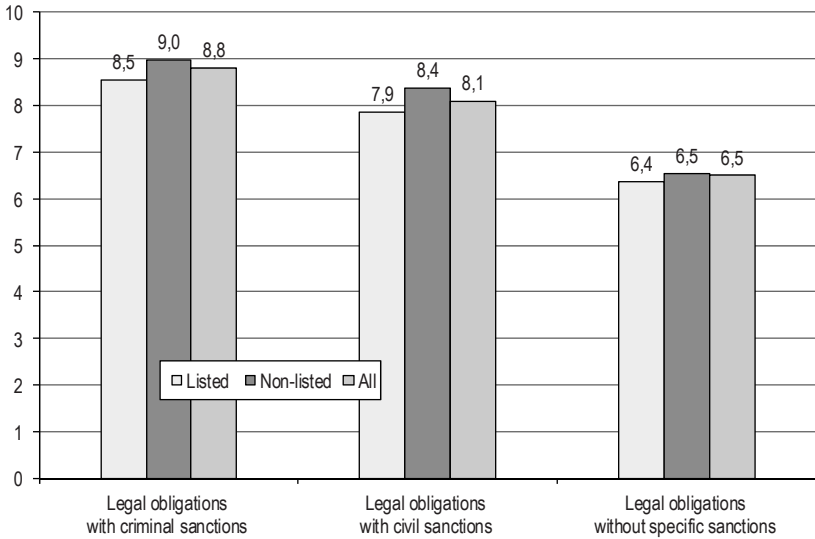
more than a regulation without sanctions. There is only a weak correlation between criminal sanctions and the other two options, whereas there is a strong correlation between civil sanctions and obligations without sanctions.³⁵⁹

The results according to the size of the company show that the bigger the company, the more sanctions are valued. This corresponds with the outcome that smaller companies rate the effectiveness of legal rules without sanctions substantially higher than the other companies. All companies regard criminal sanctions to be more effective than civil sanctions (*figure 105*).

The analysis differentiating the answers according to listed companies on the stock exchange and companies not listed shows that there is almost no difference in regard to legal obligations without a sanction, neither between listed and non-listed companies nor in comparison to the average. In comparison to listed companies and the average company, non-listed companies regard criminal and civil sanctions to be more motivating. In contrast, listed companies rate both types of sanctions below average (*figure 106*).

³⁵⁹ For details on the correlation, see *infra* p. 233.

Figure 106: Direct enforcement strategies by creating legal compliance duties (listing)



No. of answers: Listed/non-listed/all (42/46/89 companies).

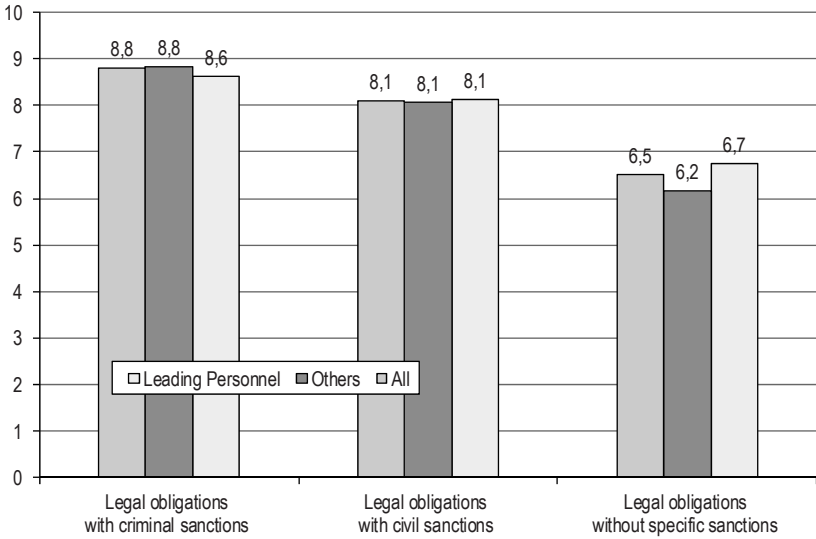
The evaluations by leading personnel (including members of the executive board and non-executive board CCOs, CFOs, and Chief Audit Executives) and the executive board alone show that both groups rate civil and criminal sanctions similar to the average results of all companies. A difference exists in regard to legal obligations without specific sanctions. Leading personnel regards this measure to be slightly more important than the average employee, whereas the executive board clearly rates it to be more important (figures 107, 108).

3. Indirect Enforcement Strategies by Creating Legal Incentives

The interviewees were also asked to evaluate the relevance of various indirect enforcement strategies that could motivate companies to implement a compliance program on a scale of 1 to 10 (ranking from “low motivation” to “high motivation”), if the legislator does not enact an obligatory legal regulation to install a compliance program as a direct enforcement measure.

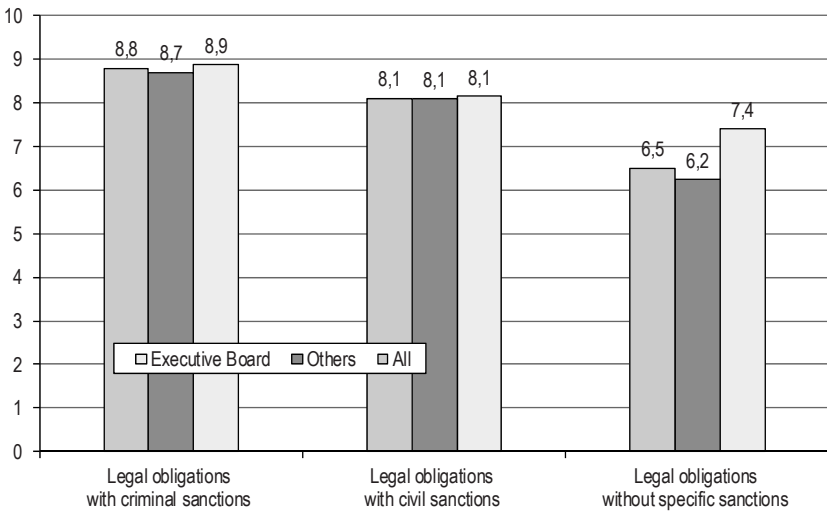
These indirect enforcement strategies are not based on a general duty to create compliance programs for the prevention of economic crime but on sanctions against the perpetrators, superiors, or companies which only apply when crimes are committed by employees or other persons associated with the company. The idea

Figure 107: Direct enforcement strategies by creating legal compliance duties (leading personnel)



No. of answers: Leading personnel/others (43/46).

Figure 108: Direct enforcement strategies by creating legal compliance duties (executive board)



No. of answers: Executive board/others (15/74).

behind this strategy is that these sanctions (especially fear of these sanctions or the moral respect for criminal law) motivate companies to install compliance programs in order to prevent the crimes of employees that also lead to sanctions against the companies themselves. This motivation – as illustrated, e.g., by the US-American and Italian legislation – can be increased by certain legal privileges providing for impunity or for reduced sentences in cases in which an employee commits a crime despite the existence of a well-designed compliance program. This additional incentive can motivate companies even more to have a well-designed compliance program than “classic” sanctions can.

In the present questionnaire, three such different types of “indirect enforcement systems” were to be evaluated: The first system is based only on the existence of criminal liability on the part of the acting employee, his superior (for insufficient supervision), and the companies (for crimes of its employees without any additional privileges or exceptions). The second system refers to the criminal liability of the company, yet provides privileges for existing compliance systems in cases in which an employee commits a crime. These compliance-based privileges for companies could be: exclusion from criminal liability for the company, mitigation of a criminal sentence against the company, and suspension of criminal proceedings against the company for crimes of its employees in case an effective compliance program is in place. The third system consists of regulations on the civil liability of the acting employee, of the superior of the employee for insufficient supervision, or of the company for crimes of its employees.

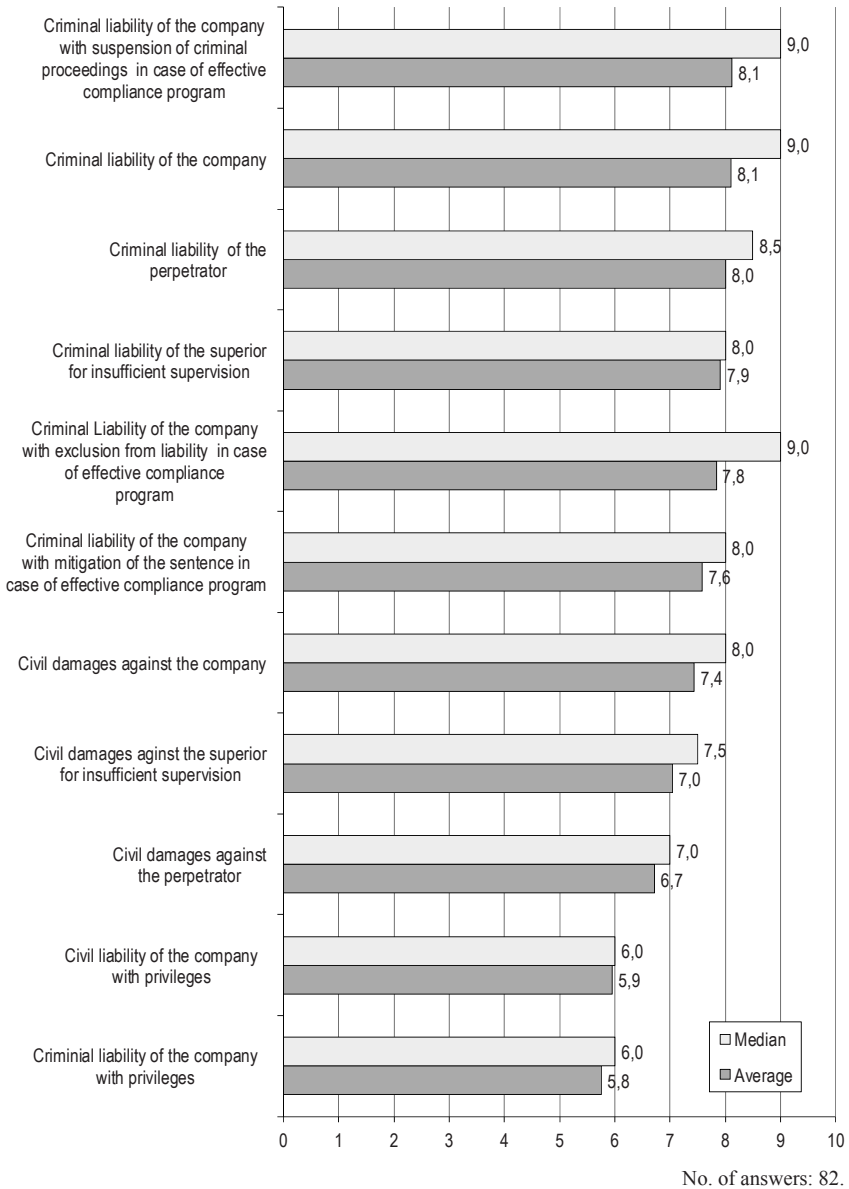
The answers showed three main aspects: (1) Criminal liability without providing for any privileges,³⁶⁰ whether of the employee, the superior, or the company, was seen to motivate more than civil liability. (2) Corporate liability, both criminal and civil, was seen to motivate more than the liability of acting employees or even the liability of superiors for insufficient supervision. (3) The highest motivation was seen in regulations regarding corporate criminal liability for crimes of employees with and without the option to suspend criminal proceedings in case of an effective compliance program (*figure 109*).

The significance test (t-test)³⁶¹ shows that the differences between criminal sanctions against the perpetrator, the superior, and the company (without privileges)

³⁶⁰ The results putting privileges in case of civil and criminal liability of the company in the last two places seem to contradict the more highly rated results of the three precisely named privileges (suspension of criminal proceedings, exclusion from liability and mitigation of criminal sentence). This outcome seems to be due to the vague wording of the question, asking just for “privileges”. An inquiry of several participants showed that, especially in smaller companies, the participants could not clearly picture what was meant by “privileges” and therefore did not regard them as anything special/important.

³⁶¹ For details, see *supra* p. 32 and *infra* p. 233.

Figure 109: Motivating effect of sanctions on creating compliance programs (general)³⁶²



³⁶² See no. 18 c) (questionnaire, Annex I.A.1.)/no. 78 (online questionnaire, Annex I.A.2.).

compared to civil liability measures are significant.³⁶³ These criminal sanctions, rated higher than civil ones, are therefore considered to motivate significantly more than civil measures. The same applies to corporate criminal liability with a bonus for the company in case of an effective compliance program compared to the majority of civil liability measures with and without privileges.³⁶⁴ Only the civil liability of the company does not show a significant difference to the criminal liability of the company when the criminal liability of the company is excluded or when a criminal sentence against the company is mitigated in case of an effective compliance program; but there is a significant difference between the civil liability of the company and the criminal liability of the company when proceedings against the company are suspended in case of an effective compliance program.³⁶⁵

The differences between the criminal sanctions against the perpetrator, the superior, and company (with and without privileges) are all not significant, so that no clear assessment or ranking of the different criminal law measures is possible. In contrast, the differences between the various civil sanctions are all significant, showing that civil damages against the company are more important than those against the superior and against the perpetrator.

The results according to the size of the company show that the interviewees of companies of all sizes are convinced that criminal sanctions motivate more than civil sanctions. Smaller companies regard sanctions against the perpetrator (ranking the criminal sanction in first place) to be more important than corporate sanctions. Larger companies see the opposite: corporate sanctions motivate more than those against the perpetrator. Large and middle-sized companies also value privileges for an effective compliance program in case of corporate criminal liability much more than smaller companies:³⁶⁶ Large companies put the exclusion of liability in first place before all other measures, middle-sized ones favor the suspension of proceedings (*figure 110*).

The analysis differentiating the answers according to companies listed on the stock exchange and non-listed companies shows that listed companies rate all above-mentioned privileges for companies significantly higher than non-listed companies. Listed companies clearly put criminal sanctions with the exclusion of

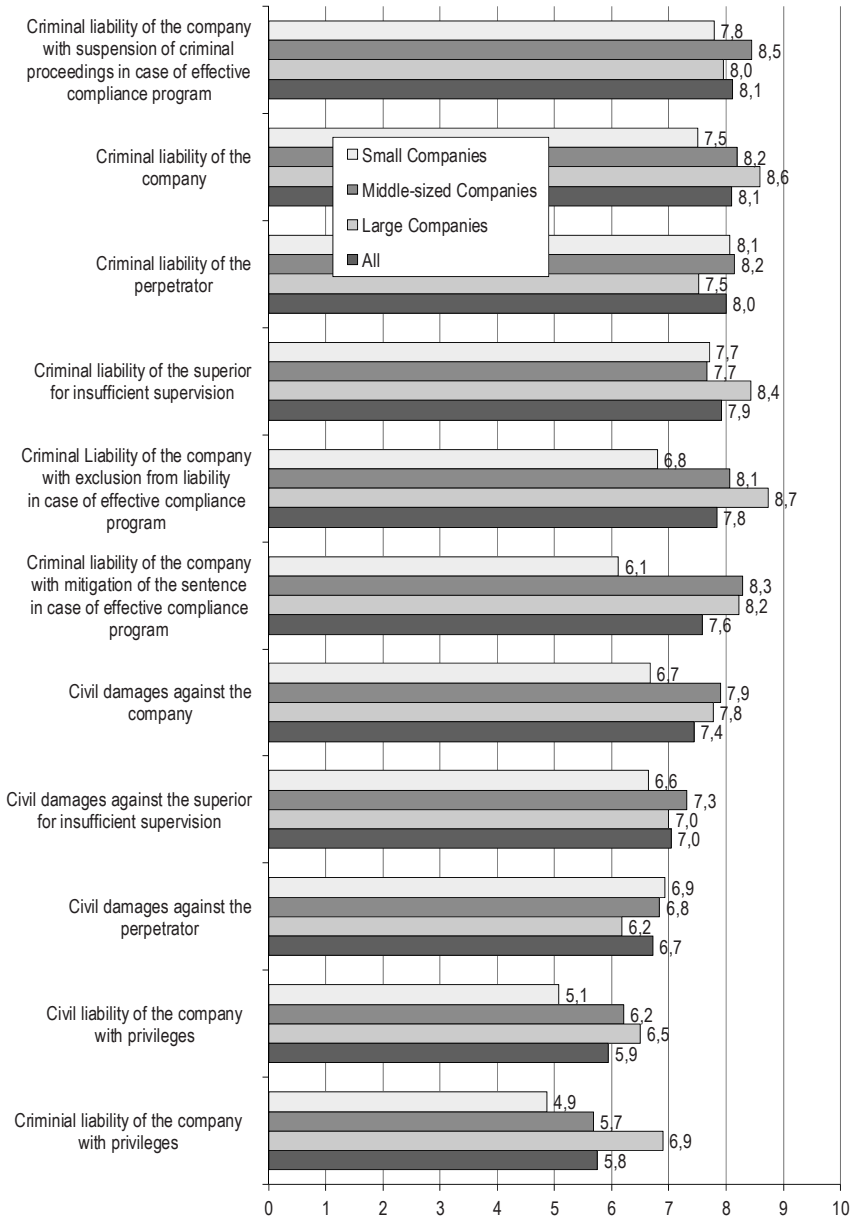
³⁶³ See e.g. criminal liability perpetrator & civil liability perpetrator (p-value: .000***); criminal liability superior & civil liability superior (p-value: .000***); criminal liability company & civil liability company (p-value: .005**). For the complete tables, see *infra* p. 236.

³⁶⁴ See e.g. exclusion from criminal liability of the company in case of effective compliance program & civil damages perpetrator (p-value: .002**); mitigation of criminal sentence of the company in case of effective compliance program & civil damages perpetrator (p-value: .003**). For the complete tables, see *infra* p. 236.

³⁶⁵ Suspension of criminal proceedings against company in case of effective compliance program & civil damages company (p-value: .024*).

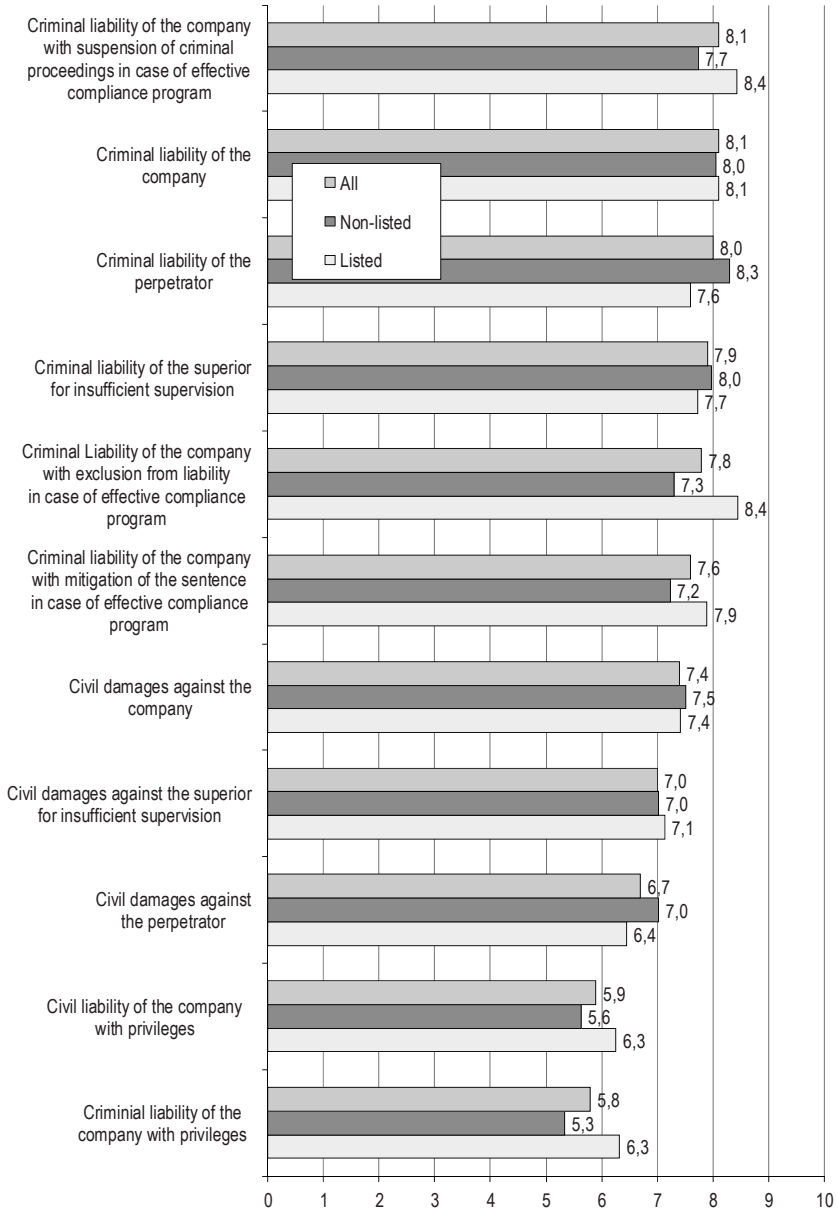
³⁶⁶ See the annotation *supra* note 360.

Figure 110: Motivating effect of sanctions on creating compliance programs (company size)



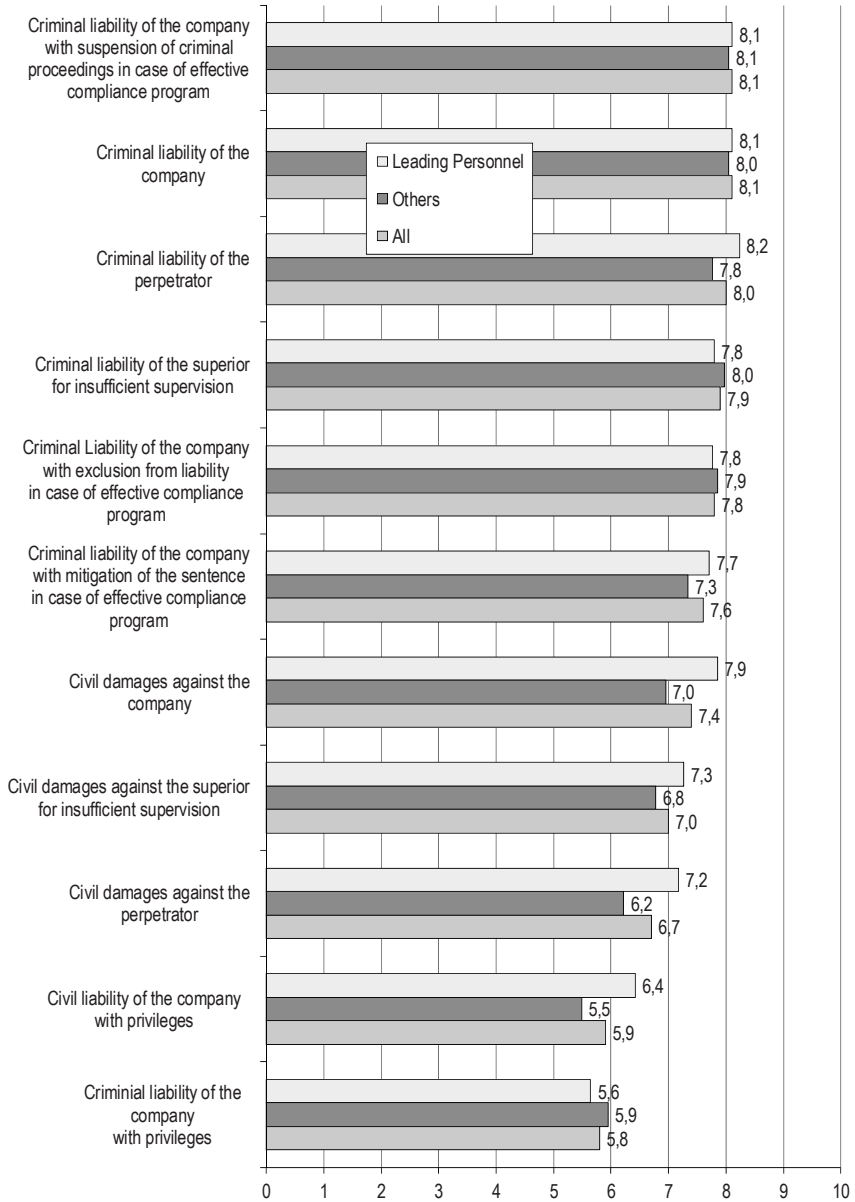
No. of answers: All/large/middle-sized/small (82/23/33/28 companies).

Figure 111: Motivating effect of sanctions on creating compliance programs (listing)



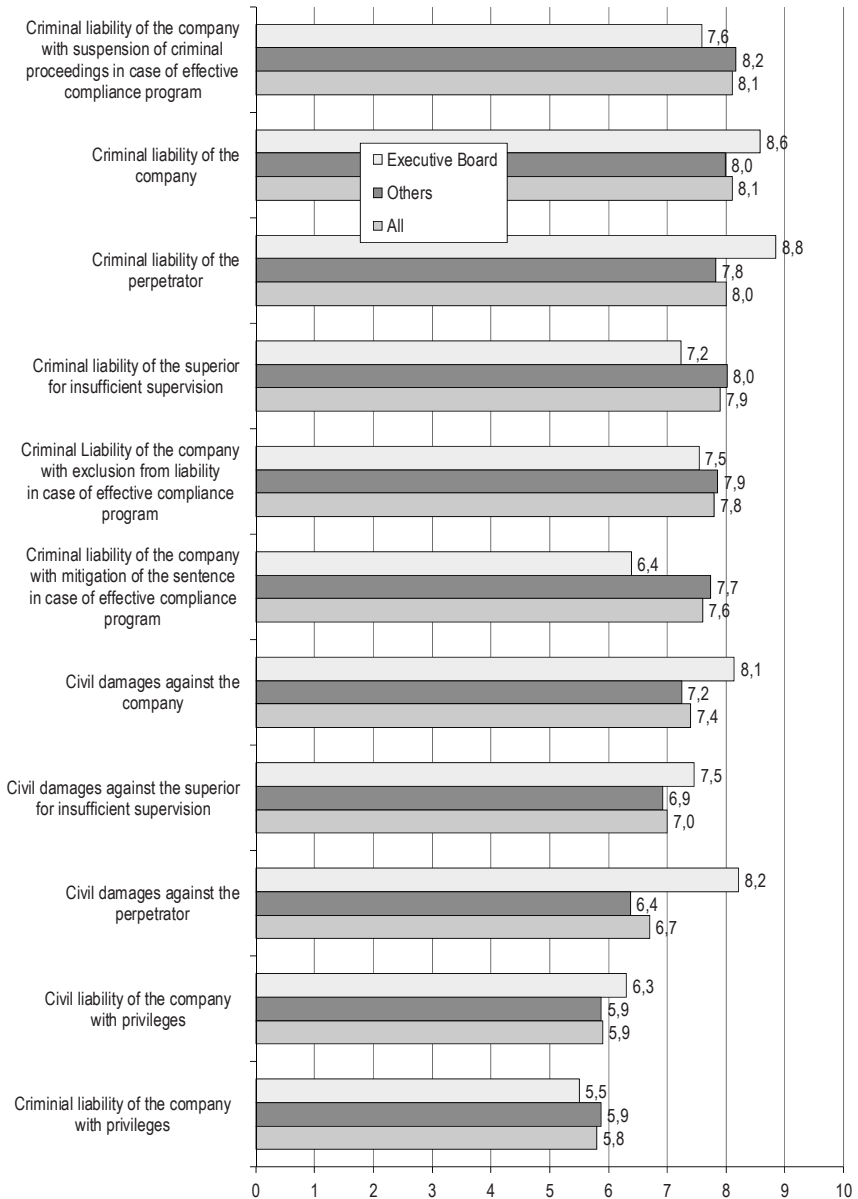
No. of answers: Listed/non-listed/all (39/43/82 companies).

Figure 112: Motivating effect of sanctions on creating compliance programs (leading personnel)



No. of answers: Leading personnel/others/all (43/46/89).

Figure 113: Motivating effect of sanctions on creating compliance programs (executive board)



No. of answers: Executive board/others/all (15/74/89).

liability or the suspension of criminal proceedings in case there is an effective compliance program in the first two places, followed by the criminal liability of the company without a privilege. The criminal liability of the perpetrator ranks only sixth. Non-listed companies put criminal sanctions against the perpetrator in first place, rating it substantially higher than listed companies (*figure 111*).

The evaluations by leading personnel (including members of the executive board and non-executive board CCOs, CFOs, and Chief Audit Executives) and the executive board show that both groups rate civil sanctions against the perpetrator, the company, and the superior higher than the average. The rating of the executive board differs substantially from the evaluation of the other respondents and also from the average. Apart from these aspects, the evaluation of leading personnel is similar to that of the average. In contrast, the evaluation of the executive board shows greater differences. The executive board places criminal sanctions against the perpetrator in first place, followed by corporate criminal liability. In third and fourth place are civil sanctions against the perpetrator and against the company. Privileges for effective compliance programs are regarded as being less motivating and are rated below average. Also, sanctions against the superior for the lack of due supervision are rated below average and rank in the lower field of the possible measures (*figures 112, 113*).

4. Other Incentives

The companies were also given the opportunity to mention other incentives for creating effective compliance programs.³⁶⁷ Among the few responses were:

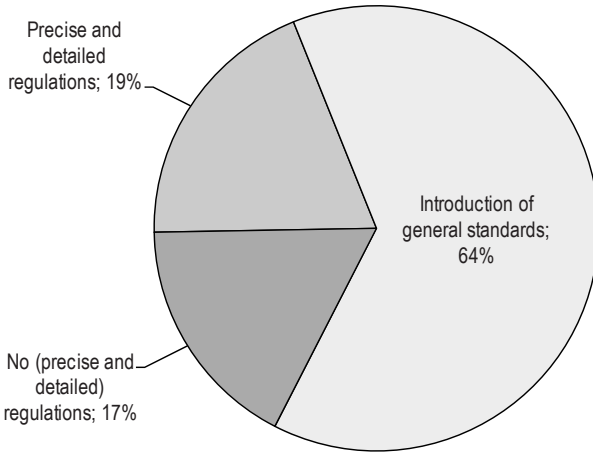
- Public pressure on the companies;
- Positive public recognition (“white list”);
- Company rankings;
- Increased liability of corporate representatives, especially the supervisory board (“Aufsichtsrat”) for insufficient compliance programs;
- Fostering “healthy” business relationships.

D. Legal Regulation and Self-Regulation

The companies were also asked what kind of regulation would be more effective in case the legislator creates obligations or incentives to install a compliance program. More than 60 percent regard general standards with room for self-regulation to be the most effective measure. 19 percent even regard precise and detailed regu-

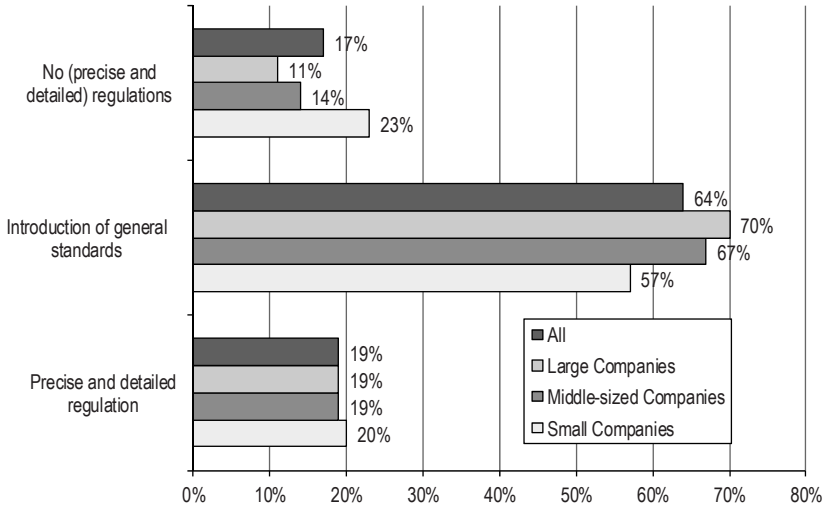
³⁶⁷ See no. 18c (questionnaire, Annex I.A.1.)/no. 79 (online questionnaire, Annex I.A.2.). Number of answers: 8.

Figure 114: Scope of regulation (general)³⁶⁸



No. of answers: 93.

Figure 115: Scope of regulation (company size)



No. of answers: All/large/middle-sized/small (93/27/36/30 companies).

³⁶⁸ See no. 19 (questionnaire, Annex I.A.1.)/no. 80 (online questionnaire, Annex I.A.2.).

lations on compliance programs that do not leave room for much self-regulation to be the most effective measure. Only 17 percent prefer no (or no precise and detailed) regulations (*figure 114*).

The results according to the size of the company show that about the same percentage of companies of all sizes would prefer to have precise and detailed compliance regulations. Compared to middle-sized and large companies, however, a substantially larger percentage of small companies prefer not to have any regulations at all. The same applies to the introduction of general standards (*figure 115*).

E. Other Aspects

Finally, the questionnaire offered the opportunity to contribute additional ideas for improving and/or implementing compliance programs.³⁶⁹ Only a few additional ideas were mentioned. They included:

- Clear rules for compliance programs such as those in the United States Sentencing guidelines or by developing the requirements of internal control systems;
- Development of international/European compliance standards and avoidance of conflicting standards;
- Awards for good compliance;
- Better integration of ethical rules into compliance programs;
- Legal protection for anonymous reporting of incidents (whistle-blower protection);
- Separation and independent organization of the internal audit unit (relative to the specific size of a company);
- Clear rules for tenders, placings, and accounting;
- Obligatory integrity checks for employment in certain positions.

III. Interviewed Companies and Interviewees

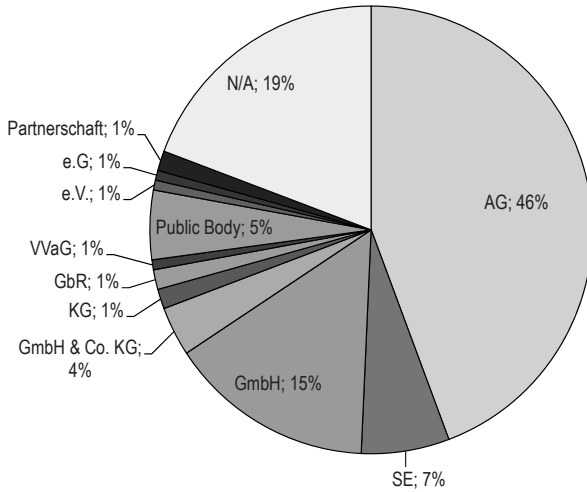
A. Interviewed Companies

1. Legal Form and Listing

The majority of the participating companies in the first study are incorporated companies (Aktiengesellschaft, AG). The second largest group is limited liability companies (Gesellschaft mit beschränkter Haftung, GmbH), followed by the Euro-

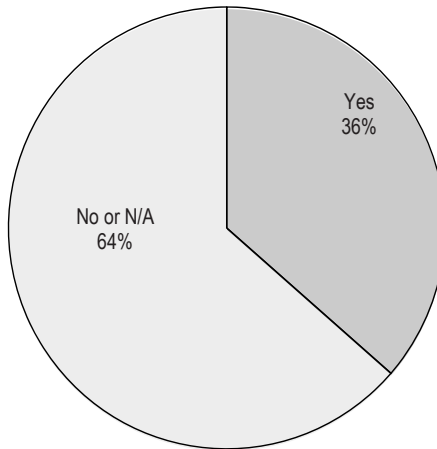
³⁶⁹ See no. 20 (questionnaire, Annex I.A.1.)/no. 81 (online questionnaire, Annex I.A.2.). Number of answers: 14.

Figure 116: Legal form of interviewed companies³⁷⁰



100%: 140 companies.

Figure 117: Listing of interviewed companies on stock exchange³⁷¹



100%: 140 companies.

³⁷⁰ See no. 1 (questionnaire, Annex I.A.1.)/no. 1 (online questionnaire, Annex I.A.2.).

³⁷¹ See no. 1 (questionnaire, Annex I.A.1.)/no. 2 (online questionnaire, Annex I.A.2.).

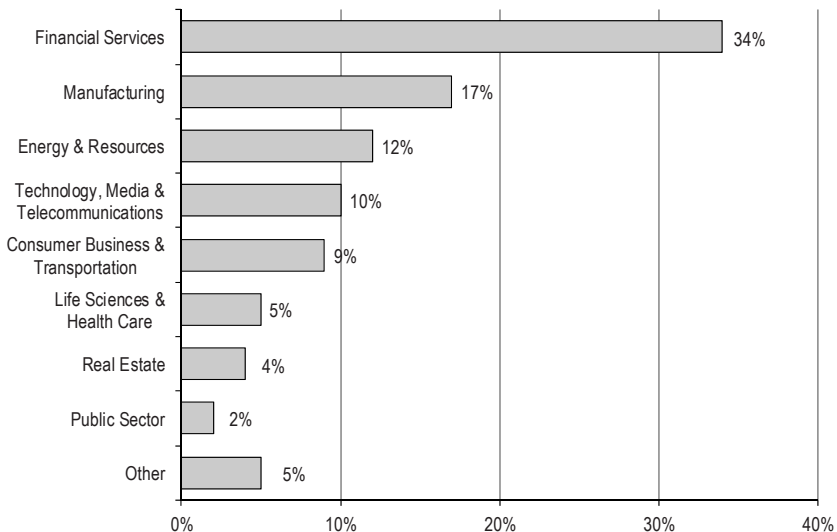
pean form of incorporated companies (Societas Europea, SE), public bodies, and the special form of limited partnerships (Kommanditgesellschaft, KG), where the personally liable partner is a limited liability company (so-called GmbH & Co. KG) (figure 116).

The companies were also asked whether they are listed on the stock exchange, as a company attracts more public attention if this is the case. Such a listing is possible in Germany if the companies are incorporated in the form of an “Aktiengesellschaft” or a “Societas Europea”. 36 percent of the companies answered in the positive. This means the vast majority of the participating “Aktiengesellschaften” and “Societas Europeas” is listed and dealt on the stock exchange (figure 117).

2. Sector of Activity, Markets, and Size

The majority of the participating companies provide financial services, which includes banks and insurance companies. The second largest group consists of manufacturing companies, followed by the sectors “Energy & Resources”, “Technology, Media & Telecommunications”, and “Consumer Business & Transportation” (figure 118).

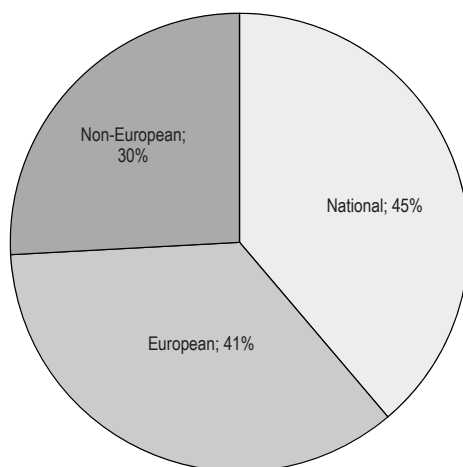
Figure 118: Main sector of activity³⁷²



No. of answers: 115 (multiple responses allowed, so that the total can exceed 100%).

³⁷² See no. 1 (questionnaire, Annex I.A.1.)/no. 3 (online questionnaire, Annex I.A.2.).

Figure 119: Markets³⁷³



No. of answers: 118 (multiple responses allowed, so that the total can exceed 100%).

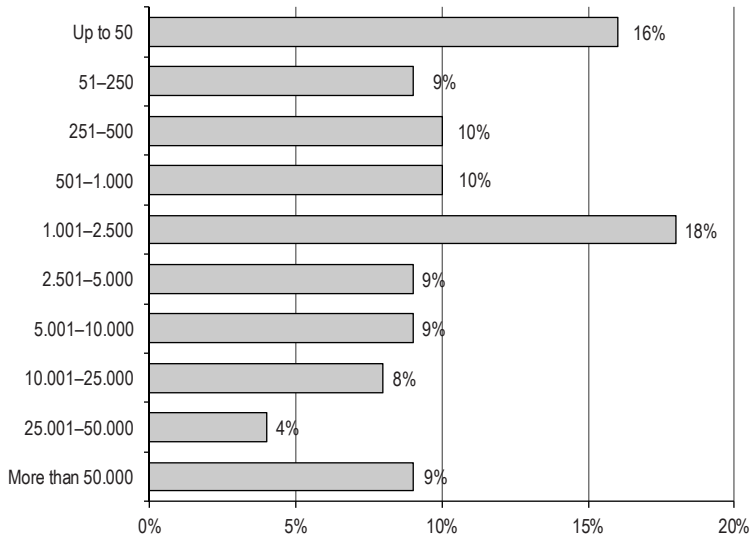
The companies are almost equally active in Germany as well as in the European area. 30 percent are also doing business in non-European countries. As the majority of the companies do business abroad, they do not merely operate under the German legal system but are also influenced by other legal orders (*figure 119*).

Over fifty percent of the companies have more than 1,000 employees worldwide. Almost one third (30%) has more than 5,000 employees and can be classified as “large companies”.³⁷⁴ However, the study included a number of smaller companies with up to 500 employees (34%) that have not yet been covered by most of the existing studies (“small companies”). “Middle-sized” companies account for 36 percent of the companies (*figure 120*).

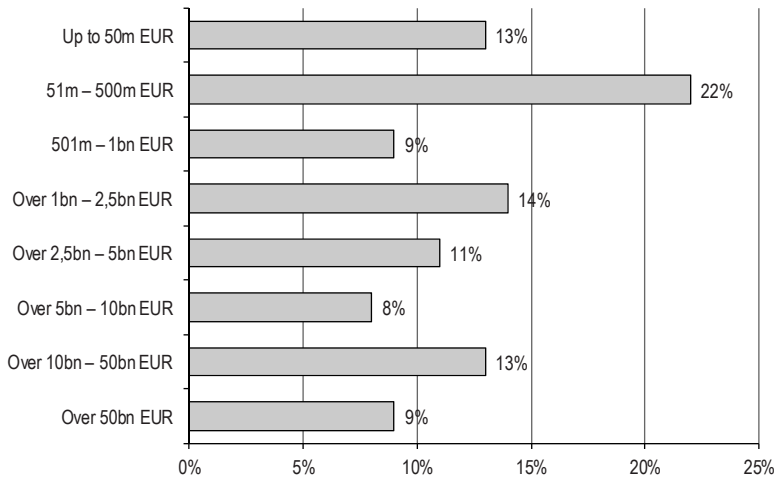
Over fifty percent of the companies have an annual turnover of more than one billion EUR, more than one fifth of even more than 10 billion EUR. About one third of the companies, however, have a turnover of up to 500 million EUR, 13 percent of only up to 50 million EUR. The turnover therefore exhibits a similar distribution between small and large companies as the number of employees (*figure 121*).

³⁷³ See no. 1 (questionnaire, Annex I.A.1.)/no. 4 (online questionnaire, Annex I.A.2.).

³⁷⁴ See p. 2 for the definitions of “small”, “middle-sized” and “large” companies.

Figure 120: Number of employees³⁷⁵

No. of answers: 114.

Figure 121: Annual turnover³⁷⁶

No. of answers: 90.

³⁷⁵ See no. 1 (questionnaire, Annex I.A.1.)/no. 5 (online questionnaire, Annex I.A.2.).

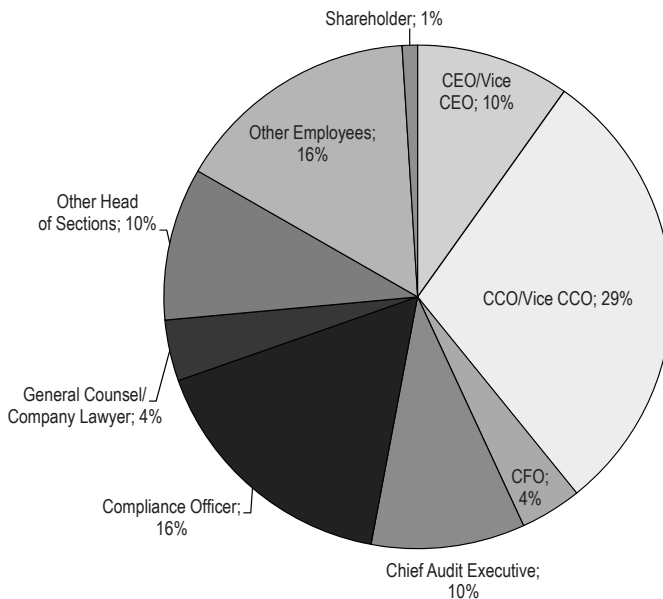
³⁷⁶ See no. 1 (questionnaire, Annex I.A.1.)/no. 6 (online questionnaire, Annex I.A.2.).

B. Interviewees

The questionnaire was mainly (53%) answered by the (Vice) Chief Executive Officer (CEO), the (Vice) Chief Compliance Officer (CCO), the Chief Financial Officer (CFO) or the Chief Audit Executive. 20 percent of the responses came from a compliance officer, the company's general counsel (Leiter Recht) or a lawyer ("Syndikusanwalt"). Thus, the answers were given by persons either responsible at the top level for compliance or by persons responsible for implementing or advising on compliance issues (*figure 122*).

In the majority of cases, the interviewee either belongs to the executive board or to the compliance or legal department, which is in line with the positions given above. The structures within the companies vary in regard to the title of the compliance department and its independence from the legal department (*figure 123*).

*Figure 122: Interviewee's position*³⁷⁷



No. of answers: 109.

³⁷⁷ See no. 2 (questionnaire, Annex I.A.1.)/no. 7 (online questionnaire, Annex I.A.2.).

Figure 123: Department to which interviewee belongs ³⁷⁸

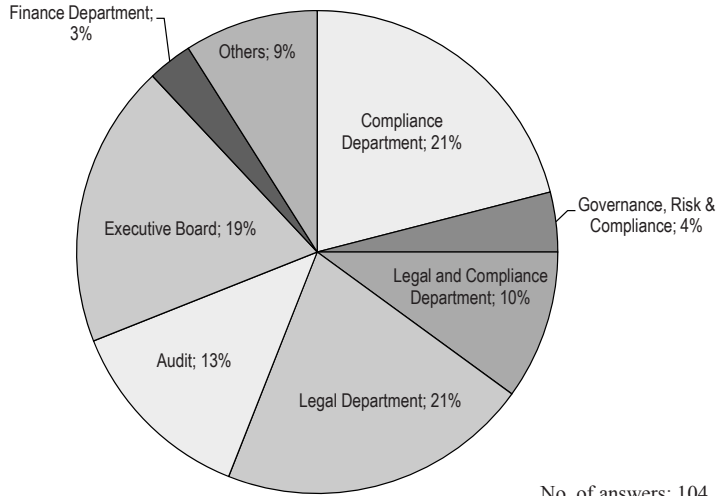
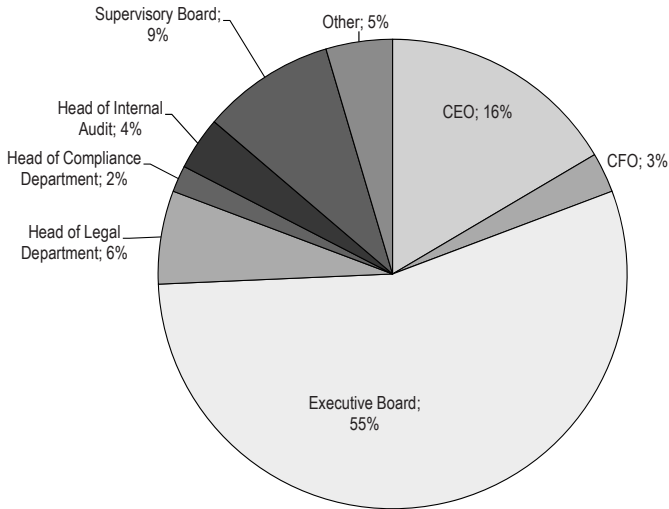


Figure 124: Department to which interviewee reports ³⁷⁹

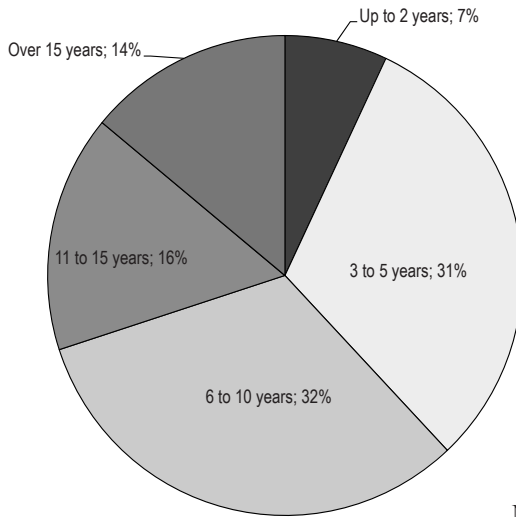


No. of answers: 112 (multiple responses allowed, so that the total can exceed 100%).

³⁷⁸ See no. 2 (questionnaire, Annex I.A.1.)/no. 8 (online questionnaire, Annex I.A.2.).

³⁷⁹ See no. 2 (questionnaire, Annex I.A.1.)/no. 10 (online questionnaire, Annex I.A.2.).

Figure 125: Interviewee's experience with compliance issues³⁸⁰



The interviewee, in over 80 percent of the cases, reports to the executive board, the CEO, or the CFO. Nine percent, mainly the compliance officers and company lawyers, report to the head of the legal or the compliance department; ten percent, mainly CEOs, report to the supervisory board (“Aufsichtsrat”) (figure 124).

On average, the interviewees have 9.2 years (median: 8 years) of experience with compliance topics. 30 percent have even more than ten years of experience. The average interviewee can therefore be considered well-informed and experienced on the topic (figure 125).

³⁸⁰ See no. 2 (questionnaire, Annex I.A.1.)/no. 9 (online questionnaire, Annex I.A.2.).

Part 3

Special Comparative Evaluation of Different Regulative Approaches

The following section presents the results of the second, above-mentioned questionnaire-based gathering of information from business experts in regard to the evaluation of different strategies and sanctions and their relevance for the prevention of crime in companies (A.). It also presents the results on the evaluation of different regulatory approaches that could foster the introduction of compliance programs in companies (B.).³⁸¹ These findings differentiate and analyze in more detail the results of the first questionnaire on possible incentives for creating compliance programs.³⁸² This section concludes with an overview of the companies and the interviewees surveyed in the second questionnaire (C.).

I. Evaluation of Strategies for the Prevention of Crime

The interviewees were asked to evaluate different strategies and their importance for the prevention of crime within the corporate sphere. The questionnaire included an evaluation of effective compliance programs compared to legal sanctions (A.), an evaluation of sanctions against different addressees (B.), and an evaluation of various sanctions against the perpetrator, the superior, and the company (C.).

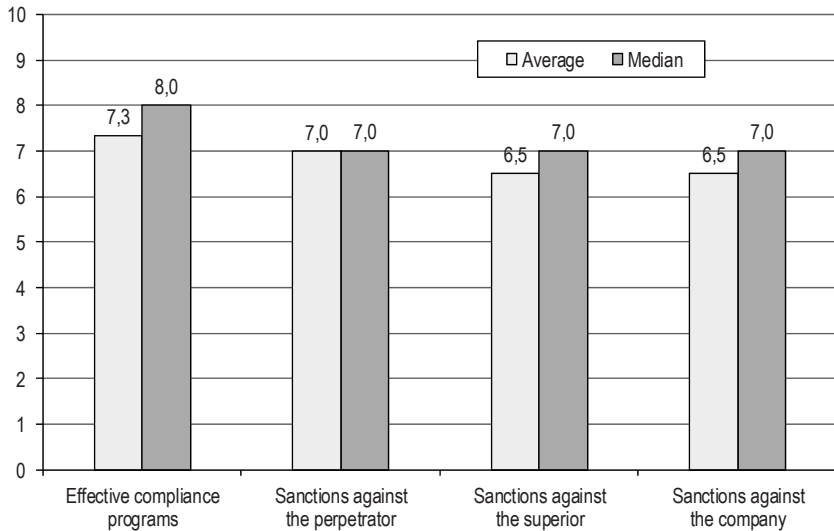
A. Comparing Compliance Programs and Legal Sanctions for the Prevention of Crime

The questionnaire asked the interviewees to evaluate the effectiveness of four existing or possible approaches on the prevention of criminal behavior within companies on a scale of 1 to 10 (ranking from “not effective” to “effective”). The four approaches comprised effective compliance programs, sanctions against the perpetrator, the superior, and the company. The answers did not lead to substantial

³⁸¹ See Annex I.B. for the questionnaire. For the results of the survey on the status of compliance programs and economic crime, see *supra* Part 2.

³⁸² See *infra* Part 2 III.B. (p. 133 ff.).

Figure 126: Approaches for the prevention of crime (general)³⁸³



No. of answers: 139 companies.

differences in the judgments. However, the results show that effective compliance programs for the prevention and detection of crimes are judged to be the most effective measure, being more effective than all three kinds of sanctions (*figure 126*).

The significance test (t-test)³⁸⁴ shows a clearly significant difference between effective compliance programs and sanctions against the superior as well as a very significant difference between such programs and sanctions against the company.³⁸⁵ There is, however, no significant difference between effective compliance programs and sanctions against the perpetrator. This can be seen as an indicator that compliance programs are not regarded as a clearly preferable substitute to sanctions against the perpetrator.

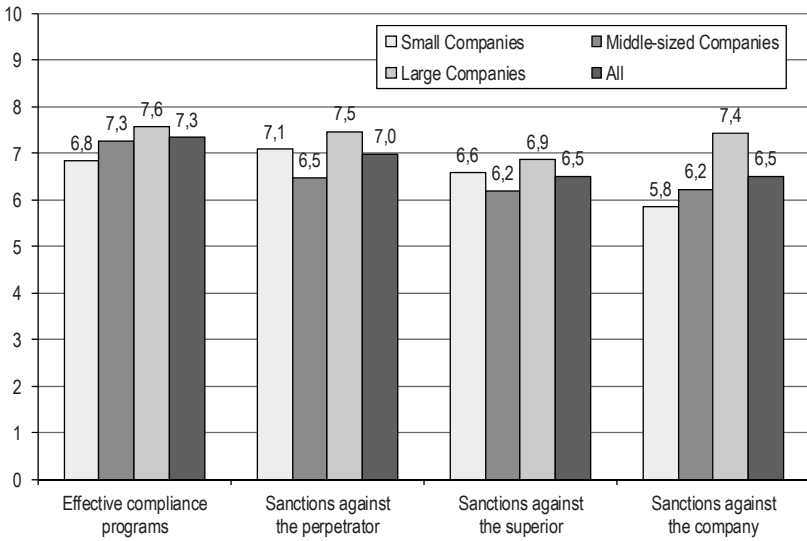
If one looks at the results according to the size of the company, the picture is much more diverse. Large companies consider all measures to be more important than small and middle-sized companies. Large and middle-sized companies see an effective compliance program as the most effective measure, whereas small companies find sanctions against the perpetrator to be more effective (*figure 127*).

³⁸³ See no. 5 of the questionnaire (Annex I.B.).

³⁸⁴ For details, see *supra* p. 32 and *infra* p. 256.

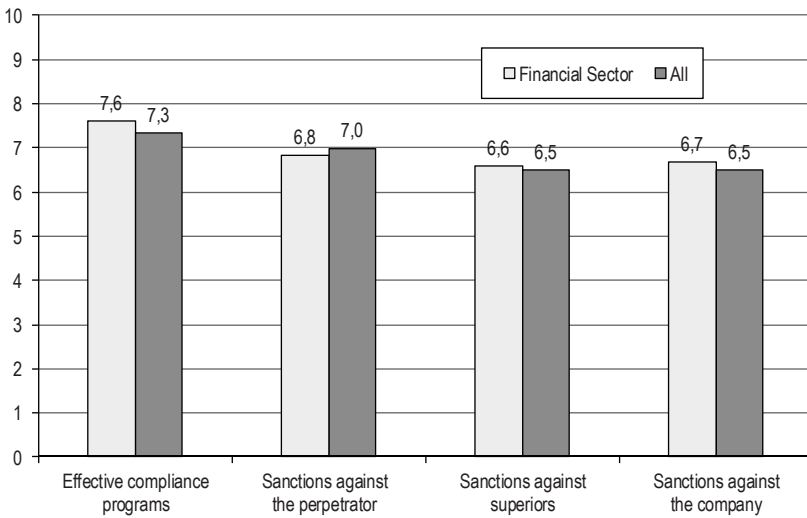
³⁸⁵ Compliance programs & sanctions against the superior (p-value: .000***); Compliance programs & sanctions against the company (p-value: .001**). For the tables, see *infra* p. 262.

Figure 127: Approaches for the prevention of crime (company size)



No. of answers: All/middle-sized/small (139/36/57/38 companies).

Figure 128: Approaches for the prevention of crime (financial sector)



No. of answers: All/financial sector (139/43 companies).

In contrast to the results according to size of the companies, the ones for companies from the financial sector do not differ much from the average results, but they are a bit more distinct: Compliance programs clearly rank in first place, all different kinds of sanctions are clearly judged to be less effective (*figure 128*).

B. Comparing Legal Sanctions Against Different Addressees for the Prevention of Crime

The questionnaire asked the interviewees to evaluate not only the effectiveness of compliance programs in contrast to legal sanctions but also to differentiate between sanctions against the perpetrator, the superior, and the company. This allows for a comparison of the evaluation of legal sanctions against these different addressees. Again, the answers show no substantial differences in the judgments (see *supra figure 126*). Sanctions against the perpetrator were considered the most effective legal action. Sanctions against the company for offenses committed by company members as well as sanctions against the superior of the employee if offenses were committed because of inadequate supervision are equally judged to be less effective.

The significance test (t-test)³⁸⁶ shows that there are no significant differences between sanctions against the superior and those against the company.³⁸⁷ The medium correlation of the answers indicates that companies regarding one measure to be important/not important often also regard the other measure to be important/not important. With regard to sanctions against the perpetrator, the results show a trend to judge these sanctions to be significantly more important than the other two kinds of sanctions. Yet the results are not completely clear: There is a very significant difference compared to sanctions against the superior but only a marginal one compared to sanctions against the company.³⁸⁸

The results according to the size of the company show that large companies consider all three kinds of sanctions to be more important than small and middle-sized companies (see *supra figure 127*). All companies regard sanctions against the perpetrator to be the most important ones. For large and middle-sized companies, sanctions against superiors are the least effective measure, whereas small companies place sanctions against the company in last place. The greatest difference concerning the answers is in regard to the sanctions against the company. Large companies regard such measures to be much more important than the other companies, even seeing no substantial difference to sanctions against the perpetrator.

³⁸⁶ For details, see *supra* p. 32 and *infra* p. 233.

³⁸⁷ For the tables, see *infra* p. 239.

³⁸⁸ Sanctions against the perpetrator & sanctions against the superior (p-value: .007**); Sanctions against the perpetrator & sanctions against the company (p-value: .056†).

Companies from the financial sector evaluate all three kinds of sanctions quite similar, hence making only a slight difference between sanctions against the perpetrator and the other sanctions (see *supra* *figure 128*). Sanctions against superiors are regarded to be least effective and even slightly less effective than sanctions against the company.

C. Comparing Different Types of Sanctions for the Prevention of Crime

The interviewees were also asked to evaluate and compare the effectiveness of different types of sanctions for the prevention of criminal behavior within companies. The questionnaire differentiated between criminal sanctions and regulatory sanctions (“Ordnungswidrigkeiten”), as the German system has both types of sanctions. Additionally, forfeiture for criminal and regulatory offenses was taken into account. Although it is often not regarded as a genuine punitive sanction, it nonetheless often has the same punitive effect. The questionnaire also asked the participants to evaluate the mere making public of a criminal or regulatory conviction, in order to determine whether publicity effects or reputational effects are relevant.

Since the adequacy of sanctions often depends on the addressee, the questionnaire did not ask the interviewees to evaluate the aforementioned sanctions in general but with respect to the above mentioned addressees: (1.) the perpetrator, (2.) the superior, and (3.) the company.

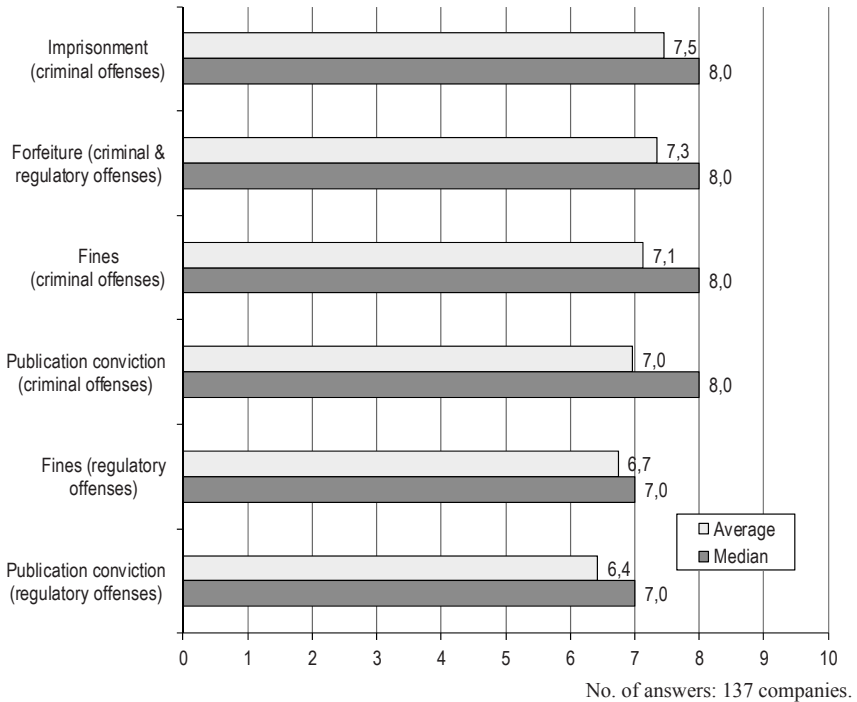
1. Different Sanctions Applied Against the Perpetrator

First, the questionnaire asked the interviewees to evaluate the effectiveness of different legal sanctions against the perpetrator on the prevention of criminal behavior within companies on a scale of 1 to 10 (ranking from “not effective” to “effective”). The answers show no big differences between the evaluation of the various sanctions. Imprisonment in case of the commission of a criminal offense was seen as the most effective sanction, ranking ahead of forfeiture measures for criminal and regulatory offenses and fines for criminal offenses. The making public of a criminal conviction was regarded as the least serious criminal measure but still ranked before fines for regulatory offenses. The making public of a conviction for regulatory offenses was judged to be the least effective measure (*figure 129*).

The significance test (t-test)³⁸⁹ shows that the criminal measures are rated significantly higher than regulatory ones.³⁹⁰ The difference between imprisonment and

³⁸⁹ For details, see *supra* p. 32 and *infra* p. 233.

Figure 129: Different sanctions applied against the perpetrator (general)³⁹¹



criminal fines on the one side and regulatory measures on the other is significant.³⁹² The mere making public of a criminal conviction is rated significantly higher than the making public of a regulatory conviction. Yet, the making public of a criminal conviction, though rated higher, shows no significant difference to a regulatory fine.

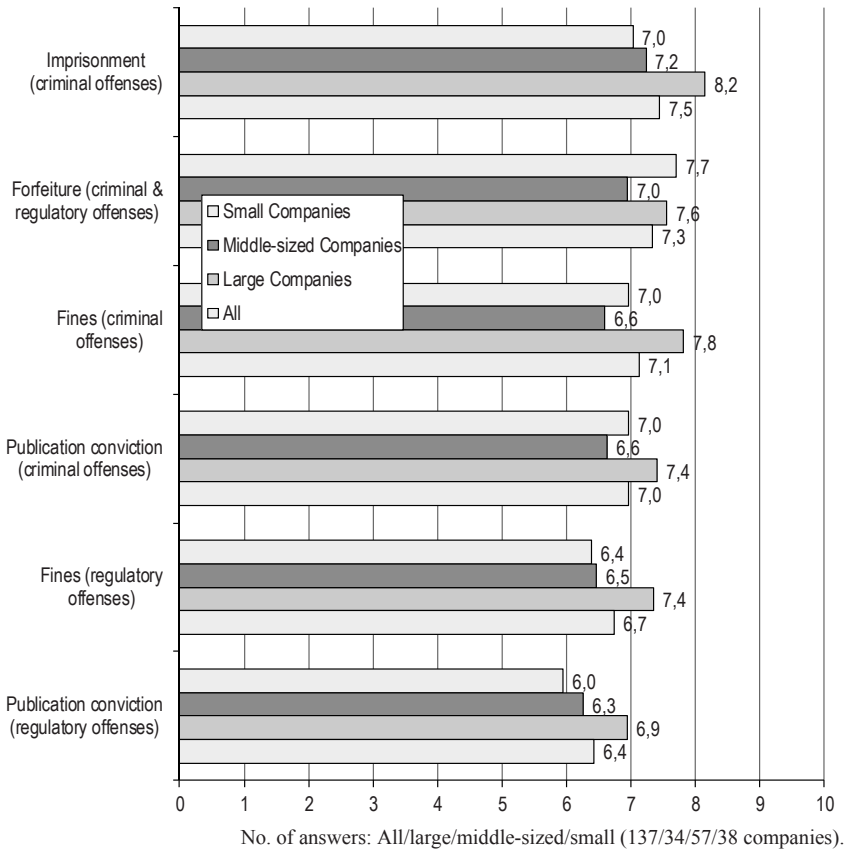
The t-test also shows the importance of imprisonment and of forfeiture. With the exception of forfeiture, the test confirms that imprisonment is seen as the most important sanction, as it is rated significantly higher than the other sanctions. Forfeiture is rated slightly lower, but there is no significant difference to imprisonment.

³⁹⁰ For the tables, see *infra* p. 240.

³⁹¹ See no. 6 a) of the questionnaire (Annex I.B.).

³⁹² Imprisonment & regulatory fine (p-value: .000***); imprisonment & publication regulatory conviction (p-value: .000***); criminal fine & regulatory fine (p-value: .001**); criminal fine & publication regulatory conviction (p-value: .002**); publication criminal conviction & publication regulatory conviction (p-value: .000***).

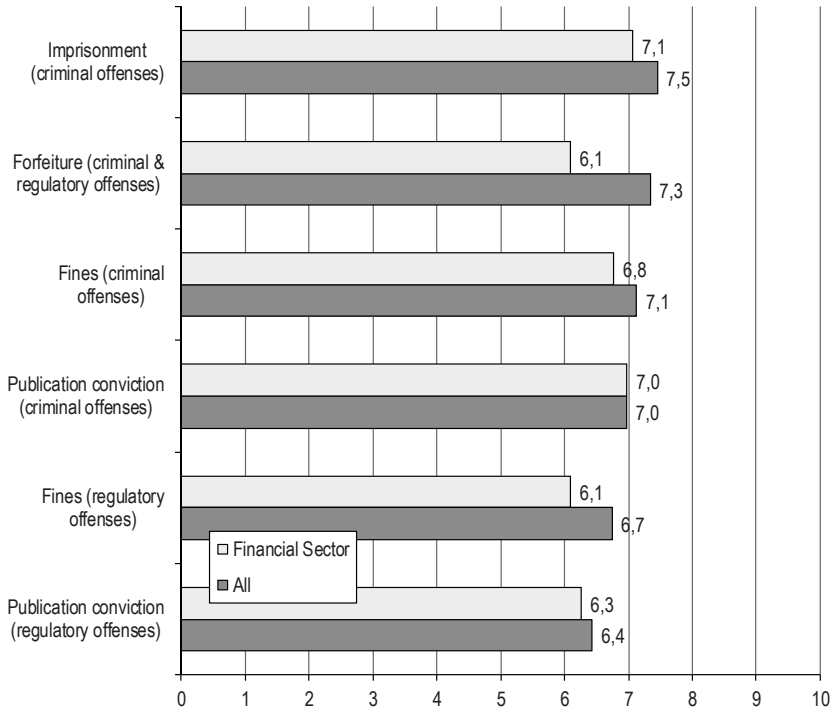
Figure 130: Different sanctions applied against the perpetrator (company size)



The same applies to the other criminal measures compared to forfeiture. There is no significant difference for forfeiture compared to criminal fines and making public criminal convictions, although these two are rated lower than forfeiture. In contrast, the difference between forfeiture – with its higher rating – and regulatory fines and the making public of regulatory fines is significant. Hence, forfeiture is clearly regarded as the more important measure compared to regulatory measures.

The results according to company size do not differ substantially from the average. Large companies deem the measures to be more important than small and middle-sized companies. The only exception is forfeiture: Small companies regard this measure to be not only more important than large companies but also to be more important than imprisonment or a criminal fine. Regulatory fines and the making public of a regulatory conviction is ranked in the last two places by all companies (figure 130).

Figure 131: Different sanctions applied against the perpetrator (financial sector)



No. of answers: All/financial sector (137/43 companies).

Companies from the financial sector also clearly place regulatory fines and making public a regulatory conviction in the two last places. With the exception of making public a criminal conviction, these companies regard all measures to be less important than the average. Such public measure is seen to be clearly more important than measures of forfeiture, which is in last place (figure 131).

2. Different Sanctions Applied Against the Superior

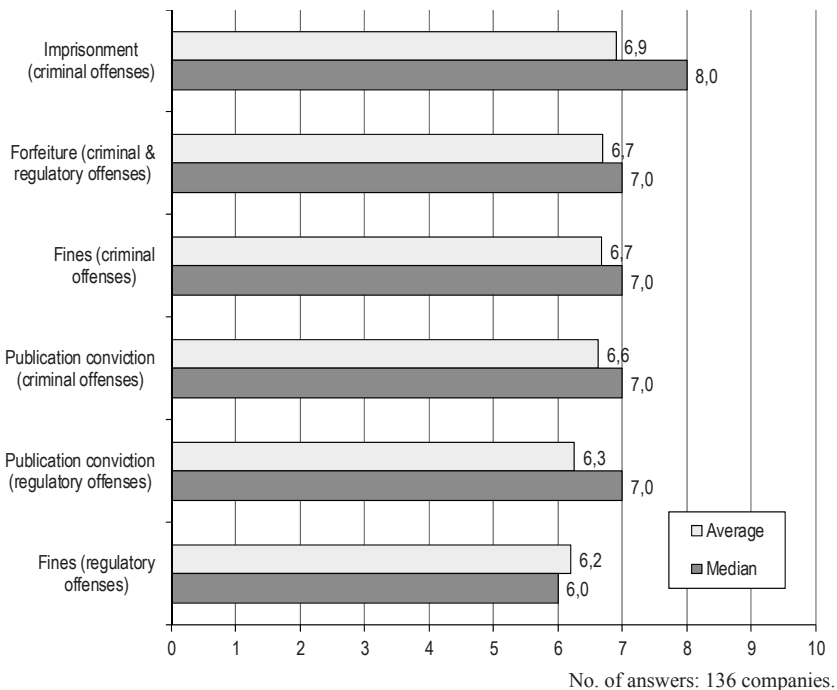
Second, the interviewees were asked to evaluate the effectiveness of different criminal and regulatory sanctions against the superior for insufficient supervision of subordinates, thus enabling them to commit a criminal or regulatory offense, as regards the prevention of criminal behavior within companies on a scale of 1 to 10 (ranking from “not effective” to “effective”). Again, imprisonment in case of the commission of a criminal offense was seen as the most effective sanction, ranking ahead of forfeiture measures for criminal and regulatory offenses and fines for criminal offenses. Also, the making public of a criminal conviction was regarded as

the least serious criminal sanction, but it ranked before fines for regulatory offenses. The making public of a conviction for regulatory offenses was judged to be the least effective measure (*figure 132*).

The evaluation of sanctions against the superior shows almost the same pattern as the measures against the perpetrator (*supra figure 129*). Only the last two places differ: The interviewees see regulatory fines in last place for perpetrators but place the making public of a regulatory conviction in last place for superiors. A remarkable difference only exists in the rating of the different sanctions: All the measures against superiors were seen to be less effective than comparable measures against the perpetrators. This confirms the result seen above in regard to the sanctions against different addressees where sanctions against the superior was also rated lower than sanctions against perpetrators (*supra figure 126*).

Again, such as in the case of sanctions against the perpetrator, the significance test (t-test)³⁹³ shows that there is a significant difference between imprisonment,

*Figure 132: Different sanctions applied against the superior (general)*³⁹⁴

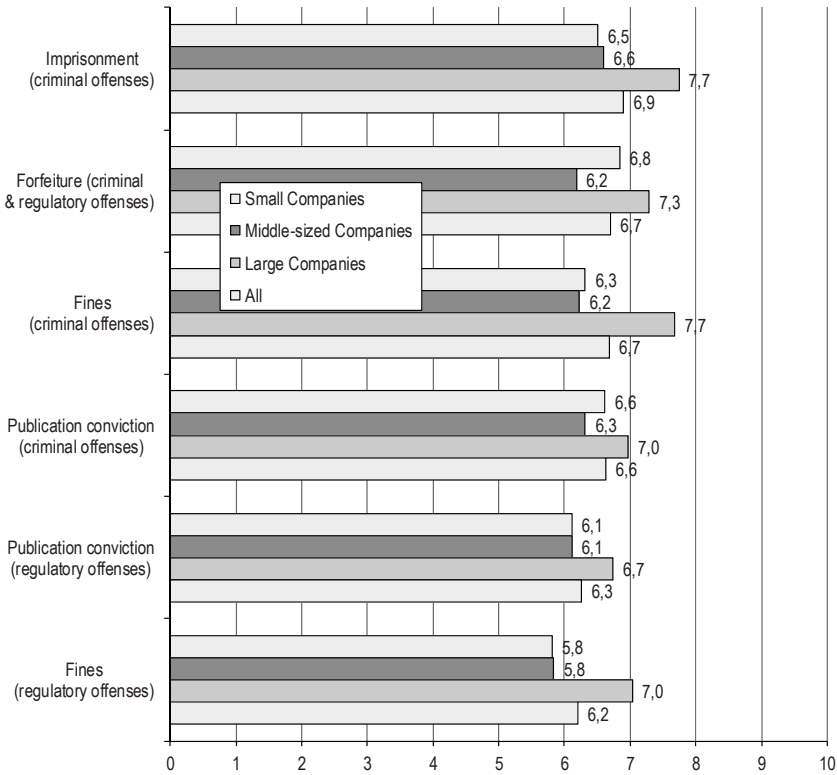


³⁹³ For details, see *supra* p. 32 and *infra* p. 233.

³⁹⁴ See no. 6 b) of the questionnaire (Annex I.B.).

criminal fines, and the making public of a criminal conviction on the one hand and regulatory measures on the other hand.³⁹⁵ Criminal measures are therefore rated to be significantly more important than regulatory measures. The test also confirms that imprisonment is seen as the most important sanction, which is rated significantly higher than the other sanctions (again, with the exception of forfeiture), although the difference to criminal fines and the making public of criminal convictions is only marginally significant.³⁹⁶ Forfeiture is rated slightly lower than imprisonment, but there is no significant difference to it. The same applies to the

Figure 133: Different sanctions applied against the superior (company size)



No. of answers: All/large/middle-sized/small (136/34/57/37 companies).

³⁹⁵ Imprisonment & regulatory fine (p-value: .000***); imprisonment & publication regulatory conviction (p-value: .001**); criminal fine & regulatory fine (p-value: .000***); criminal fine & publication regulatory conviction (p-value: .044*); publication criminal conviction & publication regulatory conviction (p-value: .001**).

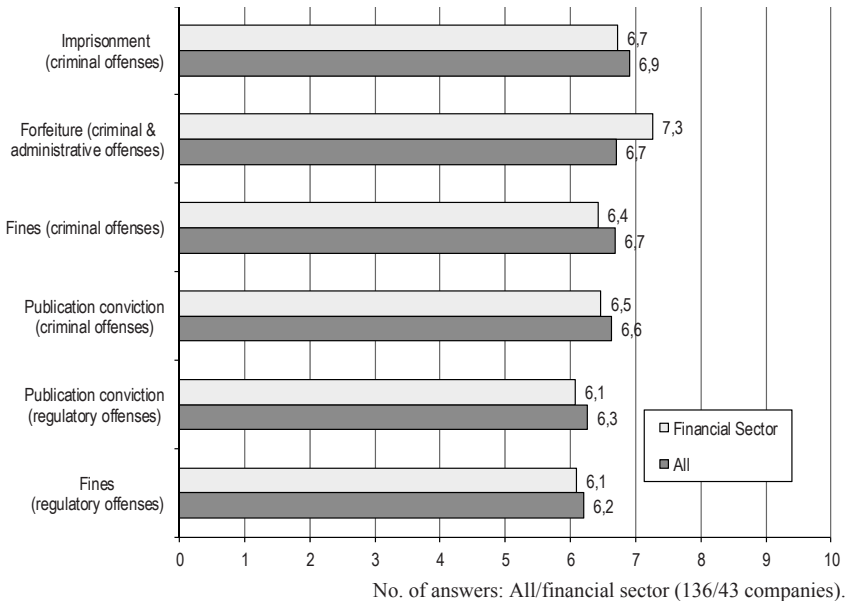
³⁹⁶ For the tables, see infra p. 242.

other criminal measures. There is no significant difference for forfeiture compared to criminal fines and the making public of criminal convictions. In contrast, the difference between forfeiture – with its higher rating – and regulatory fines and the making public of regulatory fines is significant. Hence, forfeiture (such as criminal measures) is regarded as the more important measure.

The results according to the size of the company are much more diverse. Again, large companies judge all measures to be more important than small and middle-sized companies. Small and middle-sized companies put the making public of criminal offenses in second place, whereas large companies regard criminal fines as more important. Large companies rank regulatory fines much higher than the other companies (*figure 133*).

In contrast to the results according to company size, those for companies from the financial sector do not differ much from the average results. With the exception of forfeiture, all measures are considered to be slightly less important than the average. Forfeiture is seen as the most important measure, regulatory fines and the making public of a conviction rank last (*figure 134*). This result is contrary to the evaluation of sanctions against the perpetrator, where forfeiture is put in last place (see *supra figure 131*). The relevance of forfeiture therefore seems to depend very much on the position of the person within the company.

Figure 134: Different sanctions applied against the superior (financial sector)



3. Different Sanctions Applied Against the Company

Third, the companies were asked to evaluate on a scale of 1 to 10 (ranking from “not effective” to “effective”) the effectiveness of criminal and regulatory sanctions against the company for the commission of offenses by their employees as regards the prevention of criminal behavior within companies. The results show that the average ratings for the individual measures against companies do not differ greatly from one another. The prohibition of specific business activities was regarded to be the most effective sanction, followed by criminal fines, measures of forfeiture for criminal and regulatory offenses and, in fourth place, the replacement of the executive board. Regulatory fines rank behind these measures. Structural measures, such as the obligation to implement a compliance program (7th place), the appointment of a compliance monitor to supervise the implementation of compliance measures (8th place) or the appointment of an external trustee to temporarily take over the executive power (10th place), are seen as less effective. Remarkably, the most serious sanction, the shutdown of plants, ranks last (*figure 135*). An explanation for this result might be that the legal threshold for the shutdown of plants, which is already possible under German administrative law in accordance with § 396 AktG for incorporated companies (“Aktiengesellschaft”) or § 62 GmbHG for limited liability companies (“GmbH”), is set so high that it rarely happens in practice which makes it a sanction that is neither feared nor seriously taken into account as a preventive measure.

As the average results for the majority of measures are very close together, the significance test (t-test)³⁹⁷ shows that there are only a few significant differences.³⁹⁸ A criminal fine with its slightly higher rating is significantly different from a regulatory fine.³⁹⁹ But there is no significant difference to forfeiture, the prohibition of business activities, and the replacement of the board. A significant difference exists compared to the lower-rated obligation to implement a compliance program and the appointment of a compliance monitor.⁴⁰⁰ For the highest-rated measure, the prohibition of business activities, the same applies: This measure is significantly different compared to the obligation to implement a compliance program and the appointment of a compliance monitor but not compared to forfeiture, the replacement of the executive board, and – quite remarkably as there is a significant difference between criminal and regulatory fines – to regulatory fines. Compared to all the

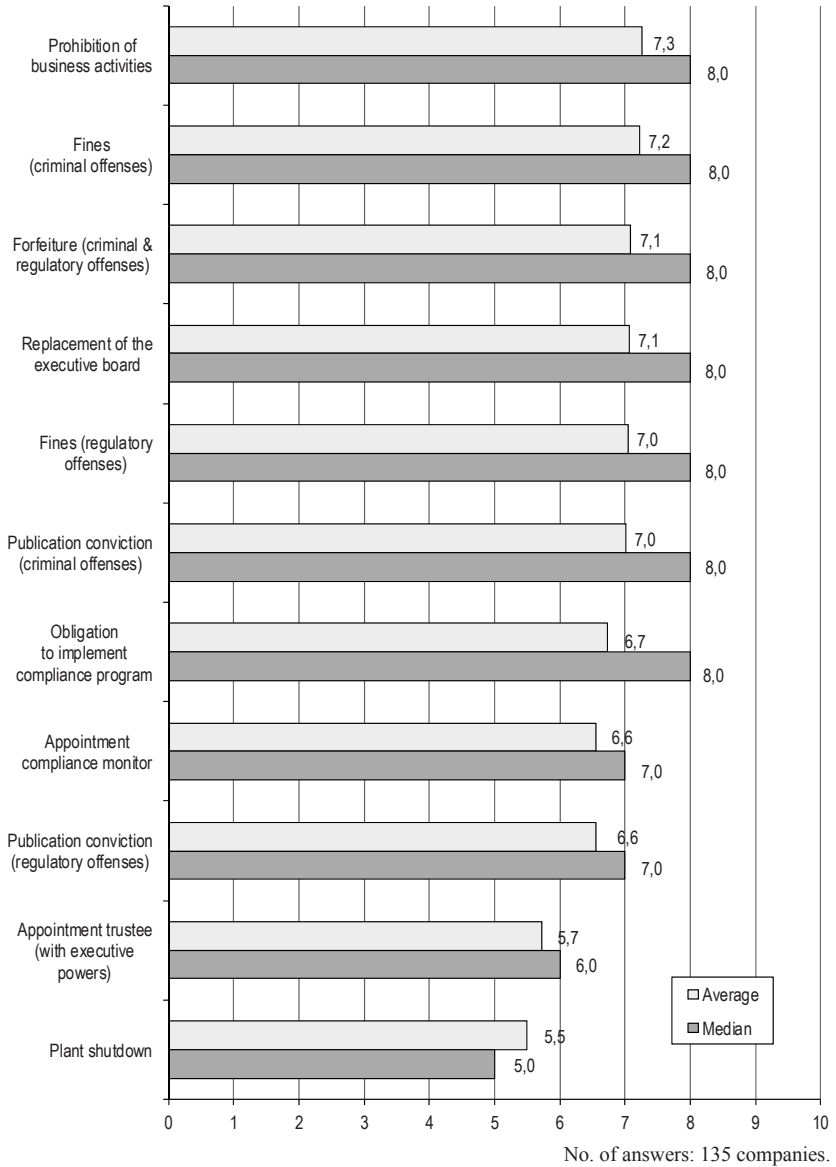
³⁹⁷ For details, see *supra* p. 32 and *infra* p. 233.

³⁹⁸ For the tables, see *infra* p. 243.

³⁹⁹ Criminal fine & regulatory fine (p-value: .017**).

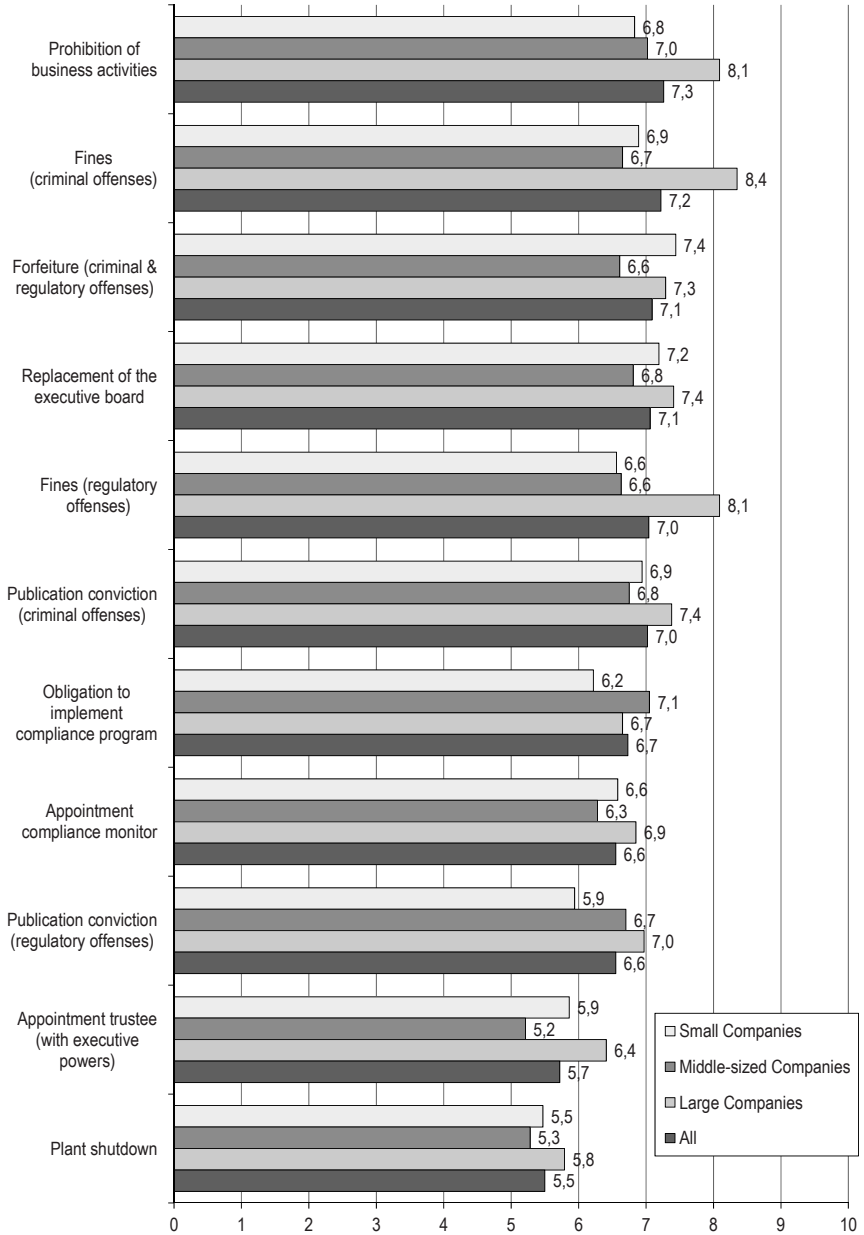
⁴⁰⁰ Imprisonment & regulatory fine (p-value: .000***); imprisonment & publication regulatory conviction (p-value: .001**); criminal fine & regulatory fine (p-value: .000***); criminal fine & publication regulatory conviction (p-value: .044*); publication criminal conviction & publication regulatory conviction (p-value: .001**).

Figure 135: Sanctions against the company (general)⁴⁰¹



⁴⁰¹ See no. 6 c) of the questionnaire (Annex I.B.).

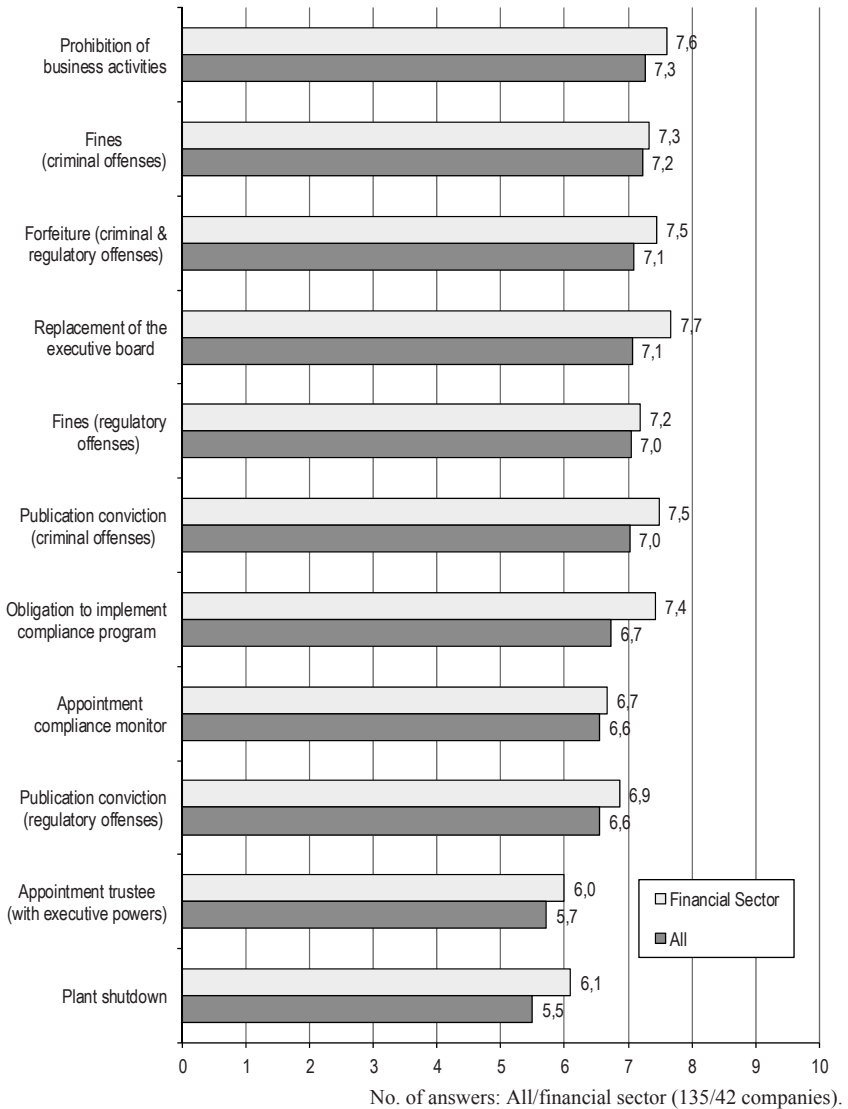
Figure 136: Sanctions against the company (company size)



No. of answers: All/large/middle-sized/small (135/34/57/36 companies).

other measures, a significant difference also exists between the two lowest-rated measures, the appointment of a trustee with executive powers and plant shutdown, compared to all other measures. These two lowest-rated sanctions are clearly regarded as not being very effective.

Figure 137: Sanctions against the company (financial sector)



The results according to the size of the company reveal a much more incoherent picture compared to the average. The prohibition of business is not put in first place in any of the three categories: Large companies see criminal fines first; middle-sized companies the obligation to implement a compliance-program and small companies forfeiture. Besides the obligation to implement a compliance program and forfeiture, large companies judge all measures to be more important than small and middle-sized ones. In particular, criminal and regulatory fines as well as the prohibition of business activities were rated substantially higher than by the other companies. The appointment of an external trustee to temporarily take over the executive powers as well as the shutdown of plants were the only two measures which the different companies agreed on; they were put in the last two places (*figure 136*).

The results for companies from the financial sector show that these companies find all measures to be more important than the average company. This is quite remarkable as financial companies regard sanctions against the perpetrator and the superior to be less important than the average. The replacement of the board, the prohibition of business activities and the making public of the conviction are seen as the three most important measures. Fines (criminal and regulatory ones) only rank sixth and seventh; the shutdown of plants and the appointment of a trustee with executive powers are found to be the least important measures (*figure 137*).

D. Cross-Section Analysis

The cross-section analysis of the aforementioned results shows that sanctions against the superior received a lower rating on average than sanctions against the perpetrator. This confirms the picture already seen in the comparison of different types of sanctions (see *supra figure 126*).

However, the comparison between sanctions against the perpetrator (see *supra figure 129*) and the superior (see *supra figure 132*) on the one hand and sanctions against the company (see *supra figure 135*) on the other, paints a more differentiated picture of the relationship of the sanctions than given in the aforementioned comparison of different types of sanctions (see *supra figure 126*): The majority of corporate sanctions received a rating much closer to the rating of sanctions against the perpetrator than to sanctions against the superior. But there are also corporate sanctions rated even lower than the lowest sanctions against the superior. Insofar, the question of whether corporate sanctions are regarded as being more important for the prevention of crime in comparison to sanctions against the superior (but also in comparison to sanctions against the perpetrator) depends very much on the type of corporate sanction.

The results also illustrate that the main criminal measures, imprisonment and criminal fines, were not only rated higher but were also rated significantly higher than regulatory measures. Only the results for the making public of a criminal conviction and a number of corporate measures do not show this clear distinction in comparison to regulatory measures.

Another result is the strong position of forfeiture for criminal and regulatory offenses. Forfeiture, in the case of sanctions against the perpetrator and the superior, is significantly different from regulatory measures but not from criminal fines and imprisonment. Insofar, forfeiture is seen as being closer to criminal sanctions than regulatory sanctions. Within the rating of the various corporate sanctions, the position of forfeiture is less distinct, as there is no significant difference to the more highly rated criminal fine, but there is also no significant difference to the slightly lower-rated regulatory fine.

II. Evaluation of Strategies for Creating Compliance Programs

In the discussion about the prevention of crime, compliance programs are often seen as a vital element of a successful prevention strategy. As shown, compliance programs are considered the most important means of preventing criminal behavior within companies (see *supra* figure 126). For this reason, the question is important as to which means could foster and motivate the development and implementation of such preventively orientated compliance measures within companies. This question had already been touched on by the first questionnaire⁴⁰² and was taken up and analyzed in more detail by the second questionnaire. Hence, in addition to the question of whether sanctions have an effect on the prevention of criminal behavior within companies (see *supra* I.), the second questionnaire asked the interviewees to evaluate the effect of different regulatory approaches on their motivation to take up compliance measures.

The second questionnaire again distinguished between (A.) direct obligations to introduce compliance programs and (B.) indirect strategies that could motivate companies to take up measures.⁴⁰³ In contrast to the first survey, which, due to its international approach, only referred to “criminal” sanctions, the second questionnaire distinguished between criminal and regulatory sanctions (“Ordnungswidrigkeiten”) in order to depict the German system.

⁴⁰² See *supra* p. 136 et seq.

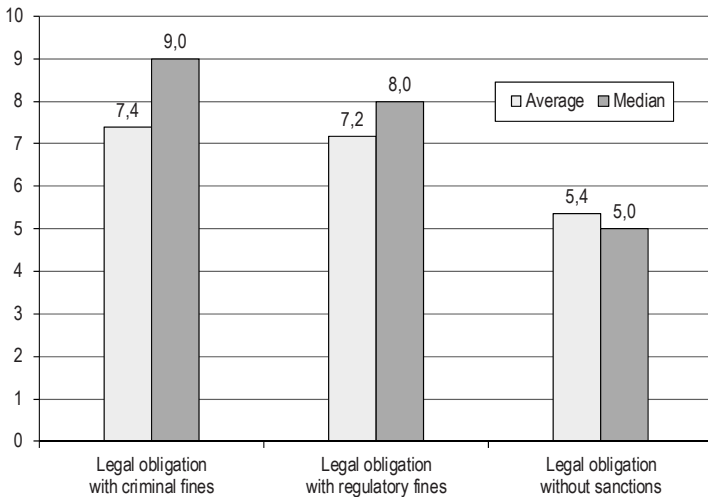
⁴⁰³ For the first survey, see *supra* p. 136 et seq.

A. Direct Enforcement Strategies by Creating Legal Compliance Duties

In Germany specific legal obligations to introduce single compliance measures exist only in some sectors (e.g. in the sector of securities trading). Against this background, the companies were asked to evaluate on a scale of 1 to 10 (ranking from “not important” to “very important”) how important existing legal strategies are and how important possible legal strategies would be for them in order to implement compliance measures for the prevention and detection of criminal acts within their company.

The interviewees were first asked to evaluate different strategies that provide for a legal requirement to introduce compliance programs (direct enforcement strategies). They were given the choice between either a legal obligation to implement compliance obligations without any sanctions in the case of non-implementation or a legal obligation to implement compliance obligations either with criminal or regulatory fines (“Ordnungswidrigkeiten”) in the case of non-implementation. The answers show that legal obligations with sanctions are regarded to be considerably more important than legal obligations without sanctions. Insofar, they confirm the result of the first questionnaire.⁴⁰⁴ Criminal fines are regarded as being slightly more important than regulatory fines (figure 138).

Figure 138: Direct enforcement strategies by creating legal compliance duties (general)⁴⁰⁵

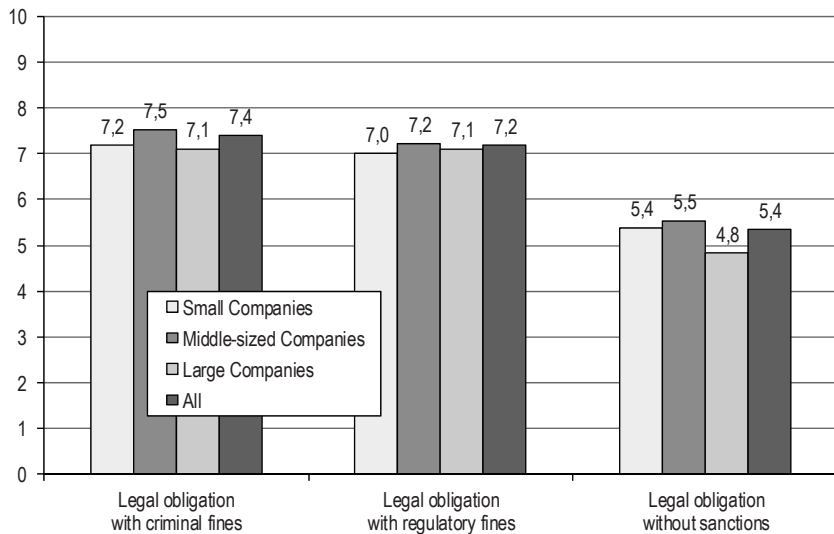


No. of answers: 137 companies.

⁴⁰⁴ See supra p. 136 et seq.

⁴⁰⁵ See no. 7 of the questionnaire (Annex I.B.).

Figure 139: Direct enforcement strategies by creating legal compliance duties (company size)



No. of answers: All/middle-sized/small (137/33/57/38 companies).

The significance test (t-test)⁴⁰⁶ confirms that there is a clearly significant difference between legal obligations with (criminal or regulatory) fines compared to legal obligations without a fine.⁴⁰⁷ Yet the difference between a criminal fine and a regulatory fine is not significant. Insofar, obligations with a sanction are regarded to be clearly more important than those without sanctions. However, it is unclear whether a criminal fine is really more important than the regulatory fine as indicated by the average.⁴⁰⁸

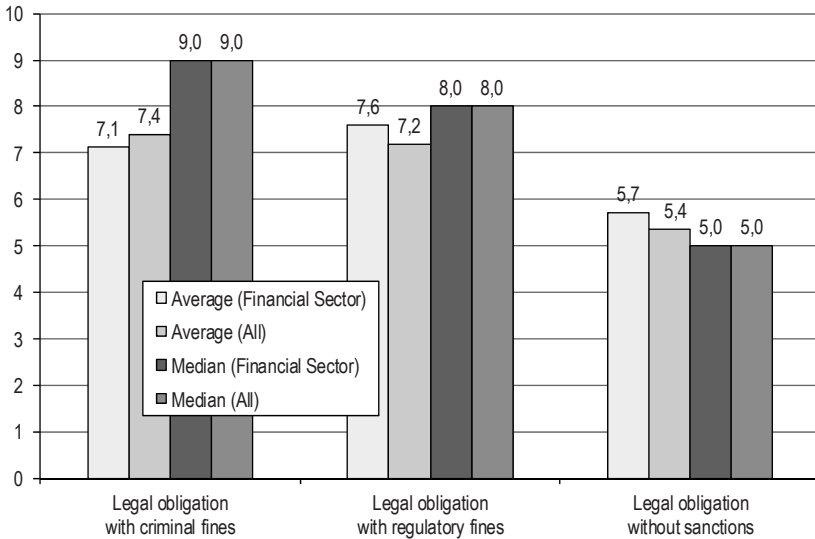
The results according to the company size do not differ much from the average result. Large companies tend to evaluate the measures as being slightly less important than other companies, especially in regard to a legal obligation without any sanctions. Large companies also see no difference between a criminal and a regulatory fine (*figure 139*).

⁴⁰⁶ For details, see *supra* p. 32 and *infra* p. 233.

⁴⁰⁷ Legal obligation without sanctions & legal obligation with criminal fines (p-value: .000***); legal obligation without sanctions & legal obligation with regulatory fines (p-value: .000***). For the tables, see *infra* p. 246.

⁴⁰⁸ This result is the only one that shows no significant difference between criminal and regulatory fines. For the other results, see *infra* under B. Indirect Enforcement Strategies. For an overview of the results, see also *infra* p. 187.

Figure 140: Direct enforcement strategies by creating legal compliance duties (financial sector)



No. of answers: All/financial sector (137/43 companies).

The results for companies in the financial sector show one particular deviation from the average results. A legal obligation with a regulatory fine was seen on average to be more important than a legal obligation with a criminal fine. However, the median⁴⁰⁹ shows no difference between companies in the financial sector and companies from other sectors. This means that the majority of companies in the financial sector are in line with the average position. The higher rating of legal obligations with regulatory fines in the highly regulated financial sector might be due to experiences with substantial regulatory fines whereas criminal measures are not seen as frequently in this sector (*figure 140*).

B. Indirect Enforcement Strategies by Creating Legal Incentives

In addition to the possibility of creating direct obligations to introduce a compliance program, the interviewees were asked to evaluate the relevance of various *indirect* enforcement measures and their relevance for the establishment of compli-

⁴⁰⁹ For details, see *supra* p. 31.

ance measures for the prevention and detection of criminal acts within companies if the legislator does not enact an obligatory legal regulation to install a compliance program as a direct enforcement strategy. The functioning of this indirect enforcement strategy is explained above.⁴¹⁰

Again, the interviewees had to evaluate three different types of such “indirect enforcement systems”. The approach taken in the first questionnaire was further developed in order to enable a better differentiation between the addressees and the various sanctions. The first system taken up by the second questionnaire referred to different addressees. The questionnaire differentiated between sanctions for (1.) perpetrators, (2.) superiors and (3.) companies in the case that a crime occurs and the importance of these sanctions for the interviewees for taking up compliance measures. The second system concerned different regimes of sanctions. Here, the questionnaire distinguished between criminal, regulatory and civil sanctioning systems for each of the three addressees. The third system referred to the (criminal, regulatory and civil) liability of the company yet provided for the privilege of excluding liability in cases in which an employee commits a crime but an effective compliance system exists. Insofar, the interviewees were asked to evaluate various types of sanctions against different addressees not with regard to the (direct) effect of preventing the addressees from committing crimes but with regard to the relevance of these different sanctions for the company to consider taking up compliance measures.

1. Motivating Effect of Sanctions Against the Perpetrator

First, the interviewees were asked to evaluate on a scale of 1 to 10 (ranking from “not important” to “very important”) how strongly sanctions against perpetrators for the commission of crimes motivate them to take up compliance measures for the prevention and detection of criminal acts within their company. Criminal sanctions were considered to be the most important measure, ranking ahead of civil sanctions on average (but show the same result concerning the median⁴¹¹). Regulatory sanctions are seen as the least important measure. The differences between the results are rather small (*figure 141*).

Although the difference between the results are rather small, the significance test (t-test)⁴¹² shows that there is a significant difference between criminal sanctions and regulatory sanctions.⁴¹³ Yet neither the difference between criminal sanctions

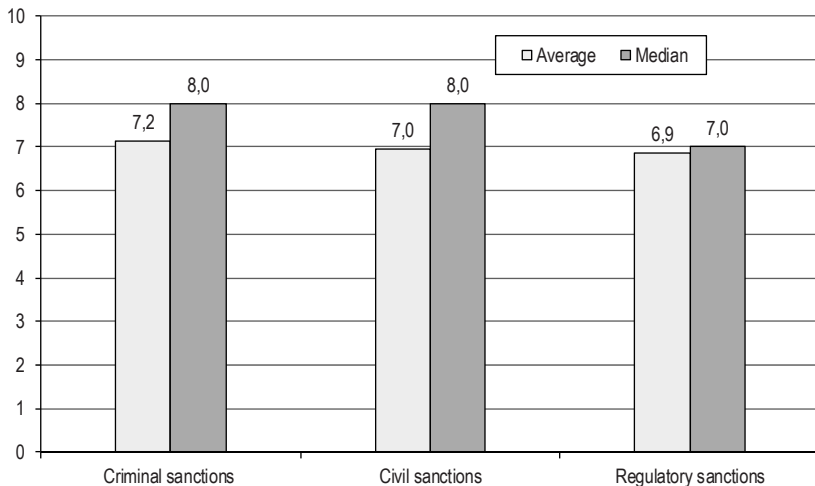
⁴¹⁰ See *supra* p. 139.

⁴¹¹ For details, see *supra* p. 31.

⁴¹² For details, see *supra* p. 32 and *infra* p. 233.

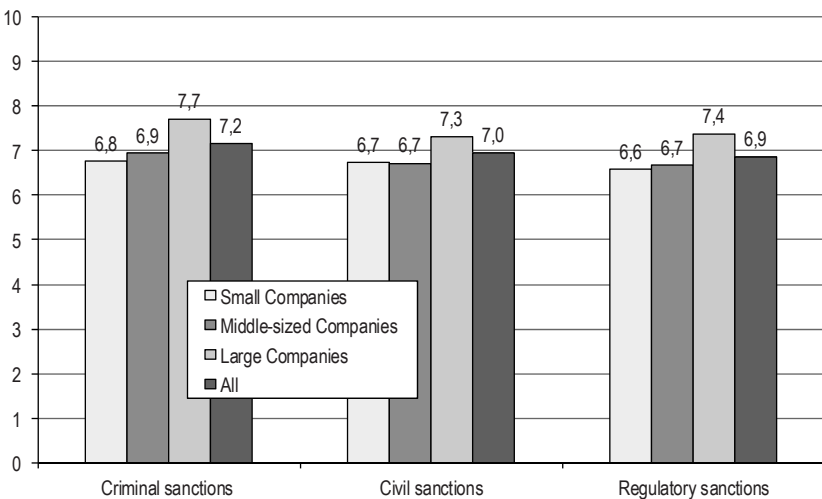
⁴¹³ Criminal sanctions & regulatory sanctions (p-value: .019*). For the tables, see *infra* p. 247.

Figure 141: Motivating effect of sanctions against the perpetrator on creating compliance programs (general)⁴¹⁴



No. of answers: 131 companies.

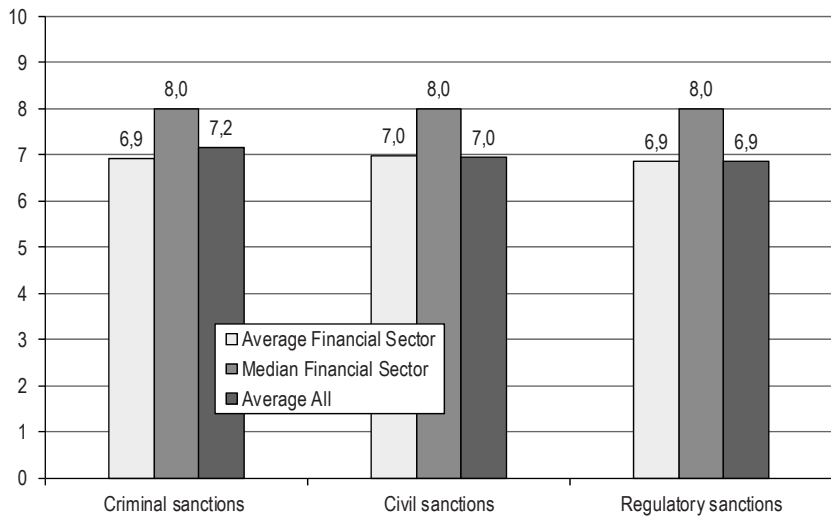
Figure 142: Motivating effect of sanctions against the perpetrator on creating compliance programs (company size)



No. of answers: All/large/middle-sized/small (131/34/54/37 companies).

⁴¹⁴ See no. 8 a) of the questionnaire (Annex I.B.).

Figure 143: Motivating effect of sanctions against the perpetrator on creating compliance programs (financial sector)



No. of answers: All/financial sector (131/43 companies).

and civil sanctions nor between civil sanctions and regulatory sanctions are significant. Insofar, obligations with a criminal sanction are assessed to be more important than obligations with a regulatory sanction. It is unclear, however, whether a criminal sanction is really believed to be more important than a civil sanction as the higher average indicates.

The results for companies according to their size show that a criminal sanction is always rated as being more important than a civil or a regulatory one. Large companies consider a regulatory sanction to be more important than a civil sanction, whereas small and middle-sized companies give more weight to a civil sanction. The deviations in the results are rather small. The only clear result is that large companies judge all sanctions to be more important than the other companies (*figure 142*).

The results for companies in the financial sector show that the differences between the three types of sanctions are hardly measurable as the results are very close together: The median⁴¹⁵ value is the same for all; the average value shows that a civil sanction is regarded to be slightly more important than either a criminal or a regulatory one (*figure 143*).

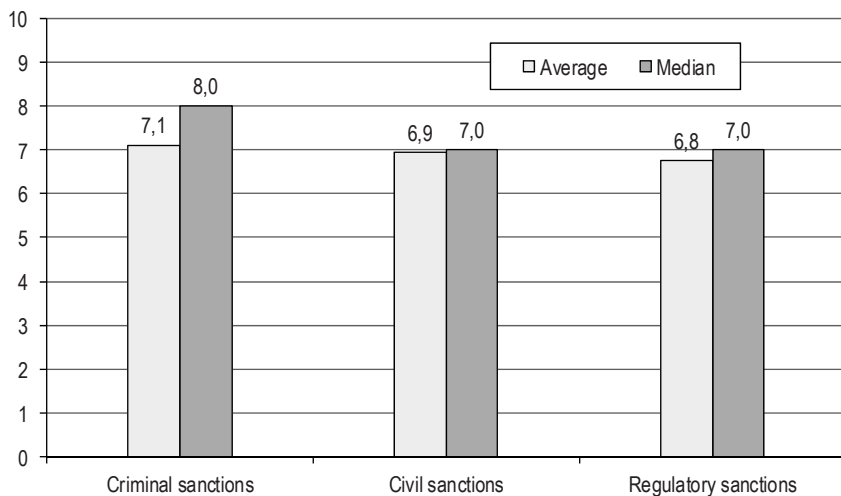
⁴¹⁵ For details, see *supra* p. 31.

2. Motivating Effect of Sanctions Against the Superior

Second, the companies were asked to evaluate on a scale of 1 to 10 (ranking from “not important” to “very important”) how strongly sanctions against superiors for insufficient supervision fostering the criminal behavior of subordinates motivates the interviewees to take up compliance measures for the prevention and detection of criminal acts within their company. Again, criminal sanctions were regarded to be the most important measure, ranking ahead of civil and regulatory sanctions (*figure 144*). The differences between the results are rather small such as in the case of sanctions against the perpetrator (see *supra figure 141*).

The significance test (t-test)⁴¹⁶ shows – although the difference is small – that there is a significant difference between criminal sanctions and regulatory sanctions.⁴¹⁷ Also, there exists a significant difference between civil and regulatory sanctions, but there is no significant difference between criminal and civil sanctions. Insofar, obligations with a criminal sanction are regarded to be more important than those with regulatory ones. It is unclear, however, whether a criminal

*Figure 144: Motivating effect of sanctions against the superior on creating compliance programs (general)*⁴¹⁸



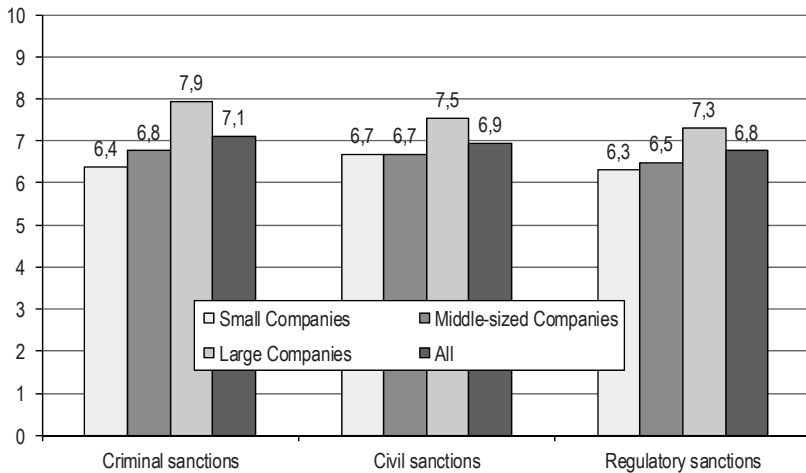
No. of answers: 131 companies.

⁴¹⁶ For details, see *supra* p. 32 and *infra* p. 233.

⁴¹⁷ Criminal sanctions & regulatory sanctions (p-value: .001**). For the tables, see *infra* p. 247.

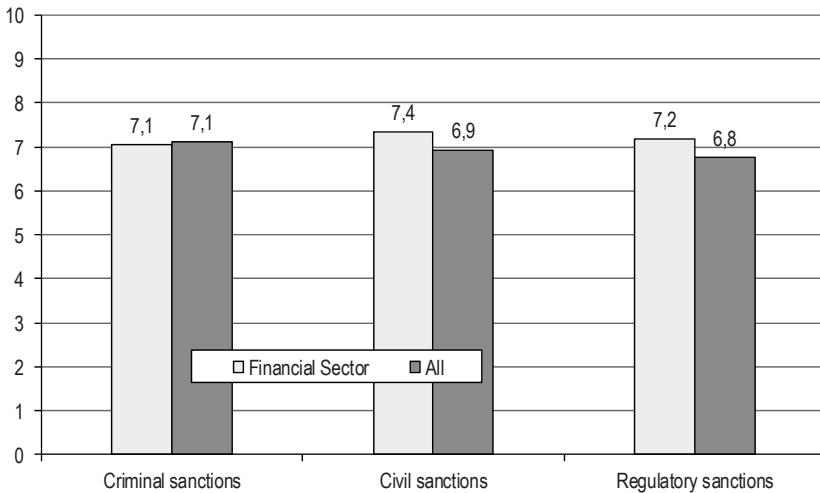
⁴¹⁸ See no. 8 b) of the questionnaire (Annex I.B.).

Figure 145: Motivating effect of sanctions against the superior on creating compliance programs (company size)



No. of answers: All/large/middle-sized/small (131/34/54/37 companies).

Figure 146: Motivating effect of sanctions against the superior on creating compliance programs (financial sector)



No. of answers: All/financial sector (137/43 companies).

sanction is really believed to be more important than a civil sanction as the higher average indicates.

The results for companies according to their size mainly mirror the general results, but give a less consistent picture. Again, the only clear result is that large companies judge all sanctions to be more important than the other companies. In addition, all types of companies consider regulatory sanctions to be the least important measure. Yet only large companies (clearly) and middle-sized companies (slightly) rate a criminal sanction as more important than a civil one. Small companies even consider civil sanctions to be more important than criminal sanctions. However, these differences between the results are rather small (*figure 145*).

Like the results for sanctions against the perpetrator, the results for companies in the financial sector show that there are only subtle differences between the three types of sanctions: The median⁴¹⁹ value is the same for all (8; the average value shows that a civil sanction is regarded to be slightly more important than a regulatory one, which, in turn, is also considered to be even more important than a criminal sanction (*figure 146*).

3. Motivating Effect of Sanctions Against the Company

Third, the interviewees were asked to evaluate on a scale of 1 to 10 (ranking from “not important” to “very important”) how strongly various strategies against companies for offenses of their employees motivate them to take up compliance measures for the prevention and detection of criminal acts within their company. The differences between the results for the different corporate sanction systems are very small and provide the following picture: A corporate criminal liability system with harsh sanctions as well as criminal, civil, and regulatory systems, in which liability is excluded if the company has an effective compliance program, are seen as the most important measures for motivating companies to take up compliance programs. Civil and regulatory liability systems with harsh sanctions but without the option of excluding liability by means of an effective compliance system are viewed as motivating the least (*figure 147*).

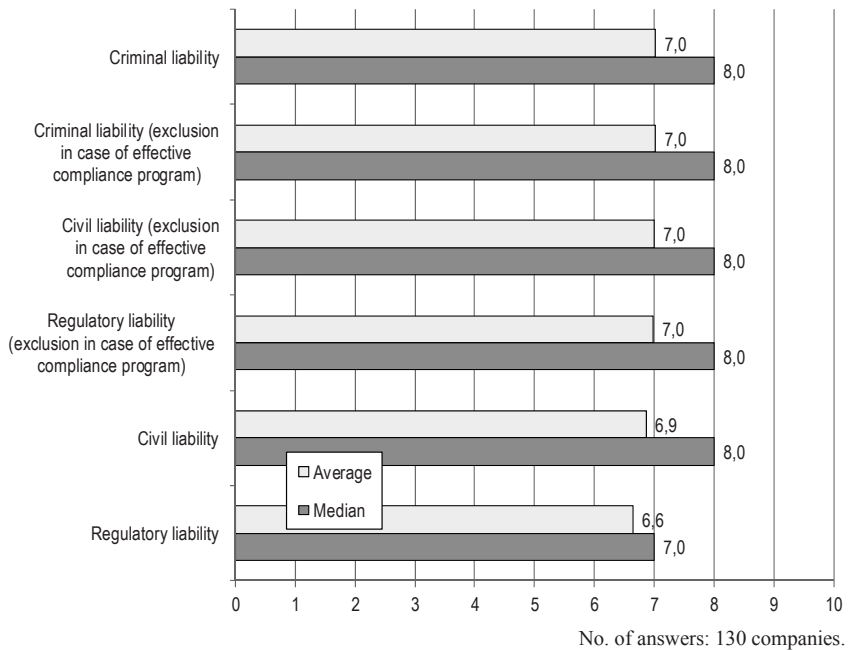
Again, such as in the cases of sanctions against the perpetrator and the superior, the significance test (t-test)⁴²⁰ shows that there is a significant difference between criminal and regulatory liability although the difference between the results is rather small.⁴²¹ Significant differences also exist between regulatory liability and

⁴¹⁹ For details, see *supra* p. 31.

⁴²⁰ For details, see *supra* p. 32 and *infra* p. 233.

⁴²¹ Criminal sanctions & regulatory sanctions (p-value: .010*). For the tables, see *infra* p. 248.

Figure 147: Motivating effect of sanctions against the company on creating compliance programs (general)⁴²²

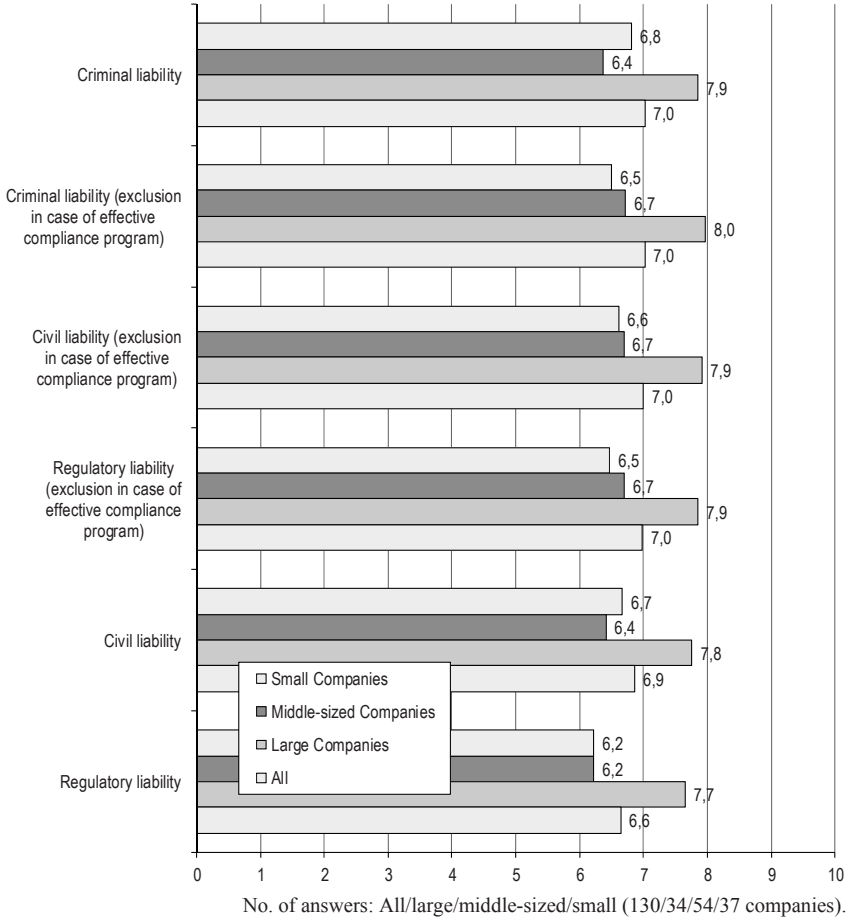


criminal liability with the exclusion of liability in case of an effective compliance program. The same applies to the differences between regulatory liability and civil liability with the exclusion of liability in case of an effective compliance program as well as between regulatory liability and regulatory liability with the exclusion of liability in case of an effective compliance program. The other differences between the measures are not significant. Insofar, obligations with a criminal sanction are regarded to be more important than those with a regulatory one. The bonus for effective compliance programs is preferred by the respondents in comparison to a mere regulatory liability but does not have a special effect on their rating in comparison to a mere criminal liability approach.

The results for companies according to their size show a more diverse picture than the average results for all companies. Again, as with the rating for sanctions against the superior and the perpetrator, large companies judge all sanctions to be more important than the other companies. Once again, all types of companies con-

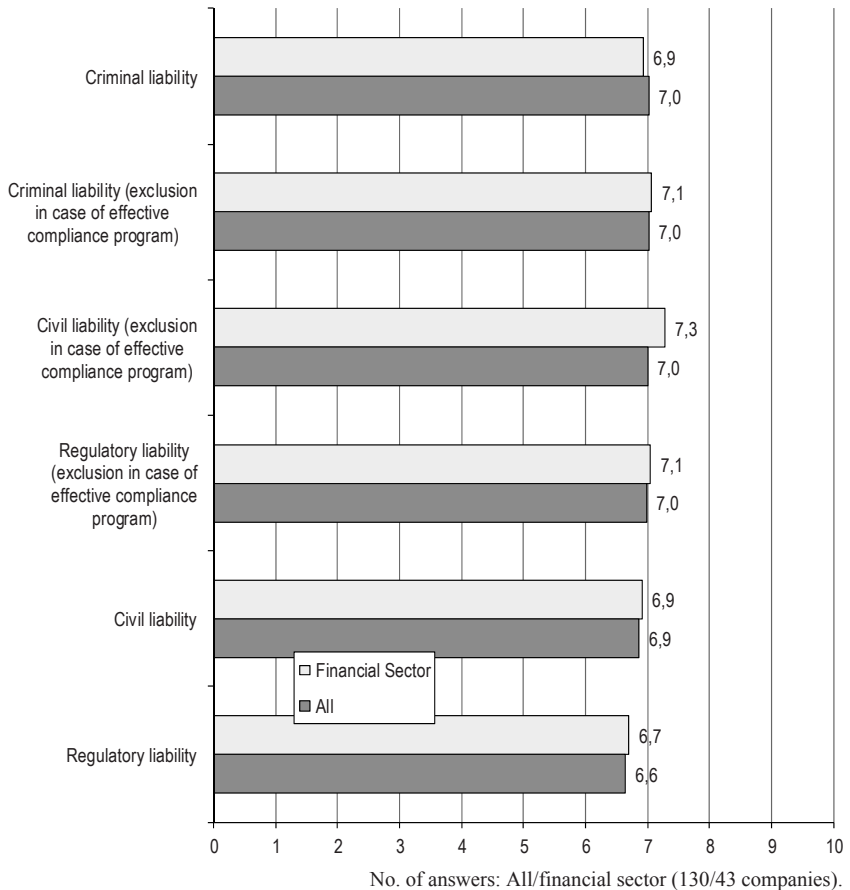
⁴²² See no. 8 c) of the questionnaire (Annex I.B.).

Figure 148: Motivating effect of sanctions against the company on creating compliance programs (company size)



sider regulatory sanctions to be the least important measure. Large companies and middle-sized companies consider a criminal sanction with the exclusion of liability in the case of an effective compliance program to be the most important legal measure towards introducing compliance programs. Also, these companies regard civil and regulatory measures with the exclusion of liability in the case of an effective compliance program to be more important than mere sanctions without such an incentive. In contrast, small companies deem criminal and civil sanctions alone to be the most important measures. Civil, criminal, and regulatory sanctions with the

Figure 149: Motivating effect of sanctions against the company on creating compliance programs (financial sector)



exclusion of liability in the case of an effective compliance program rank lower than pure civil and criminal measures (figure 148).

The results for companies in the financial sector do not differ much from the average results, as there are only subtle differences between the results, but they set priorities differently: A civil sanction system with the exclusion of liability in case of an effective compliance program is in first place, followed by a comparable criminal and regulatory system. Liability systems without incentives (a criminal system being of the same importance as a civil one, but both being more important than a regulatory one) are thought to motivate less (figure 149).

C. Cross-Section Analysis

The answers concerning direct and indirect enforcement mechanisms brought to light three main aspects concerning the motivation to take up compliance measures for the detection and prevention of crimes within companies:

(1) Criminal liability – regardless of whether on the part of the employee, the superior or the company – was seen to motivate significantly more than regulatory liability. While the general evaluation of different legal strategies (the direct enforcement measures, see *supra figure 138*) could not show a significant difference between criminal and regulatory measures, the more detailed analysis showed such a significant difference for all the questions concerning sanctions against the perpetrator, the superior and the company.

(2) The motivating effect of civil liability – regardless of whether on the part of the employee, the superior, or the company – was rated higher than that of regulatory liability. Yet no overall significant difference could be shown.

(3) Liability of the perpetrator – at the criminal, or civil, or regulatory level – is on average regarded to be slightly more important for the motivation to take up compliance measures than liability of the superior and that of the company. Similarly, the liability of the superior – criminal, civil or regulatory – is considered to be slightly more important (on average, but only in part as regards the median⁴²³) than corporate liability. However, this result could not be consistently shown in the median value. In addition, the t-test revealed that there are almost no significant differences between the evaluations of the different measures on the motivation to take up compliance measures.⁴²⁴

III. Interviewed Companies and Interviewees

A. Interviewed Companies

The majority of the companies participating in the second questionnaire (55%) are incorporated companies (Aktiengesellschaft, AG). The second largest group (24%) is limited liability companies (Gesellschaft mit beschränkter Haftung, GmbH), followed by public bodies (7%). Other forms, such as the special form of limited partnerships (Kommanditgesellschaft, KG), where the personally liable partner is a limited liability company (so-called GmbH & Co. KG), or the European

⁴²³ For details, see *supra* p. 31.

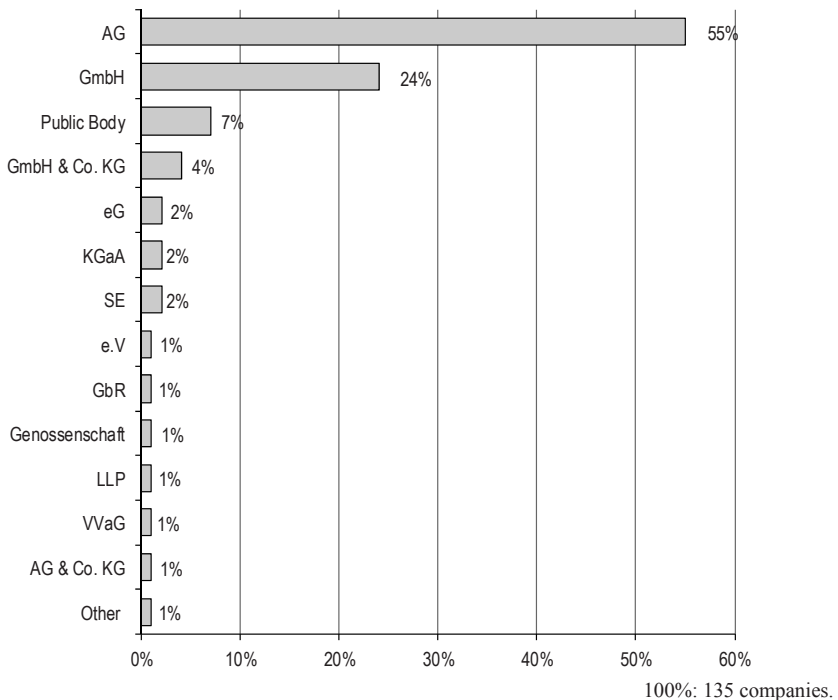
⁴²⁴ For the tables, see *infra* p. 249. For details of t-test, see *supra* p. 32 and *infra* p. 233.

form of incorporated companies (*Societas Europea*, SE), only make up a small number of the interviewed companies (*figure 150*).

The companies were also asked whether they are listed on the stock exchange, as a company attracts more public attention if this is the case. Such a listing is possible in Germany if the companies are incorporated in the form of an “Aktiengesellschaft” or a “Societas Europea”. 28 percent of the companies answered in the affirmative. This means that only about half of the participating “Aktiengesellschaften” and “Societas Europea” are listed and dealt on the stock exchange (*figure 151*).

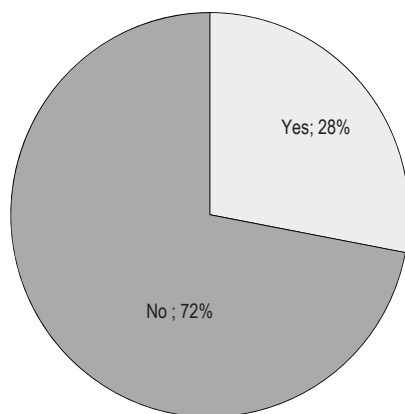
The majority of the participating companies provide financial services, which includes banks and insurance companies. The second largest group consists of manufacturing companies, followed by the sectors “Consumer Business & Transportation”, “Technology, Media & Telecommunications”, and “Energy & Resources” (*figure 152*).

*Figure 150: Legal form of interviewed companies*⁴²⁵



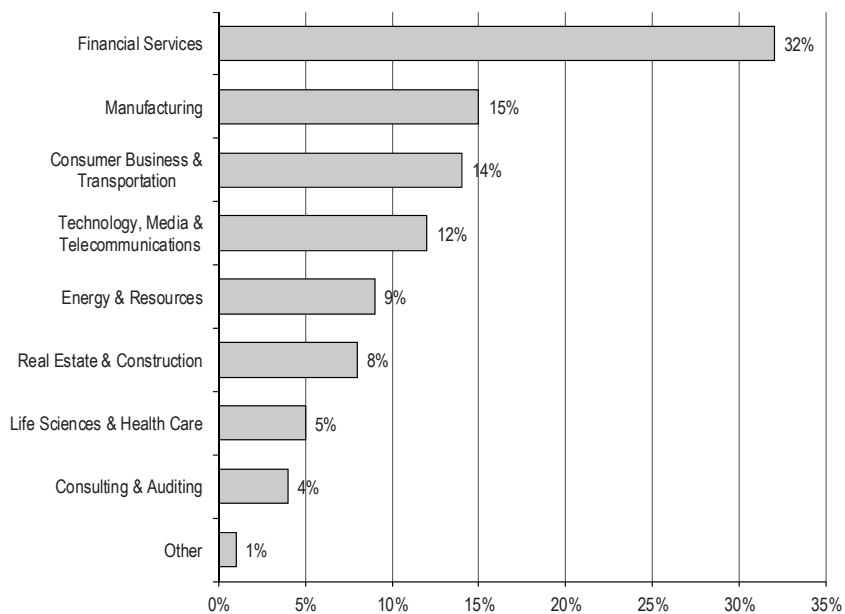
⁴²⁵ See no. 2 of the questionnaire (Annex I.B.).

Figure 151: Listing of interviewed companies on stock exchange⁴²⁶



100%: 134 companies.

Figure 152: Main sector of activity⁴²⁷

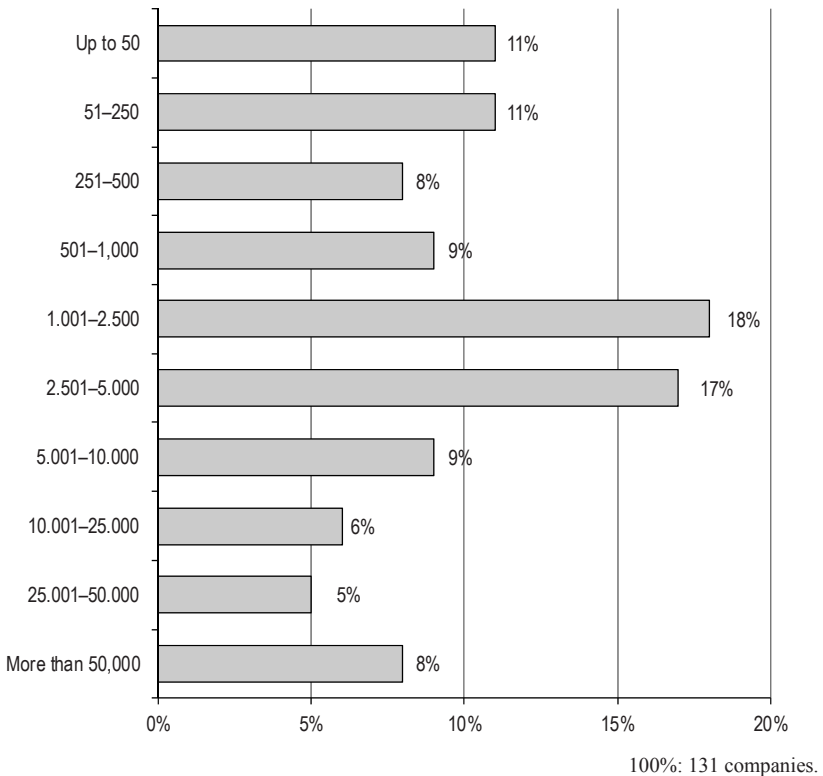


100%: 132 companies.

⁴²⁶ See no. 12 (question 2) of the questionnaire (Annex I.B.).

⁴²⁷ See no. 12 (question 3) of the questionnaire (Annex I.B.).

Figure 153: Number of employees⁴²⁸

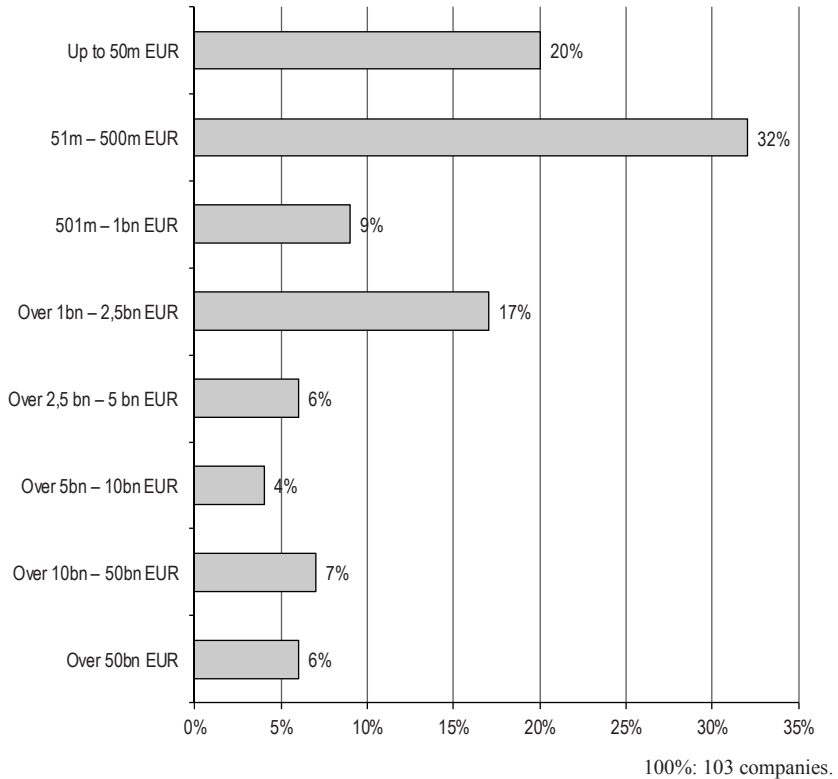


Over 60 percent of the companies have more than 1000 employees worldwide. About 28 percent have more than 5000 employees and can be classified as “large companies”.⁴²⁹ The study also includes a number of smaller companies with up to 500 employees (approx. 30%) that have not yet been covered by most of the existing studies (“small companies”). “Middle-sized” companies account for about 44 percent of the companies (*figure 153*).

Over 50 percent of the companies have an annual turnover of up to 500 million EUR. Forty percent have a turnover of more than one billion EUR, 13 percent of even more than 10 billion EUR (*figure 154*).

⁴²⁸ See no. 12 (question 4) of the questionnaire (Annex I.B.).

⁴²⁹ See p. 2 for the definitions of “small”, “middle-sized” and “large” companies.

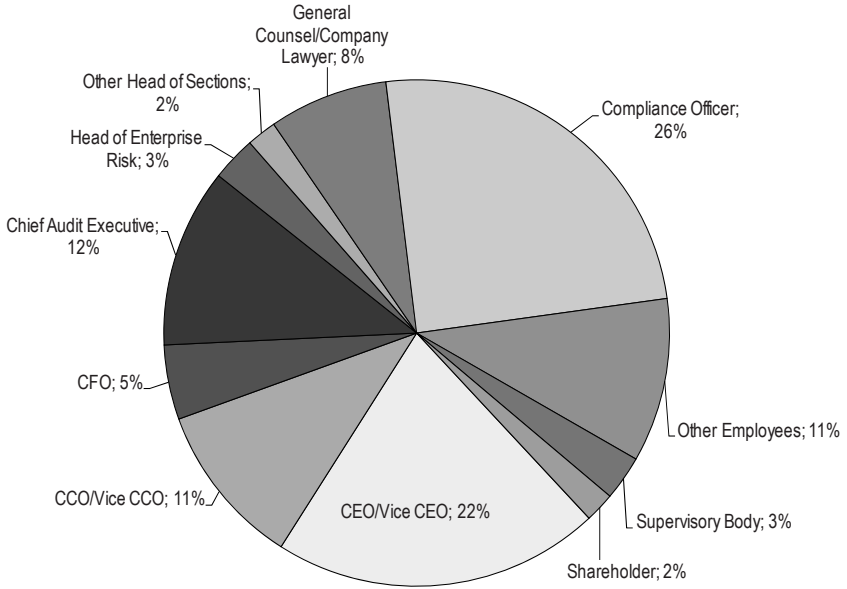
Figure 154: Annual turnover⁴³⁰

B. Interviewees

The questionnaire was mainly answered by senior management (55%), the respondent being either a member of the executive board, the (Vice) Chief Compliance Officer (CCO) or another head of section. Another 26 percent of the responses came from a compliance officer, eight percent from the company's general counsel (Leiter Recht) or a lawyer ("Syndikusanwalt"). Thus, as in the case of the first questionnaire, the vast majority of answers were given by persons at the top level responsible for compliance or by persons responsible for implementing or advising on compliance issues (*figure 155*).

⁴³⁰ See no. 12 (question 5) of the questionnaire (Annex I.B.).

Figure 155: Interviewee's position⁴³¹



100%: 120 companies.

⁴³¹ See no. 13 of the questionnaire (Annex I.B.).

Part 4

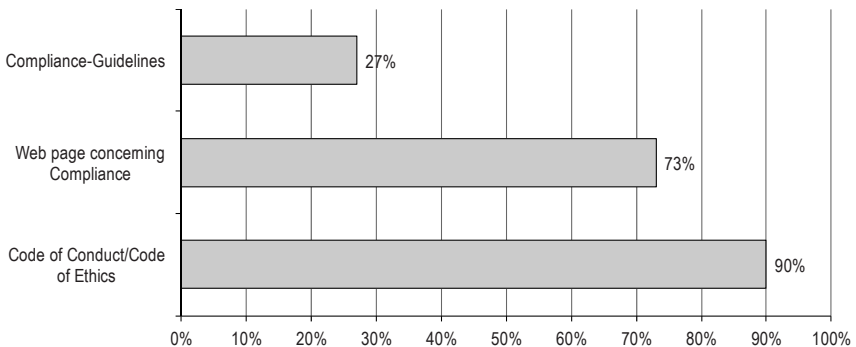
Results of Compliance Documents Published by DAX 30 Companies

In addition to the questionnaire-based survey, the compliance documents published on the Internet by the 30 leading companies listed on the German stock exchange (DAX) were examined (in the following: “the companies”). The analysis concentrated on five different aspects: online presentation of the compliance issues, legal topics covered, ethical topics covered, information and reporting structures, and training on compliance. As the analysis concentrates on the core documents, other measures addressed elsewhere by the companies are not included in the following presentation of results.

I. Compliance and Online Presentation

In a first step, the study analyzed whether companies have taken up the topic of compliance and how extensively they depict it in their Internet presentation. Almost three quarters of the companies have a separate web page that deals solely with compliance. The presentation is, in many cases, easily accessible and can be found in a prominent position. In some companies, however, it is (still) somewhat hidden and connected to other topics (*figure 156*).

Figure 156: Website with internet presentation and documents



Only 27 percent of the companies have guidelines that explicitly use the term “compliance”. The other companies often refer to compliance on their websites and provide a short abstract on the topic. They also have guidelines dealing with the topic compliance that merely have a different name. The following expressions are used in addition to “compliance guidelines”:

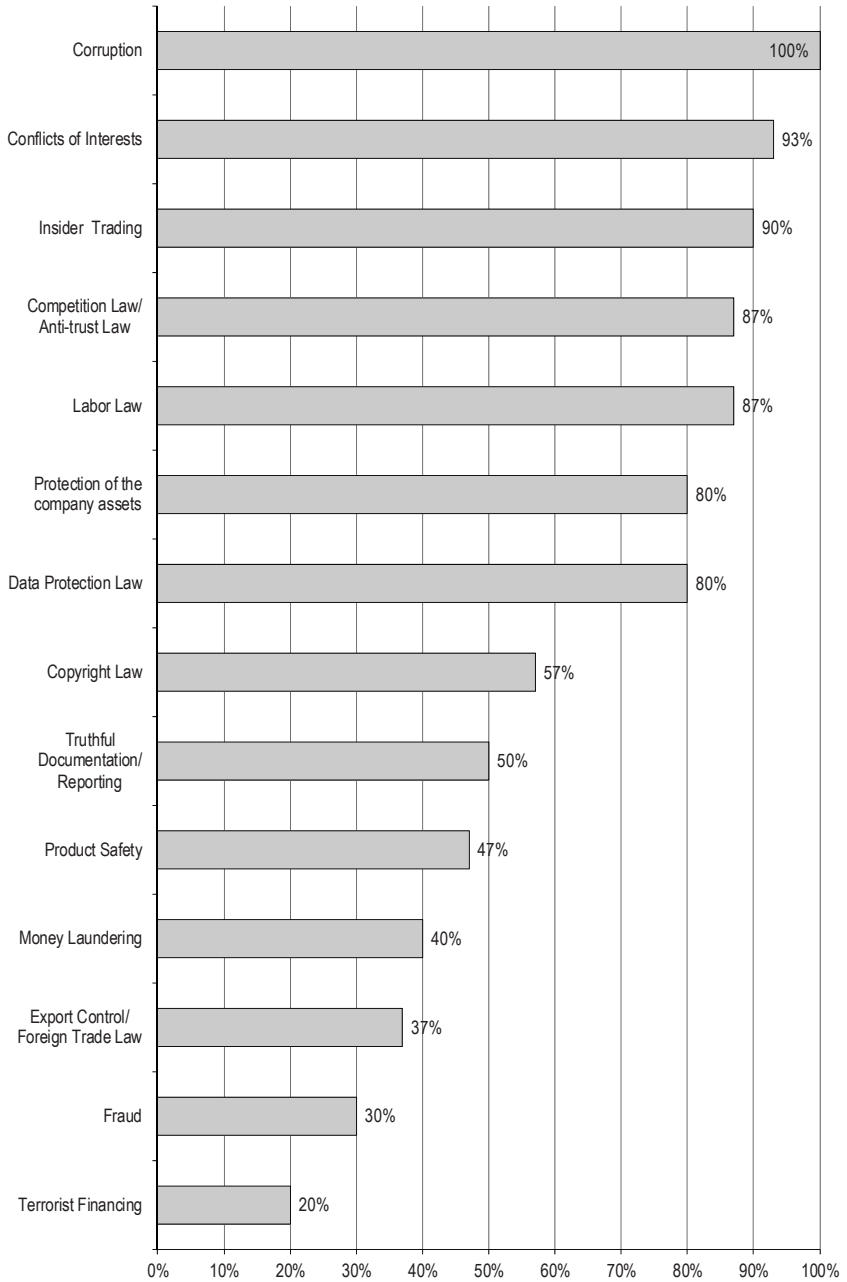
- Verhaltenskodex;
- Verhaltensrichtlinie;
- Ethikkodex;
- Richtlinien für integriertes Verhalten;
- Unternehmenskodex;
- Code of Conduct;
- Code of Ethics;
- Business Conduct Guidelines.

Approximately 50 percent of the companies use a German term, the other 50 percent an English expression. 90 percent of the companies have a code of conduct or equivalent. This figure exceeds 73 percent (the number of websites concerning compliance), as some companies with compliance guidelines also have such a document. Only two companies have neither a compliance codex nor any comparable document. Some terminological confusion exists in this context but, in substance, compliance has become almost ubiquitous among the leading companies.

II. Legal Topics Covered

In a second step, the compliance documents were analyzed in regard to the legal fields or topics covered. The most prominent topic taken up by all companies is corruption. Many companies also address conflicts of interest (93%), insider trading (90%), competition law/antitrust law (87%) and labor law (87%). Prominent roles are not played by money laundering (40%), export controls (37%), fraud (30%) and terrorist financing (20%). The results show that, under the term “compliance”, many different aspects from the areas of criminal law, civil law, and administrative law are drawn together, although a clear emphasis is on criminal law (*figure 157*).

Figure 157: Legal topics covered



III. Ethical Topics Covered

In addition to the legal topics covered, the compliance documents were also analyzed to what extent other aspects are addressed. The results show that compliance with legal regulations is by no means the only aspect covered. The overwhelming majority of the companies also address discrimination (93%) and protection of

Figure 158: Ethical topics covered

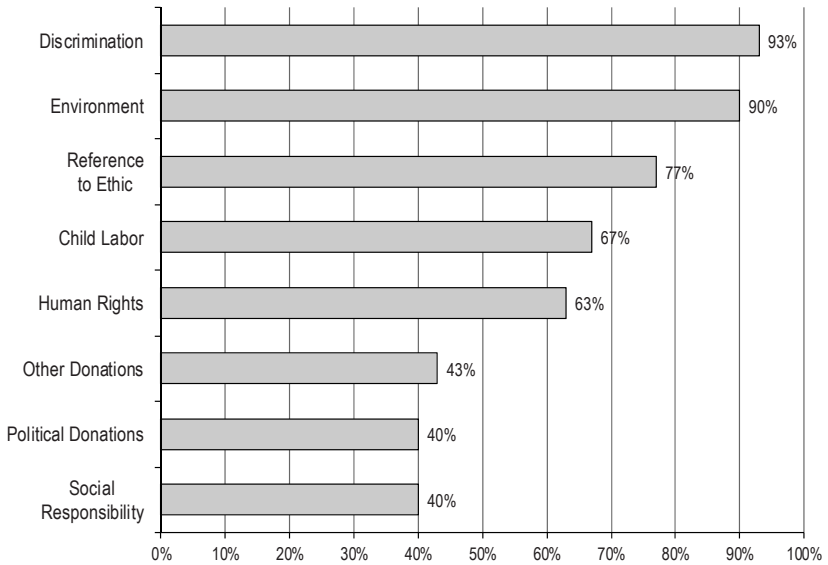
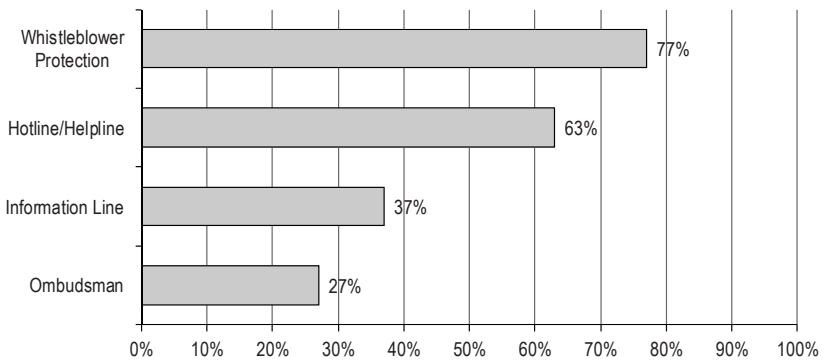


Figure 159: Information and reporting structures



the environment (90%). A reference to ethics is made by 77 percent. Two thirds take up the problem of child labor and human rights. Of less importance are (political) donations and other aspects of social responsibility (*figure 158*).

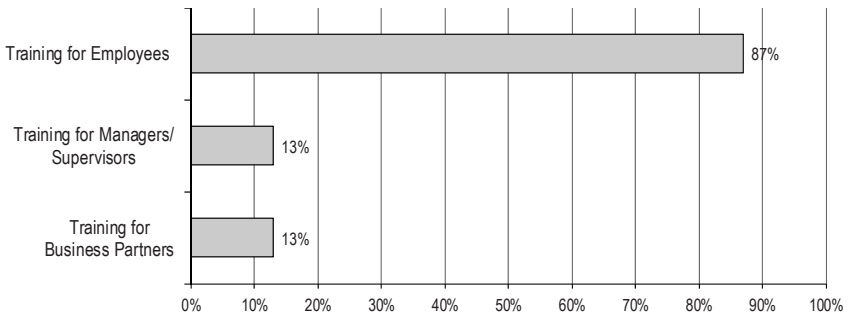
IV. Information and Reporting Structures

Besides a description of the relevant compliance rules and aspects, the compliance documents also deal with the ways in which employees can obtain further information or report incidents. 27 percent of the companies have some kind of ombudsman who can be contacted to a certain degree for further information on compliance issues but mainly in order to report incidents. 37 percent of the companies have set up an information structure that employees can use to gain further information, especially when they are in doubt about whether a certain behavior is allowed or not. Almost two thirds of the companies have implemented a hotline or helpline to which incidents can be reported. In almost all cases, this reporting can be done confidentially, in some cases also anonymously. 77 percent of the companies also address the aspect of whistle-blower protection, at least by explicitly making it clear that any retaliation is forbidden (*figure 159*).

V. Compliance Instruction

The last aspect analyzed was the scope of training and education. 87 percent of the companies identify ordinary employees as the target group. Instructional measures include information meetings, handing out compliance guidelines/codes of conduct as well as special handbooks or brochures. In some companies, regular

Figure 160: Compliance instruction



employee newsletters also exist on compliance. Face-to-face training is very common as is web-based training or e-learning programs. Often there exists special training for specific groups of employees, especially for newly employed personnel. Some companies provide for refresher training after a fixed period of time (e.g. three years). Several companies also work with questionnaires or surveys in order to monitor learning achievements.

Only 13 percent of the compliance documents specifically address training at the management level. The example of specific training courses for new management personnel is the exception. Sometimes the responsibility of management to instruct employees is stressed additionally. Also, 13 percent of companies list training measures for business partners, especially suppliers. These include workshops as well as web-based trainings.

Although the documents and websites do not cover the training measures in depth, it becomes clear that compliance training is primarily designed for the vast majority of employees below (top) management level (*figure 160*).

Summary and Conclusions

I. Object, Aim, and Methodology of the Present Study

Compliance programs and similar systems are widespread in large and middle-sized companies in Germany. Studies of consultancies and other economic literature illustrate the broad use of these systems for various tasks, ranging from the prevention of corporate crime to the improvement of the company's reputation. In recent years, groundbreaking academic and practical work, esp. in foreign countries, has also developed innovative concepts for the use of these programs in new criminal policies against economic crime.

Till now, however, the German and the European legislators have not taken up these proposals. The current German draft on corporate criminal liability is the first substantial step in this direction. One of the main reasons for the reluctance of the legislators is a lack of factual information about prevalence, structure, and essential elements of these programs as well as their possible function and value for the prevention and detection of corporate crime. In addition, many – especially factual – questions are open, such as: Do these programs indicate a paradigm shift with a successful new approach to the prevention and detection of economic crime, amending traditional state prosecution with new self-regulatory normative systems? Or do they primarily serve as “window dressing” for companies and as new sources of income for consultancies promoting the new approach in colorful studies with detailed statistics? And, ultimately: How could this new approach toward private corporate compliance be embedded in the traditional system of state prosecution based on the prosecution of acting perpetrators and supervising managers by means of criminal law combined with a system of regulatory sanctions against companies?

Against this background, the present study is the first independent scientific empirical research in Germany that analyzes not only the status and topics of compliance programs, but their possible effects for the prevention and prosecution of economic crimes and their integration into the traditional criminal justice system, as well. Methodologically, the research is primarily based on two empirical surveys with two detailed questionnaires, each of which was sent to more than 5000 companies, resulting in 140 and 148 qualified answers respectively which have been examined in this analysis.⁴³²

⁴³² For the methodology of the study, see *supra* p. 26 et seq. See also *infra* Part 5 II.1 (p. 201) and the introductory comment to Part 5 III (*infra* p. 204).

The vast majority of answers to the questions were given by managers at the top level of their companies and responsible for compliance or by experts responsible for implementing or advising on compliance issues.⁴³³ About 83 percent of the interviewees in the first survey and 84 percent of the interviewees in the second survey belong to the top management or deal with legal and compliance issues. About 43 percent of the interviewees in the first survey and 38 percent of the interviewees in the second survey are members of the executive board or the chief compliance officer. The participating companies represent a broad spectrum of various company sizes and sectors: In the first survey (resp. the second survey) about 46 percent (55%) of the companies are incorporated companies (Aktiengesellschaft) and 15 percent (24%) limited liability companies (Gesellschaften mit beschränkter Haftung – GmbH).⁴³⁴ About 36 percent (28%) of them are listed on the stock exchange.⁴³⁵ 34 percent (32%) represent financial services, 17 percent (15%) manufacturing, and 9 percent (14%) consumer business and transportation.⁴³⁶ In both surveys, over 60 percent of the companies have more than 1000 employees worldwide.

As a consequence, the answers given by high-ranking representatives of these companies come from persons with considerable specialized knowledge and represent a broad sample of the German economy. Since most of the companies addressed are clients of excellent business consultancies, their engagement and knowledge regarding compliance programs might be greater than that of the average company. Furthermore, the addressees could decide on their own whether or not to participate in the questionnaires (self-selection), and the response rates are rather low.⁴³⁷ Thus, with respect to some questions the results might not show a truly representative picture of the situation in German companies. For example, more companies dealing with compliance issues could have taken part than other companies. The questionnaires had addressed this particular issue by specifically motivating companies without a compliance program to participate in order to receive a representative picture. In addition, at least concerning the main sector of activity the responding companies show a comparable distribution to the companies the questionnaires were sent to.⁴³⁸

⁴³³ See figures 122, 155.

⁴³⁴ See figures 116, 150.

⁴³⁵ See figures 117, 151.

⁴³⁶ See figures 118, 152.

⁴³⁷ See *supra* p. 27 and p. 30.

⁴³⁸ See *supra* note 155 and note 157 as well as figures 118, 152.

II. Empirical Results on the Status of Compliance Programs in Germany

The empirical research of this study revealed that compliance in Germany has clearly gained ground and is widespread in the economic sector. The following *ten main aspects* characterize the current status of compliance:

1. For large and middle-sized companies, especially ones that are publicly traded, compliance has become a normal part of business life. The question for these companies is not whether to invest in compliance at all but merely in which fashion to do so. On average, 84 percent of all companies questioned reported that they have a compliance program.⁴³⁹ Non-listed companies tend to be more reluctant to introduce a compliance program. Also, small companies are less likely to have a compliance program; yet the size of the company does not play the same decisive role as the question of listing. Many companies with a compliance program have recently improved it.⁴⁴⁰

2. The areas covered by compliance programs are limited. Among the most common and among the ones regarded as most important by the companies are corruption, competition law/antitrust law, data protection, and the protection of company assets from theft, fraud, etc.⁴⁴¹ This shows that compliance for companies primarily means “criminal compliance” and “regulatory compliance”. However, the programs do not merely refer to the legal regulations but also equally include ethical aspects.⁴⁴² Compliance therefore has a close connection to business ethics and functions to cover a multitude of interests, different types of regulation and legal areas.

The topics chosen for compliance programs are very much based on the risk of substantial sanctions in the fields of corruption, antitrust law, and increasingly data protection that has become visible due to prominent cases and a correspondingly vivid public discussion during the past decade. However, this limited selection of possible compliance topics raises some doubts as to whether the actual major legal risks within the companies are adequately covered. Thus, in practice compliance is not yet a general approach towards preventing and detecting infringements of all types of law within companies.

3. Compliance in many companies has been implemented by means of organizational measures, especially by creating a compliance department or appointing a compliance officer: in 42 percent of the companies dealing with compliance a spe-

⁴³⁹ See figure 5, 8, 156, and the remark on p. 200.

⁴⁴⁰ See figure 87.

⁴⁴¹ See figure 9.

⁴⁴² For the aspects covered by compliance programs, see figure 19; for the importance of the covered compliance aspects, see figures 13, 15.

cialized compliance department is responsible, 66 percent of all participating companies have at least appointed a compliance officer.⁴⁴³ The number of employees working on compliance topics is not very high, depending, of course, on the size of the company.⁴⁴⁴ In 84 percent of the companies no more than 20 persons work on compliance issues. This rather low number raises concern about whether its “effective” enforcement is possible with so few employees.

4. Companies have taken up a variety of measures to communicate compliance, with written codes of behavior as well as trainings and seminars being the most common ones.⁴⁴⁵ About half of the companies with a compliance program include external experts, especially lawyers, and are ready to invest a substantial amount of money in it.⁴⁴⁶ Training methods often comply with modern standards of education, including techniques of controlling learning success.⁴⁴⁷

5. Companies have also taken up a variety of measures for the detection of possible infringements.⁴⁴⁸ Internal audits, used by 69 percent of the companies, are the most common and most important measure. But external audits also play a major role, referred to by 56 percent of the companies. About half of the companies have a hotline system for anonymous reporting. While anonymous reporting is regarded to be very important, the existence of a special hotline is not seen as being equally relevant. Compared with earlier studies, acceptance for such hotlines seems to be growing.⁴⁴⁹ Rewards for relevant information are not only the least common measure, used by 31 percent of the companies, but it is also regarded to be of no major importance for the detection of incidents.

6. The involvement of top management in elaborating or fostering compliance issues is a substantial part in the life of the majority of the companies.⁴⁵⁰ The interviewees rated such a top management commitment on a scale of 1 to 10 (ranking from “not involved” to “strongly involved”) with 7.3. The visibility of the personal commitment of top management in compliance issues for the majority of the employees (ranking from “not visible” to “highly visible”) was rated 7.1. The executive board rated the commitment and visibility more positively than the group of compliance officers. The main activities of top management include communicating compliance issues, being involved in the training process, and participating

⁴⁴³ For details see figure 20 (organizational responsibility for compliance programs) and figure 28 (compliance measures for information and education) and figure 38 (detection measures).

⁴⁴⁴ See figures 26, 27.

⁴⁴⁵ See figure 28.

⁴⁴⁶ See figures 32–34.

⁴⁴⁷ See figures 35, 36.

⁴⁴⁸ See figures 38, 39.

⁴⁴⁹ For the studies, see *supra* p. 73.

⁴⁵⁰ For details, see *supra* p. 84 et seq.

in control measures. The “tone of the top” and good moral standards were considered the most effective compliance measures.⁴⁵¹

7. Culture and values play an important role in many companies. One main aspect concerns the anti-corruption policy. 54 percent of the companies have value limits for gifts, in the majority of cases up to 50 EUR.⁴⁵² Special procedures for determining tolerable gifts exist in 47 percent of the companies.⁴⁵³ Besides corruption as a specific topic, values are generally important in the majority of companies. 53 percent of the companies have a program on corporate social responsibility besides a compliance program.⁴⁵⁴ The number is higher for large and/or listed companies.⁴⁵⁵ 60 percent of the companies make contributions to the wellbeing of society.⁴⁵⁶ Social activities range from the training of employees and suppliers over the screening of business partners to the participation in the UN Global Compact Initiative.⁴⁵⁷

8. The majority of incidents that were reported within companies were committed not for the benefit of the company but rather show that the company was a victim of its own employees or of third parties.⁴⁵⁸ Unfortunately, not more than a half of the interviewed companies provided information on these aspects. Among the responding companies theft, unlawful appropriation, and fraud – offenses that mainly affect the company’s assets – make up the majority of offenses committed by employees and by third parties.⁴⁵⁹ Compliance measures are therefore not only one of public interest but are in the own interest of the company to protect its assets. Hence, companies that have already had to deal with a number of incidents have implemented more reporting mechanisms and place a much higher value on them than companies without reported incidents.⁴⁶⁰ Corruption, breaches of anti-trust law, and data abuse, all offenses that could trigger corporate (criminal) liability, rank behind the aforementioned offenses committed against the companies. Nonetheless, corruption and anti-trust cases are the main offenses investigated within companies.⁴⁶¹

⁴⁵¹ See figure 92.

⁴⁵² See figures 55–57.

⁴⁵³ See figure 58.

⁴⁵⁴ See figure 5.

⁴⁵⁵ See figures 6, 7.

⁴⁵⁶ See figures 60, 61.

⁴⁵⁷ See figure 59.

⁴⁵⁸ See figures 44, 45 (concerning reported incidents) and figures 63, 64, 66 (victimization of company and third parties).

⁴⁵⁹ See figures 65, 66.

⁴⁶⁰ See figures 49–51.

⁴⁶¹ See figures 71, 72.

9. For the investigation of incidents (compliance investigations), the companies in the great majority of cases have not set up rules for a standardized procedure as part of their compliance program.⁴⁶² Nonetheless, a number of companies have implemented rules for conducting investigations and do not merely decide on a case-by-case basis. Many investigations are led by an internal department, in 71 percent of companies by the internal audit unit.⁴⁶³ In more than 40 percent of the cases, external experts are involved.⁴⁶⁴

10. Employee protection in the context of internal investigations is addressed by a number of companies but is not yet common place. 64 percent of the companies expect full cooperation of their employees in internal investigations.⁴⁶⁵ But only 30 percent of the companies have taken precautions for protecting the interests of affected employees.⁴⁶⁶ The main protection measure is the possibility to contact a lawyer followed by the instruction that statements of the employee could be used in a criminal proceeding and the instruction about the right to remain silent in case of self-incrimination.⁴⁶⁷ The size of the company has no decisive influence on the protection measures.⁴⁶⁸

III. Consequences and Hypotheses for Criminal Policy

The aim of the present empirical survey was not only to provide *facts* for possible compliance-based criminal policies against corporate crime. In addition, the surveys asked the questioned experts for their evaluation of the effectiveness of various strategies for crime prevention. It is obvious that these facts and the evaluation of the questioned experts are – on their own – not a sufficient basis for the development of new compliance-based criminal policies: First, the development of new criminal policies requires additional – especially value-based – input from various other (especially legal) disciplines, particularly with regard to balancing the aspect of effectiveness with the aspects of liberty and human rights protection. Second, the evaluations of the interviewees, especially their answers to the evaluative questions, can provide only general indications regarding the reported contents and should not be viewed as conclusive. And third, the evaluations of the various options sometimes did not differ considerably and the above cited response rate to

⁴⁶² See supra p. 104.

⁴⁶³ See figure 74.

⁴⁶⁴ See figure 73.

⁴⁶⁵ See supra p. 108.

⁴⁶⁶ See supra p. 108.

⁴⁶⁷ See figure 78.

⁴⁶⁸ See figure 79.

the questionnaire was small, so that an influence of this selection process to the results cannot be excluded.⁴⁶⁹

However, despite these caveats, the obtained facts and evaluations allow the formulation of certain empirically founded hypotheses, which then must be tested and developed further by empirical, dogmatic, and comparative legal work. For this – more modest – purpose, the analyzed material is very beneficial: The answers result not only from highly competent experts with a good oversight on the compliance measures in their companies but – as far as the effectiveness of certain options had to be evaluated – were given by the persons who are among the prime addressees of these measures and therefore can authentically (and better than lawyers) judge their motivating value on themselves, their peers and their colleagues. In addition, all responses were gathered and analyzed in a methodologically correct procedure. Above all, there are no better empirical means for evaluating the respective questions about the effectiveness of the various preventive measures at hand, making it a valuable element for judging the respective criminal policies.

For that reason, the present study does not present fixed policy recommendations. Instead, it formulates *ten main hypotheses* for criminal policy which are followed by the present surveys' corresponding results supporting the respective hypothesis. Thus, the following summarizing results of the evaluative part of the questionnaire and the underlying facts are not structured according to the questions posed above. Instead, they are arranged according to the relevance of the answers for the proposed hypotheses. These hypotheses are submitted for further discussion and the necessary normative evaluation especially in future interviews with practitioners, in comparative legal studies, and in interdisciplinary discourses with lawyers, economists, criminologists, and legal politicians. These *ten main hypotheses* and their underlying results of the present study are:

1. Compliance programs can contribute considerably to the prevention and detection of economic crimes. Thus, there are good reasons for companies and the legislator to make use of the potential which compliance programs offer for preventing and detecting corporate crime. This is based both on the facts and the evaluations of the reported answers.

a) The present analysis shows the importance of compliance programs, first by their broad application and importance in today's practice: More than two thirds of the interviewed companies have a compliance program.⁴⁷⁰ The companies demonstrate the relevance of these systems by updating them regularly, which is primarily necessitated by legal modifications.⁴⁷¹ In addition, investments in these programs

⁴⁶⁹ See supra p. 27 and p. 30.

⁴⁷⁰ See figure 5.

⁴⁷¹ See figures 87, 88.

seem to be considerable (but not excessive),⁴⁷² and teaching methods in compliance are advanced and controlled.⁴⁷³ About 71 percent of the companies possess a written code of behavior.⁴⁷⁴ The majority of companies have defined clear limits for the acceptance of gifts.⁴⁷⁵ More than half of the companies have guarantees for anonymous and confidential reporting of irregularities.⁴⁷⁶ In almost all companies, compliance is delegated to a unit where it can be dealt with on a day-to-day basis.⁴⁷⁷ About 42 percent of the companies have specific compliance departments.⁴⁷⁸ 74 percent of the responsible departments report to the CEO, 21 percent to the CFO, and 21 percent (also) directly to the supervisory board, thus further demonstrating the importance of the company's compliance regime.⁴⁷⁹ The percentage of compliance programs installed in the interviewed companies (84%) exceeds the number of installed codes of ethics (78%), corporate social responsibility systems (64%), and corporate governance codes (55%).⁴⁸⁰

The compliance programs especially enforce administrative law (84%) and criminal law (82%), followed by ethics (65%), regulatory offenses (51%), and civil damage rules (25%).⁴⁸¹ The programs are markedly oriented toward averting the risk of substantial sanctions in the fields of corruption and antitrust law as well as the risks of data law infringements.⁴⁸² The motivation for such programs aiming at the prevention and detection of crimes often come in the form of legal obligations.⁴⁸³ When evaluating the relevance of general considerations for the establishment of these programs on a scale of 1 to 10 (low motivation/high motivation), the companies focus especially on public reputation (8.6), the expectations of shareholders (7.8), business partners (7.7), markets (7.5), as well as ethical considerations (7.2).⁴⁸⁴ However, these additional grounds for compliance programs do not change their aims of preventing and detecting corporate crime but often provide important and additional reasons for taking up these measures in companies. In addition, the respective motivating factors (such as loss of reputation or unfulfilled expectations of third parties) are often indirect consequences of criminal sanctions.

⁴⁷² See figure 34 in regard to expenses on external training experts.

⁴⁷³ See figures 35, 36.

⁴⁷⁴ See figure 28.

⁴⁷⁵ See figure 55.

⁴⁷⁶ See figure 38 and accompanying text.

⁴⁷⁷ See figure 20. See also figure 38 (66% of the companies have a compliance officer/compliance department).

⁴⁷⁸ See figure 20.

⁴⁷⁹ See figure 23.

⁴⁸⁰ See figure 5.

⁴⁸¹ See figure 19.

⁴⁸² See figure 9.

⁴⁸³ See figure 86 and figure 88 (reasons for improving compliance programs).

⁴⁸⁴ See figure 99.

b) Furthermore, the companies qualified the first *improvement of their own compliance programs on prevention and detection of illegal acts* on a scale of 1 to 10 (little change/a lot of change) in a more positive way (7.1) than the creation of the program (6.7).⁴⁸⁵ The evaluation of the interviewees regarding the overall *effectiveness* of their present compliance program in the prevention and detection of crimes on a scale of 1 to 10 (not effective/very effective) resulted in an average ranking of 7.0.⁴⁸⁶ The interpretation of this rating must take into account that the interviewees did not judge the effectiveness of an “ideal” compliance program but rather the effectiveness of their own concrete system, which can be better evaluated by them than an abstract system and – above all – which 26 percent of the responding companies intend to develop further.⁴⁸⁷

The overall positive evaluation of specific compliance measures for the prevention and detection of crimes is also illustrated by the fact that the interviewees judged the importance of their companies’ information and education measures on a scale of 1 to 10 (not important/very important) to be very high, especially with respect to seminars (8.4), written codes of behavior (8.4), and individual communication (8.2).⁴⁸⁸ The same applies for the detection of crimes, especially by compliance officers or departments (9.3) or anonymous reporting (8.2).⁴⁸⁹ In another answer, the effectiveness of several specific compliance measures (such as the “tone of the top” ranking 9.3 or good moral standards ranking 9.2) was evaluated even higher than some legal sanctions (such as civil damages against companies, which ranked 7.4 or civil damages against the perpetrator, which ranked 6.7).⁴⁹⁰ Thus, the positive evaluation of the effectiveness of compliance programs and especially its various features can compete with the perceived effectiveness of the present legal measures for the prevention of crime.⁴⁹¹

c) Above all, the high effectiveness of compliance programs for the prevention of crime was further demonstrated in the second survey by the comparative analysis of the various approaches for preventing criminal behavior: On a scale of 1 to 10 (not important/very important), the interviewees again ranked the effectiveness of compliance programs for the prevention of crime (comprising “Straftaten” and “Ordnungswidrigkeiten”) higher (average 7.3 and median 8.0) than that of a sanctioning regime against the perpetrator (average and median 7.0) and sanctions against the superior (average 6.5 and median 7.0) or the company (average 6.5 and

⁴⁸⁵ See figure 89. The second and third improvements did not change the program as much as the first improvement.

⁴⁸⁶ See supra Part 2 II.B.2.b). p. 132.

⁴⁸⁷ See supra Part 2 II.B.1.f), p. 123.

⁴⁸⁸ See figure 30.

⁴⁸⁹ See figure 39.

⁴⁹⁰ See figures 92, 109.

⁴⁹¹ For the latter, see *infra* hypothesis no. 4 and 5 as well as figure 109.

median 7.0).⁴⁹² This was especially clear in the evaluations of interviewees of large or middle-sized companies where compliance programs are more common⁴⁹³ as well as evaluations of the financial sector, where a long history of and experience with compliance programs exists.⁴⁹⁴ When asked about the benefit of the compliance program in comparison to its costs, a majority of 37 percent of the companies answered that the benefits prevail, 35 percent considered costs and benefits to be more or less equal, and 28 percent saw the costs prevail.⁴⁹⁵ The picture is even clearer among large companies, which have a program more often than small companies and whose program is often very expensive due to the size of company: 44 percent of the large companies considered the benefits to outweigh the costs and only 19 percent felt that the costs prevailed.⁴⁹⁶

2. The effectiveness of compliance programs presently applied in Germany can be improved, thus making compliance-based policies even more effective, especially for the prevention of crime. With respect to their effectiveness, future compliance-based business programs and criminal policies against economic crime should especially put more emphasis on detection procedures, including regulations for the protection of the employees. Such protective measures are essential as functional equivalents for the traditional safeguards provided by the traditional state-based criminal policies in the criminal and criminal procedural codes. However, the demand for more effective compliance measures and the balancing of this demand with safeguards can only be decided by value-based legal evaluation.

The need for improvements became clear especially in the field of detection, when companies were asked to evaluate – on a scale of 1 to 10 – whether their compliance programs had effectively supported investigations: The above cited average ranking was only 6.7.⁴⁹⁷ At the same time, most responses showed that the majority of compliance programs do not contain clear rules, responsibilities, and procedures for infringement cases (which might explain a lower rating for detection measures in the previously mentioned question). Yet, 54 percent of the companies acknowledged that they had specific rules and/or procedures outside their compliance programs.⁴⁹⁸

⁴⁹² See figure 126 (however note the results by the t-test showing a significant difference between effective compliance programs and sanctions against the superior as well as against the company, but not compared to sanctions against the perpetrator).

⁴⁹³ See figure 127 and – for the dependency of compliance programs on the size of the company – figure 6.

⁴⁹⁴ See figure 128.

⁴⁹⁵ See figure 90.

⁴⁹⁶ See figure 91.

⁴⁹⁷ See supra Part 2 I.D.2.b), p. 104.

⁴⁹⁸ See supra Part 2 I.D.2.b), p. 104.

In cases of internal investigations, according to the answers given, 80 percent of the companies that have taken up precautions for employees⁴⁹⁹ instruct the employees that their statements might be used against them and 76 percent of these companies inform the employees that they can remain silent if they would otherwise incriminate themselves.⁵⁰⁰ However, 64 percent of all companies expect their employees to fully cooperate with them (while 36 percent abstained from answers).⁵⁰¹ If the detection and investigation of corporate crime by the concerned companies is to be improved, the respective procedures must also be better regulated by company rules (and, in cases of legal incentives for compliance measures, also by legislation).

3. The vague term of “compliance programs” can be concretized by differentiating some highly effective compliance measures for the prevention and detection of economic crimes. This is a prerequisite for the description of the concept of compliance programs and its integration into legal concepts. However, the use and practicability of the necessary elements of compliance programs always depends on specifics of the concrete companies concerned, such as their size and business sector. This requires special care with respect to general duties for the implementation of compliance measures, e.g. by providing sufficient room for self-regulation.

The evaluation of the effectiveness of the interviewed companies' compliance measures in *preventing* illegal behavior of employees on a scale of 0 to 10 identified a convincing sample of effective measures and strategies: These were especially the “tone of the top” (9.3), good moral standards (9.2), informing employees (8.5), internal audits (8.5), internal sanctions (8.3), compliance officers (8.2), compliance training (8.1), explaining ethics (7.9), whistle-blower protection (7.8), and reporting procedures such as hotlines (7.7).⁵⁰²

The ranking of *detection measures* for economic crime identified the following measures: the installment of a compliance department (9.3), internal audits (8.6), anonymous reporting (8.2), ombudspersons (7.4), hotlines (6.8), and external audits (6.4). In contrast, rewards were not considered to be effective and ranked only at 3.1 with at least half of the respondents not even rating it higher than 1.0.⁵⁰³

In their own practical experience, companies that have installed at least one detection measures especially use internal audits (100%), compliance departments (96%), external audits (83%), anonymous reporting (76%), hotlines (73%), ombudspersons

⁴⁹⁹ 30 percent of all companies have taken up precautions for employees.

⁵⁰⁰ See figure 78.

⁵⁰¹ See supra Part 2 I.D.3., p. 108.

⁵⁰² For more details, see figures 92–94.

⁵⁰³ See figure 39.

(66%), and rewards (46%).⁵⁰⁴ Thus, a more in-depth analysis can facilitate a generalization of these measures, which can be applied in legal concepts in order to define the types of measures for which incentives or legal requirements are created. With that said, the diverse picture also indicates that setting the same general requirements for all companies is problematic and that there might be good grounds for discretion and self-regulation.

4. In order to foster the installment of compliance programs, the legislator can directly demand compliance measures for specific areas by means of general norms. Such a *direct* legal obligation requiring the creation of specific compliance measures, accompanied by civil and criminal sanctions for cases of non-implementation, is the most effective way to enforce compliance programs in companies. Since this can create intrusive burdens for companies and difficult definitional tasks for the legislator, such direct sanction-supported duties to install specific compliance programs should especially be used for sector-specific compliance regimes (as illustrated in the areas of money laundering or insider trading) and require specific legal justifications.

If the legislator were to create “direct” legal obligations to introduce compliance programs, the interviewees judged the effectiveness of the various implementation techniques for the prevention of crimes to be as follows: 64 percent considered the introduction of *general standards with room for self-regulation* to be most effective.⁵⁰⁵ The larger the interviewee’s company, the higher the percentage of answers in favor of the effectiveness of general standards was.⁵⁰⁶ 19 percent even regarded precise and detailed provisions that do not leave room for much self-regulation to be the most effective way. Only 17 percent suggested having no precise and detailed regulations. Thus, more than 80 percent of the companies regard a clear legal framework for setting up and implementing a compliance program to be necessary for an effective compliance structure, hence circumstances that the current situation does not offer.

The assumption of necessary enforcement mechanisms for duties to create compliance programs is based on the fact that interviewees rated the relevance of a *pure legal obligation* to install a compliance program on a scale of 0 to 10 (low motivation/high motivation) with only 6.5. Contrary to that, legal obligations with civil sanctions were rated 8.1 and legal obligations with criminal law sanctions 8.8.⁵⁰⁷ This relationship was double-checked and confirmed in the second survey resulting in rankings of 5.4 for pure legal obligations without sanctions, 7.2 for legal regula-

⁵⁰⁴ See figure 38.

⁵⁰⁵ See figure 114.

⁵⁰⁶ See figure 115.

⁵⁰⁷ See figure 104. The t-test showed that differences between the measures with criminal and civil sanctions compared to the regulation without a sanction were significant.

tions with regulatory fines, and 7.4 for legal obligations with criminal fines.⁵⁰⁸ This is a clear indication for the (deterrence) effect of sanctions and especially criminal law.

These results also illustrate that the above described general positive evaluation of compliance programs and their effectiveness for the prevention of crime does not automatically mean a consent to all detailed compliance programs which might be desirable for an effective prevention of crimes. This illustrates that, when implementing compliance programs, the companies' motivation goes beyond the interest in preventing crime and considers also other interest, such as the effectiveness of their work and cost-benefit considerations.

The answers of the interviewees with respect to the various components of compliance measures also confirm that the creation of an effective compliance program is complex and can become a serious burden when called for by large areas of the economy.⁵⁰⁹ For this reason – and despite the above-mentioned high evaluation of the effectiveness of sanction-based legal obligations by the interviewees – normative criteria (such as the principles of preciseness and proportionality of legal rules) must also be used to decide whether such broad duties are adequate.

This examination requires knowing whether there are other more lenient but similarly effective systems of enforcing compliance mechanisms. Such alternative enforcement systems are especially relevant if a direct legal obligation for the creation of specific compliance measures accompanied by criminal sanctions cannot fulfill the criminal law principle of precisely determined sanction laws for all types of companies with different activities and risks.⁵¹⁰ Thus, it might be preferable to provide for more self-regulation and to also have a more lenient and flexible innovative system at hand, in which sanctions against the company for insufficient supervision/organization are only applied if lacking compliance measures have proven the insufficiency of the company's organizational supervision, resulting in the crime of an employee.

5. Due to these definitional limits of direct enforcement measures, the legislator should additionally use the option for indirect enforcement measures, which provide more freedom for the business sector to install compliance programs. Such an *indirect* enforcement measure is sanctioning of companies for the lack of supervision and compliance only when a crime by an employee has

⁵⁰⁸ See figure 138. Again, the t-test showed that differences between the measures with criminal and regulatory sanctions compared to the regulation without a sanction were significant.

⁵⁰⁹ See *supra* hypothesis no. 2, and figures 92, 93 and 94.

⁵¹⁰ For the variety of topics covered by compliance programs see figure 9 referring to corruption, fraud, asset protection and theft, data protection law, competition law and anti-trust offenses, financial reporting, labor law, copyright, product safety, money laundering, export control, protection of the environment, capital market law, tax law, and insider trading.

occurred. The strongest motivation for implementing compliance programs by such indirect mechanisms is the threat of criminal responsibility for the company and the perpetrator, but also for the superior.

In contrast to direct enforcement by binding rules, indirect enforcement measures (sanctioning the lack of compliance measures only when they result in the crime by an employee) provide the concerned companies with greater flexibility and also limit the number of infringements and investigations for lacking compliance measures to cases in which the insufficiency of compliance programs is in fact manifested by a resulting crime. For this reason, indirect enforcement mechanisms are less intrusive than direct enforcement measures accompanied by sanctions.

a) In the first survey, the effectiveness of the various types of such indirect enforcement measures was evaluated by the interviewees in a differentiated way depending on the nature and the addressee of the sanction. Analyzing only “pure” sanctioning systems without additional incentives (i.e. without privileges for compliance systems), the highest motivation on a scale of 1 to 10 (low motivation/high motivation) is achieved by a criminal responsibility scheme of companies (8.1), followed by a criminal responsibility scheme punishing the acting perpetrator (8.0) and his superior (7.9). Less effective indirect enforcement schemes for compliance programs are civil damages against the company (7.4), civil damages against the superior (7.0), and civil damages against the acting perpetrator (6.7).⁵¹¹ This means that – with respect to the type of sanction – the interviewees judged criminal law sanctions to be more effective incentives for creating compliance programs than civil law sanctions.

With respect to the addressees of the sanctions, in survey 1 measures against the respective companies were ranked higher than measures against the perpetrator. This could be seen with respect to criminal sanctions in an evaluation of 8.1 for measures against the company and of 8.0 for measures against the perpetrator; and with respect to civil measures against the company in a rating of 7.4, and for civil measures against the perpetrator of 6.7.⁵¹²

b) The second survey (which differentiated additionally between criminal and regulatory liability) confirmed the leading role of criminal law while distinguishing between different addressees: Sanctions against the perpetrator were ranked with 7.2 for criminal sanctions, with 7.0 for civil sanctions, and with 6.9 for regulatory sanctions. Sanctions against the superior resulted in ratings of 7.1 for criminal sanctions, 6.9 for civil sanctions, and 6.8 for regulatory sanctions. Sanctions against the company received an evaluation of 7.0 for criminal liability, 6.9 for

⁵¹¹ See figure 109.

⁵¹² The t-test showed that the differences between the criminal sanctions against the perpetrator, the superior, and company are all not significant, so that no final assessment of these criminal law measures is possible. In contrast, the differences between the various civil sanctions are all significant. See figure 109 and accompanying text.

civil sanctions, and 6.6 for regulatory fines.⁵¹³ This confirms the respective evaluation of survey 1 insofar as criminal sanctions provided greater motivation in all areas for installing compliance programs than other sanctions did.⁵¹⁴

With respect to the addressees of the sanctions, in addition to the results of survey 1, survey 2 indicates that criminal sanctions against the perpetrator might provide stronger motivation for installing compliance programs (7.2) than (criminal) sanctions against companies (7.0) do.⁵¹⁵ Yet these differences are not significant ones.⁵¹⁶ The same is true for civil measures (civil measures against the perpetrator ranked 7.0 and civil measures against the company were rated at 6.9).⁵¹⁷ The respective reasons are not clear, esp. when these evaluations are taken together with the evaluations of the various sanctions in combination with privileges discussed in the following.

6. The indirect enforcement of compliance programs by criminal sanctions and especially by a system of corporate criminal responsibility might be increased if criminal regulations are accompanied by clearly defined privileges for companies that have created an effective compliance program, even in cases where crimes of employees occur. However, the empirical survey did not give a clear direction for the types of sanctions to be used.

The first survey showed no significant increase in motivation for the creation of adequate compliance programs if the sanctioning system provides privileges for companies which have an adequate compliance regime.⁵¹⁸ The motivating factor of a pure criminal liability systems was rated the same (8.1) as a criminal liability system with a suspension of criminal proceedings in case of effective compliance programs (systems with exclusion and mitigation of criminal sanctions were rated even lower with 7.8 and 7.6).⁵¹⁹

Such as survey 1, survey 2 showed that the motivation of the companies to install compliance programs is not substantially influenced by privileges of criminal, civil, or regulatory sanctions if the company has an effective compliance program. Criminal sanctions with and without privileges for compliance systems as well as civil liability systems and regulatory liability systems with such privileges were all rated identically (with 7.0).⁵²⁰ However, for a civil liability system privileges for compliance could slightly raise the motivation factor from 6.9 to 7.0 and for regulatory

⁵¹³ See figures 141, 144, 147.

⁵¹⁴ See *supra* hypotheses 5.a).

⁵¹⁵ See figures 141, 147.

⁵¹⁶ For the results of the t-test, see table 25 (*infra* p. 272 et seq.).

⁵¹⁷ See figures 144, 147.

⁵¹⁸ See figure 109.

⁵¹⁹ See – also for further options – figure 109.

⁵²⁰ See figure 147.

systems even from 6.6 to 7.0.⁵²¹ Also, according to the interviewees of large companies the privileges did have a small influence for a stronger motivation, rating a criminal liability system with privileges higher (8.0) than a “pure” criminal liability system as well as civil and regulatory liability systems with privileges (all three rated 7.9).⁵²² For interviewees from financial services this difference was even greater, as criminal, civil and regulatory systems with privileges for compliance programs were ranked before “pure” criminal civil and regulatory systems.⁵²³

Taken together, the results indicate that a system of corporate criminal responsibility might be increased if criminal regulations are accompanied by clearly defined privileges for companies that have created an effective compliance program, but the differing motivating factors of the various incentives are not fully clear. For that reason it should be analyzed in more detail, e.g., whether the complex system of privileges should be better explained to the addressees or whether one should consider using a different approach.

7. The privilege for companies with adequate compliance systems should only be provided for the corporate criminal responsibility of the company. It should not be extended to the punishment of the acting employee. The same is true for the superior of the acting employee who will automatically profit from an effective compliance program according to the general norms of criminal law.

As far as a possible privilege of the *acting employee* in companies with an effective compliance program is concerned, the survey did not address this specific question. However, especially considering the interviewees’ high evaluation of the effectiveness of criminal sanctions against the perpetrator (at 7.8),⁵²⁴ the survey does not provide empirical reasons to decrease the deterrent effects of criminal law against the perpetrator by giving him a privilege for criminal acts committed in an environment with successful compliance programs. Yet this rejection of a privilege for the acting employee is primarily justified on normative grounds: The circumvention of security measures actually suggests a higher degree of “criminal energy” on the part of the perpetrator and supports aggravating rather than mitigating his sentence.

As far as a privilege of the *supervising manager* is concerned, the survey also did not include a specific question regarding this possibility. However, to a certain degree, the possible positive effect of a compliance program for the supervising man-

⁵²¹ See figure 147. The t-test show a significant difference between regulatory liability and regulatory liability with the exclusion in case of an effective compliance program, but not a significant difference between civil liability and civil liability with the exclusion in case of an effective compliance program, see table 23 (infra p. 271 et seq.).

⁵²² See figure 148.

⁵²³ See figure 149.

⁵²⁴ See figure 83.

agers' duties of care already constitutes an obligatory result of the applicable general normative rules: Since the criminal responsibility of the supervisor is based on lacking personal supervision and lacking organizational prevention with respect to the concrete criminal act, an existing compliance program (even if it is general in nature) can have direct consequences for the supervisor's criminal and regulatory liability without a specific regulation. This positive effect can – by itself – increase the motivation of the supervisor to enforce a compliance program within his company, whether or not one introduces (clarifying) regulation concerning the issue. However, the trust placed in the company's general compliance system should not serve to distract him from his specific personal supervision duties.

8. In general, and irrespective of any compliance issues, sanctions against the perpetrator of corporate crime are considered to be more effective than sanctions against the superior or the company. Sanctions against the superior and sanctions against the company are generally rated similarly. However, large and middle-sized companies judge sanctions against the company to be more effective than sanctions against the superior.

For these reasons, a system of corporate responsibility (based on the neglect of the companies' organizational duties) should exist alongside the traditional criminal law approach focusing on the responsibility of natural persons, esp. the acting perpetrator (sanctioned for his own acts) and the superior (sanctioned for neglecting his personal supervision duties).

In the above general comparison of compliance measures and sanctions against various addressees, sanctions against the perpetrator, sanctions against the superior, and sanctions against the company are, on the whole, not viewed very differently (the median of all being 7.0, in contrast to the median of compliance programs, which was 8).⁵²⁵ However, a higher evaluation of sanctions against the perpetrator can be clearly seen when comparing the average ratings that show significant differences: 7.0 for sanctions against the perpetrator and 6.5 both for sanctions against the superior and for sanctions against the company.⁵²⁶

The differentiating evaluation for the sanctions against the superior and against the company shows a higher evaluation for most sanctions when applied against companies than when applied against superiors.⁵²⁷ However, the results depend on the company size: Interviewees from large companies regard sanctions against companies (7.4) to be more effective than sanctions against the superior (6.9), whereas interviewees from small companies place sanctions against the company

⁵²⁵ See figure 126.

⁵²⁶ See figure 126. For the results of the t-test see table 9 (infra p. 262 et seq.).

⁵²⁷ See figures 129–137 and the cross section analysis supra Part 3 IV.A.

(5.8) below sanctions against the superior (6.6).⁵²⁸ These results are confirmed by the evaluations of the different types of measures, which were assessed in a similar way for perpetrators, superiors, and companies.⁵²⁹

9. Regarding *sanctions against natural persons* (i.e. the perpetrator and his superior), imprisonment, forfeiture, and fines for criminal offenses are considered to be most effective. In general, they are evaluated as considerably more effective than regulatory means.

The lower evaluation of regulatory offenses compared to criminal offenses can also be seen with respect to measures against companies. However, for the sanctioning of companies, civil measures are also considered to be very effective. The most effective option for *corporate responsibility* seems to be criminal responsibility providing, among others, for prohibitions of business activities, fines, forfeiture, and replacement of the executive board.

a) Survey 1 asked the interviewees to compare the effectiveness of criminal sanctions and civil damages for the prevention of crime. With regard to the perpetrator, they ranked criminal sanctions with 7.8 and civil damages with 7.4. With regard to the superior they evaluated criminal sanctions with 7.1 and civil damages with 6.8. Yet, with respect to *companies*, the situation was different: In survey 1, criminal law was rated with 7.0 and civil damages with 7.2 (however the median for both measures was 8).⁵³⁰

b) Survey 2 amended the comparison of different types of sanctions by a more detailed comparison esp. between various criminal sanctions and regulatory sanctions (so called Ordnungswidrigkeiten which were not asked about in the first international survey). This survey asked for differentiating evaluations with respect to the three addressees mentioned above.

With respect to sanctions against the *perpetrator*, the effectiveness of criminal measures was the highest, esp. imprisonment (average 7.5), criminal fines (7.1), and the publication of criminal convictions (7.0). Forfeiture for criminal as well as regulatory offenses was ranked on second place (7.3). Contrary to that, regulatory fines (6.7) and the publication of a regulatory conviction (6.4) were rated significantly lower.⁵³¹ The significance test confirmed that the criminal measures were rated significantly higher than the regulatory ones. This is esp. apparent when comparing the results not only for criminal law- and regulatory-based fines, but also for the criminal measure of imprisonment (7.5) and regulatory fines (6.7). The

⁵²⁸ See figure 127; see also the details of the t-test and the explanations under Part 3 II.A.

⁵²⁹ For details, see figures 129–137.

⁵³⁰ See figure 83 and accompanying text on the details of the t-test which showed that the differences are largely not significant ones.

⁵³¹ See figure 129.

t-test also confirms the higher rated effectiveness of forfeiture compared to regulatory measures.⁵³² Small companies regard forfeiture to be even more effective than imprisonment.⁵³³ Interviewees from the financial sector rate the making public of criminal convictions much higher than the average companies, and judge it to be even more important than forfeiture.⁵³⁴ Yet they rank fines for regulatory offenses even lower than the average companies (6.1).

This sequence is generally confirmed by the evaluation of the different types of sanctions for *superiors*.⁵³⁵ Once again, esp. fines for regulatory offenses (6.2) and the publication of these fines (6.3) rank at the bottom end, whereas imprisonment is put on first place (6.9). Financial services and small companies rate fines for regulatory offenses even lower than the average company (with 6.1 and 5.8). Forfeiture is, also once again, regarded to be the second important measure (6.7). Companies from the financial sector put forfeiture clearly on first place (7.3), even before imprisonment (6.7).

c) Among the various (specific) measures against *companies*, the prohibition of (individual) business activities was regarded to be most effective (7.3), followed by criminal law-based fines for criminal convictions (7.2), forfeiture for criminal and regulatory offenses (7.1), replacement of the executive board (7.1), and regulatory fines.⁵³⁶ Surprisingly, the most serious sanction, the shutdown of the company, ranks last (5.5), behind the appointment of a trustee (5.7). The significance test (t-test) shows that the different evaluation for criminal law-based fines (7.2) and regulatory-based fines (7.0) is significant.

The results according to the size of the company provide a more incoherent picture.⁵³⁷ Large companies rank criminal fines as the highest (8.4), while middle-sized companies put the obligation to implement a compliance-program (7.1) and small companies put forfeiture (7.4) in first place. Interviewees of the financial sector rank sanctions against the company relatively high, led by the replacement of the executive board (7.7), the prohibition of business activities (7.6), and the publication of a conviction (7.5).⁵³⁸

d) The lower evaluation of regulatory offenses compared to criminal measures is expressed throughout the study. This can be seen in regard to nearly all questions

⁵³² See figure 129.

⁵³³ See figure 130.

⁵³⁴ See figure 131.

⁵³⁵ See figures 132–134. However, also note the differences with respect to company size and the financial sector.

⁵³⁶ See figure 135.

⁵³⁷ See figure 136.

⁵³⁸ See figure 137.

asking for the evaluation of different sanctions and in the cross section analysis of the evaluation for sanctions against various addressees.⁵³⁹

10. As a consequence of the previous hypotheses, the most effective general regime against economic crime seems to be a cumulation of
(a) the traditional regime of criminal responsibility of the perpetrator,
(b) the regime of criminal responsibility of the superior in cases of lacking fulfillment of supervisory duties causing the employee's crime, and
(c) the above-described regime of corporate criminal responsibility (containing esp. the measures of forfeiture and criminal law-based fines) which might be combined with a privilege for the company's criminal responsibility for cases in which an effective compliance program existed and thus can eliminate the neglect of a company's duty to care.

IV. Summing Up: Hypotheses in Short

The present empirical research provides empirical arguments for the following hypotheses on a compliance-based policy against economic crime based on three pillars:

1. For specific areas of economic crime with special risks and special compliance strategies (e.g. the field of money laundering or insider trading), the law should define and require the necessary compliance measures directly by means of a specific or general norm (leaving room for self-regulation) and – provided these norms are sufficiently precise – furnish the respective obligations with regulatory or criminal sanctions (with the latter choice of sanctions mainly depending on the gravity of the offense).
2. Besides such specific regulations, a general corporate sanctioning system – preferably with corporate criminal responsibility – should be created. This system should be founded on the neglect of the company's organizational duties. As a logical consequence of the latter requirement, the system should provide a specific provision for privileges in case of an adequate compliance system such as the suspension or the mitigation of the sanction against the company. This privilege should describe the respective compliance measures in a general way (leaving room for self-regulation). It should be communicated to the companies as an incentive for the creation of adequate compliance systems.
3. This corporate criminal responsibility regime (following the US-American, Italian, and Spanish models) must supplement the traditional concepts of criminal law,

⁵³⁹ See Part 3 IV.A.

which are based on criminal responsibility of the acting employee and – in case of omission of organizational duties – that of his superior. The above privilege for an adequate compliance system with respect to criminal corporate responsibility should neither preclude the criminal responsibility of the acting employee or his supervisor nor their liability according to civil law. However, the supervisor can indirectly profit from the compliance program when it results in factually preventing the crime.

These hypotheses are primarily based on aspects of effectiveness as judged by business experts from the business community. Thus, they are providing the empirical groundwork and the contours for developing a new rational and practical system for the prevention of corporate crime. In the future, those hypotheses must be evaluated and shaped by normative aspects of constitutional and criminal law, especially with regard to developing the necessary safeguards for this new regime of public-private coregulation.

Annex

Questionnaires and Tables T-Test

I. Questionnaires

For the surveys, the questionnaires were developed both as a paper version and as an online version:

- The paper version used for the questionnaire 1 was distributed in German, an English translation of which has been attached (A.1.). The online version of the first questionnaire was also written in German. It is based on the paper version. The questions were adjusted to enable an appropriate online design (A.2.).⁵⁴⁰
- The questionnaire 2, both the paper and online versions, was also issued in German. The online version was based on the paper version. Again, the questions were adjusted to enable an appropriate online design. The paper version in German has been included in the annex (B.).

⁵⁴⁰ All data for this survey was collected using the software “limesurvey”. For details, see the website: www.limesurvey.org.

A. Questionnaire 1

1. Paper Version

Compliance Programs for the Prevention of Economic Crimes



– Questionnaire for an empirical survey –

The following questionnaire forms the basis of an international business survey analyzing the incidence, content, and effects of compliance programs and their various components. The survey is being conducted by Waseda University Tokyo/Japan and the Max Planck Institute for Foreign and International Criminal Law Freiburg/Germany.

The questionnaire can be filled out anonymously without providing your name or that of your company!

A. DESCRIPTION OF THE INTERVIEWED COMPANY AND THE INTERVIEWEE

1. Description of the company

Legal form (e.g. AG, GmbH):

If appropriate: Is your company listed on the stock exchange?

yes no

Main sector of activity (e.g. pharmaceutical):

Markets (please mark one of the following boxes with a tickmark).....

mainly national mainly European mainly outside Europe

Approximate number of employees (rough estimate sufficient)

– National:

– International:

Approximate turnover in local currency (rough estimate sufficient)

– National:

– International:

2. Position of the interviewed person

Present position/task

What department do you belong to?:

Experience in the present position and in other positions dealing with compliance issues:.....years

Reporting to (supervising department, e.g. legal):

B. DESCRIPTION OF POSSIBLE COMPLIANCE MEASURES IN THE INTERVIEWED COMPANY

3. Types of programs

Does your company have programs or other procedures aiming at one or more of the following:

- Educating employees to comply with legal provisions (often called compliance programs)?
- Applying ethical standards beyond legal requirements (often called codes of ethics or business ethics)?
- Engaging in social activities and charities (e.g. supporting schools) (often called corporate social responsibility)?
- Describing and making transparent the corporate structure and the control mechanisms of the company to the public and especially to shareholders (often called corporate governance)?

4. Targeted areas of compliance programs

If you have programs in place to prevent the illegal or unethical behavior of employees, which areas do they target?

- Asset protection and theft
- Corruption
- Fraud
- Competition, especially anti-trust offenses
- Product safety
- Copyright
- Financial reporting
- Labour Law
- Data Protection Law

Other (please specify):

What are the three most important areas? (please list according to practical relevance, No. 1 being the most relevant area)

1. 2. 3.

5. Rules to be enforced by compliance programs

If you have programs preventing illegal or unethical behavior of employees, which types of rules do they enforce?

- Criminal law
- Administrative criminal law
- Civil law regulations (providing civil damages)
- Administrative regulations
- Ethical rules

6. Organizational responsibility for compliance programs

If you have programs preventing illegal or unethical behavior of employees, who is responsible for the implementation and control of these programs?

- Special compliance department
- Legal department
- Audit department
- Finance department
- Other (please specify):

To whom does the responsible department report?

- Chief executive officer

- Chief financial officer
- Audit Committee (“Aufsichtsrat”)
- General Legal Counsel
- Other (please specify):

If you have a compliance department, how many people work there (full positions)?

- Head Office:
- Other Offices:

7. Measures of information and education

If you have programs preventing illegal or unethical behavior of employees, which means do you use to make these procedures public in your company and how important are these measures?

- Special compliance manuals

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Written codes of behavior

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Seminars or corporate trainers

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Electronic education (CD-rom, e-mail; online)

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Individual communication (e.g. by superiors)

not important	1	2	3	4	5	6	7	8	9	10	very important
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Do you involve external experts in the training process?

- yes
- no

If yes, for which part of the training?

.....

If yes, who do you involve?

- Law firms
- Auditors
- Consultancies (without auditors)
- Other (please specify):

If yes, can you specify the costs (per year)?

- Costs for law firms:
- Costs for auditors:
- Costs for consultancies (without auditors):
- Costs for others:

How do you explain the respective legal provisions to your employees?

- By just mentioning the appropriate provision (e.g. “bribery”)
- By citing legal provisions with their original full text
- By explaining or describing the contents and limits of the provisions
- By giving examples and/or model constellations, that could arise in the context of a specific workplace
- By explaining the legal reasons behind the provisions (e.g. the effects of bribery in developing countries)
- By other means (please specify):

Do you employ measures to control whether employees have read and understood compliance manuals or other respective documents?

- yes no

If yes, which control measures do you use?

.....

8. Measures to detect irregular or unethical behavior

Which of the following measures do you use to detect irregularities (especially crimes) and how important are these measures in your company?

- Internal audit

not important	1	2	3	4	5	6	7	8	9	10	very important
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- External audit

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Nomination of a special person (ombudsman) who can be contacted by employees confidentially

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Installation of a special technical hotline, which employees can use to report irregularities (often-called “whistle-blowing”)

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Guarantees for anonymous and, therefore, sanction-free and confidential reporting of irregularities

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Rewards for relevant information

not important	1	2	3	4	5	6	7	8	9	10	very important
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- Compliance officer or compliance department

not important	1	2	3	4	5	6	7	8	9	10	very important
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Other (please specify):

not important	1	2	3	4	5	6	7	8	9	10	very important
---------------	---	---	---	---	---	---	---	---	---	----	----------------

Other (please specify):

not important	1	2	3	4	5	6	7	8	9	10	very important
---------------	---	---	---	---	---	---	---	---	---	----	----------------

How many cases are reported by employees in a voluntary manner each year in your company?

Approximately cases

How many of these offenses are committed to the advantage of your company?

Approximately cases

9. Organizational measures and internal sanctions in case of infringements

Which *organizational* measures do you apply if employees infringe legal provisions?

.....

Which types of *internal sanctions* do you apply if employees infringe legal provisions?

.....

How important are internal sanctions in your company?

not important	1	2	3	4	5	6	7	8	9	10	very important
---------------	---	---	---	---	---	---	---	---	---	----	----------------

Do you inform the police or the prosecution about infringements of criminal law by employees??

rarely	1	2	3	4	5	6	7	8	9	10	always
--------	---	---	---	---	---	---	---	---	---	----	--------

10. Special commitment of top management

Is the top management at your company personally involved in elaborating or fostering compliance issues?

not involved	1	2	3	4	5	6	7	8	9	10	strongly involved
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How visible for the majority of your employees is the personal commitment of your top management in compliance issues?

not visible	1	2	3	4	5	6	7	8	9	10	highly visible
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What are the personal activities of top management in the field of compliance?

1.
2.
3.

11. Culture and values

To what degree are the following activities tolerated or clearly rejected in your company *by the majority of employees*?

Giving gifts or small bribes (e.g. 500 EUR) for the sake of the company

tolerated	1	2	3	4	5	6	7	8	9	10	not tolerated at all
-----------	---	---	---	---	---	---	---	---	---	----	----------------------

Minor thefts or fraud (e.g. 500 EUR) against the company

tolerated	1	2	3	4	5	6	7	8	9	10	not tolerated at all
-----------	---	---	---	---	---	---	---	---	---	----	----------------------

Does your company define a specific value limit up till which gifts for employees are accepted?

- yes no

If yes, which value for gifts is accepted in your company?

..... EUR

Do you have a specific procedure in order to check if certain gifts are allowed or not?

- yes no

How important is it in your company not only to consider applicable laws and the company’s financial goals, but also to foster additional moral rules and values (e.g. avoiding child labor, antidiscrimination rules or protecting the environment in foreign subsidiaries)?

not important	1	2	3	4	5	6	7	8	9	10	very important
---------------	---	---	---	---	---	---	---	---	---	----	----------------

If this aspect is important in your company, what concrete means do you apply to foster such aims?

.....

.....

Does your company make special contributions to the wellbeing of society (e.g. donations to schools or other social activities)?

- yes no

If so, please specify concrete activities?

.....

.....

Does your company support political parties (especially by contributions)?

- yes no

12. Other components of compliance programs

Compliance programs for the prevention of illegal or unethical behavior can consist of

- (1) measures of information, and
- (2) measures to detect irregular or unethical behavior,
- (3) internal sanctions by the companies,
- (4) special commitments on the part of top management regarding compliance issues,
- (5) measures to foster a culture of values within the respective companies.

Does your company use any other additional measures to foster compliance and the prevention of crime that have not been specifically asked for above?

.....
.....

13. Victimization of your company by crime

How many cases came to your attention in the past few years in which your company assumedly was the victim of a crime (e.g. fraud)?

Crimes committed by employees: approximately cases per year

Crimes committed by outsiders: approximately..... cases per year

In which area is your company particularly affected by crime?

Crimes committed by employees:

- 1.
- 2.
- 3.

Crimes committed by outsiders:

- 1.
- 2.
- 3.

14. Victimization of third parties (e.g. other companies, consumers, the state)

How many cases came to your attention in the past few years in which employees of your company were committing offenses against other companies, consumers or the state (e.g. by bribing or defrauding customers)?

Approximately cases per year

15. Investigations in and against your company/Compliance Investigations

Have there been criminal or criminal administrative investigations in your company within the past five years?

- yes no

How many criminal or criminal administration investigations have occurred in your company in the last five years?

Approximately cases

What types of cases are they (e.g. bribery)?
(please list according to practical relevance, No. 1 being the most relevant area)

1.
2.
3.

If criminal or administrative criminal investigations took place in your company, did the compliance programs of your company effectively support the investigations?

no support	1	2	3	4	5	6	7	8	9	10	high support
------------	---	---	---	---	---	---	---	---	---	----	--------------

In what way were compliance programs helpful?

.....

.....

Do you have a specific procedure/specific rules by whom and how (compliance) investigations have to be performed?

- yes no

Who conducts the investigations?

- Internal Department

- External Law Firm
- External Auditors
- External Consultancy (without auditors)
- Other (please specify):

If investigations are (also) performed internally, who/which department conducts the investigations?

.....

If external experts conduct the investigations: Why are they involved?

- Better Expertise
- Better Objectivity
- Lack of internal resources
- Better for the image of the company
- Because the investigating state authority expects external involvement
- Other reasons (please specify):

Can you specify the costs in EUR for external experts that conducted investigations within the last five years?

- Costs for law firms:
- Cost for auditors
- Costs for consultancies (without auditors):
- Costs for Others:

Do you expect your employees to fully cooperate during the investigations?

- yes
- no

Do you have taken precautions for the case an employee has to admit his personal involvement in illegal acts?

- yes no

If yes, what precautions have you taken?

- Instruction of the employee that his statement might be used against him in criminal proceedings
- Instruction of the employee that he can remain silent if he would accuse himself
- Possibility of the employee to contact a lawyer
- Other measures (please specify):

If there had been compliance investigations within your company during the last five years, did you set up an amnesty program for cooperating employees?

- yes no

Does your company bear the costs of the legal advice, which is engaged by an employee because of internal investigations?

- yes no

If so, for which employees is this measure in effect?

- Board Members
- All other employees (without board members)

Does your company in case of compliance offenses have taken out one of the following insurances?

- D&O insurance for board members
- D&O insurance for compliance officers, who are no member of the board
- Pecuniary damage liability insurance (“Vermögensschadenshaftpflichtversicherung“)

- Legal expense insurance (criminal law) for board members (“Straf-Rechtsschutzversicherung”)
- Legal expense insurance (criminal law) for compliance officers who are no member of the board
- Legal expense insurance (criminal law) for other employees (without members of the board and compliance officers)

C. EVALUATION OF COMPLIANCE MEASURES

16. Effectiveness of components of compliance programs

Practitioners and academics controversially discuss which measures can foster compliance with legal and ethical rules in companies. How effective do you consider the following measures to be in preventing illegal behavior of your employees?

a) Legal measures

Legal regulations in general

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Legal regulations with criminal law sanctions *against the perpetrator*

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Legal regulations with criminal law sanctions *against the superior of the employee* because of deficient surveillance of the perpetrator

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Legal regulations with criminal law sanctions *against your company*

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Civil law damages against the perpetrator

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Civil law damages against *the superior of the employee* because of deficient surveillance of the perpetrator

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Civil law damages against your company

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

b) Compliance measures of your company

Informing employees about legal regulations and sanctions

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Explaining to employees the ethical reasons behind the legal regulations

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Screening employees prior to hiring

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Internal audits and controls

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

External audits

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Creation of good moral standards within the company, which is supported by collaborators and the top management

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Procedures for reporting irregularities and problems (e.g. hotlines)

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Special protection of whistle-blowers (including providing confidentiality)

not effective	1	2	3	4	5	6	7	8	9	10	effective
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Comprehensive compliance manuals

not effective	1	2	3	4	5	6	7	8	9	10	effective
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Compliance training seminars

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Electronic education (CD-rom, e-mail, online)

not effective	1	2	3	4	5	6	7	8	9	10	effective
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Appointment of compliance officers

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Involvement of top management in compliance issues (“tone of the top”)

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Internal sanction system within the company

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Compliance as criterion for variable position of salaries (bonus etc.)

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

17. Effectiveness of your company’s compliance efforts

Can you indicate a year in which your compliance program was created or improved considerably?

Created in the in:

Improved considerably in:

Did the creation of your compliance program improve the prevention and detection of illegal acts in your company?

little change	1	2	3	4	5	6	7	8	9	10	a lot of change
---------------	---	---	---	---	---	---	---	---	---	----	-----------------

If you improved your compliance program considerably, did this change improve the prevention and detection of illegal acts in your company (please differentiate between each year)

little change	1	2	3	4	5	6	7	8	9	10	a lot of change
---------------	---	---	---	---	---	---	---	---	---	----	-----------------

What was the reason for the improvement?

- Modification of legal regulations
- Investigations against other companies
- Investigations against your company
- External advice (e.g. auditors, lawyers)
- Anticipated image improvement
- Public dialogue
- Other reasons (please specify)

How effective do you consider the present compliance program of your company to be in the prevention and detection of crimes?

not effective	1	2	3	4	5	6	7	8	9	10	effective
---------------	---	---	---	---	---	---	---	---	---	----	-----------

Do you have plans to change your compliance program(s)?

- yes
- no

If so, in which way?

.....

.....

18. Possible enforcement of compliance programs

Which means (motivation, sanctions, rewards) could motivate you and your company to establish a compliance program to prevent and detect the crimes of employees (aiming at crimes against your company and against outside companies)?

a) General considerations

Which relevance do the following general considerations have?

Ethical considerations

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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Reputation of your company (with regard to public opinion)

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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Shareholder expectations

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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Expectations of business partners

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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Market expectations

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

b) Direct enforcement

Which relevance would the legal regulation to install a compliance program have?

Legal obligation to install a compliance program
(*without specific sanctions* in the case of non-installment)

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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Legal obligations *with specific civil sanctions* in the case of non-installment

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Legal obligations *with criminal law sanctions* in the case of non-installment

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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c) Indirect enforcement

If the legislator does not enact an obligatory legal regulation to install a compliance program, which relevance do the following measures to create a compliance program for the prevention and detection of criminal employees have?

Criminal sanctions *for the acting employee*

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Criminal sanctions *for the superior of the employee*, based on insufficient supervision

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Criminal sanctions *for the company* for crimes of its employees

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Providing privileges of the company with respect to its criminal responsibility in cases in which an employee commits a crime

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

First possibility: The *exclusion from criminal sanctions for the company* for crimes of its employees if there is an effective compliance program.

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Second possibility: *The possibility of the mitigation of a sentence for the company* for crimes of its employees if there is an effective compliance program.

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Third possibility: *The suspension of criminal proceedings against the company* for crimes of its employees if there is an effective compliance program.

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Civil damages *on the part of the acting employee.*

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Civil damages *for the superior of the employee,* based on insufficient supervision.

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Civil damages *on the part of the company* for crimes of its employees.

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Providing privileges of the company with respect to its civil responsibility in cases in which an employee commits a crime

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
----------------	---	---	---	---	---	---	---	---	---	----	-----------------

Other means (please specify):

.....

low motivation	1	2	3	4	5	6	7	8	9	10	high motivation
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19. Legal regulation and self-regulation

If the legislator were to create legal obligations or incentives to introduce a compliance program, what would you consider more effective in the prevention of crimes?

- Precise and detailed regulations that do not leave room for much self-regulation
- Introduction of general standards with room for self-regulation
- No precise and detailed regulations.

20. Other aspects

Do you have additional ideas for improving and/or implementing compliance programs in companies or for preventing and detecting company crimes?

.....
.....

2. Online Version

Internationale Studie zur Verbreitung, zum Inhalt und zu den Auswirkungen von Compliance-Programmen.

Herzlich Willkommen zur Umfrage "Compliance-Programme zur Verhütung von Wirtschaftskriminalität"!

Der folgende Fragebogen ist Teil einer internationalen Studie, die die Verbreitung, den Inhalt und die Auswirkungen von Compliance-Programmen analysiert. Die Untersuchung wird vom Max-Planck-Institut für ausländisches und internationales Strafrecht in Freiburg in Kooperation mit der Waseda Universität (Tokio, Japan) durchgeführt.

Bitte folgen Sie zur Beantwortung der folgenden Fragen den jeweils auf dem Bildschirm angezeigten Hinweisen.

Sie können die Befragung auch unterbrechen und die Umfrage zu einem späteren Zeitpunkt fortsetzen.

Diese Umfrage enthält 81 Fragen.

Beschreibung des Unternehmens

1 [1] Welche Rechtsform hat Ihr Unternehmen? *

Bitte geben Sie Ihre Antwort hier ein:

2 [2] Falls zutreffend: Ist das Unternehmen börsennotiert?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

3 [3] Auf welchem Sektor ist das Unternehmen vorwiegend tätig (z.B. Gesundheitssektor)? *

Bitte geben Sie Ihre Antwort hier ein:

4 [4] Auf welchen Märkten ist das Unternehmen tätig? *

Bitte wählen Sie alle zutreffenden Antworten aus:

- Überwiegend national
 Überwiegend europäisch
 Überwiegend außereuropäisch

5 [5] Wie viele Mitarbeiter hat Ihr Unternehmen (grobe Schätzung genügt)? *

Bitte wählen Sie die zutreffenden Punkte aus und schreiben Sie einen Kommentar dazu:

- National
 International

6 [6] Wie hoch ist der Umsatz des letzten Geschäftsjahres in EUR (grobe Schätzung genügt)? *

Bitte wählen Sie die zutreffenden Punkte aus und schreiben Sie einen Kommentar dazu:

- Umsatz national
 Umsatz international

Beschreibung des Interviewpartners

7 [7] Welche Funktion nehmen Sie im Unternehmen wahr? *

Bitte geben Sie Ihre Antwort hier ein:

8 [8] Welcher Abteilung sind Sie zugeordnet?

Bitte geben Sie Ihre Antwort hier ein:

9 [9] Wie viele Jahre haben Sie Erfahrung mit Compliance-Themen? *

Bitte geben Sie Ihre Antwort hier ein:

10 [10] Wem gegenüber sind Sie verantwortlich (z.B. Rechtsabteilung, Vorstand)? *

Bitte geben Sie Ihre Antwort hier ein:

Beschreibung der möglichen Compliance-Maßnahmen im Unternehmen I

11 [11] Hat Ihr Unternehmen ein Programm oder Maßnahmen, die auf eine oder mehrere der folgenden Aspekte abzielen?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Schulung von Mitarbeitern zur Einhaltung rechtlicher Vorgaben (oftmals als Compliance-Programm bezeichnet)
- Einhaltung ethischer Vorgaben jenseits der rechtlichen Erfordernisse (oftmals als Ethik-Programm, Code of Ethics oder Business Ethics bezeichnet)
- Engagement bei sozialen oder wohltätigen Aktivitäten wie der Unterstützung von Schulen etc. (oftmals als Corporate Social Responsibility bezeichnet)
- Beschreibung und Offenlegung der Unternehmensstrukturen und Kontrollmechanismen gegenüber der Öffentlichkeit und den Anteilseignern (oftmals als corporate governance bezeichnet)

12 [12] Falls Sie ein Compliance-Programm haben, um illegales oder unethisches Verhalten von Mitarbeitern zu vermeiden: Welche Themen deckt dieses ab? *

Bitte wählen Sie alle zutreffenden Antworten aus:

- Schutz des Unternehmensvermögens und Schutz gegen Diebstahl
- Korruption
- Betrugsdelikte
- Wettbewerbsrecht, insbesondere Kartellrecht
- Produktsicherheit
- Urheberrecht
- Finanzberichterstattung
- Arbeitsrecht
- Datenschutzrecht
- Sonstiges:

13 [13] Welches sind die drei wichtigsten Bereiche? (bitte listen Sie die Bereiche nach ihrer praktischen Bedeutung, wobei Nr. 1 der bedeutendste Bereich ist)

Bitte geben Sie Ihre Antwort(en) hier ein:

1.
2.
3.

14 [14] Falls Sie ein Compliance-Programm haben, um illegales oder unethisches Verhalten von Mitarbeitern zu vermeiden: Welche Regelungsgebiete erfasst dieses?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Strafrecht
- Ordnungswidrigkeitenrecht
- Schadenersatzregelungen des Zivilrechts inkl. Organhaftungsansprüchen
- Verwaltungsrecht
- Ethische Vorgaben

15 [15] Falls Sie ein Compliance-Programm haben, um illegales oder unethisches Verhalten von Mitarbeitern zu vermeiden: Wer ist für die Implementierung und Kontrolle des Programms verantwortlich?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Eigene Compliance-Abteilung
- Rechtsabteilung
- Revision
- Finanzabteilung
- Sonstiges:

16 [16] An wen berichtet die vorgenannte Abteilung? / Wem gegenüber ist sie verantwortlich?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Unternehmensleiter (CEO)
- Finanzleiter (CFO)
- Aufsichtsrat
- Leiter der Rechtsabteilung
- Sonstiges:

17 [17] Falls Sie eine eigene Compliance-Abteilung haben, wie viele Personen sind dort beschäftigt (in vollen Stellen)?

Bitte wählen Sie die zutreffenden Punkte aus und schreiben Sie einen Kommentar dazu:

- Unternehmenszentrale
- Andere Einheiten

Beschreibung der möglichen Compliance-Maßnahmen im Unternehmen II

18 [18]

Falls Sie ein Compliance-Programm haben, um illegales oder unethisches Verhalten von Mitarbeitern zu vermeiden:
Welche Maßnahmen haben Sie, um die Compliance-Vorgaben zu vermitteln, und wie wichtig sind diese?

(Skala von 1-10 mit 1 als "nicht wichtig" bis 10 als "sehr wichtig")

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Spezielles Compliance-Handbuch	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Schriftlicher Verhaltenskodex	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Schulungen/Seminare	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Elektronische Schulung (CD-ROM, E-Mail, Online)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Individuelle Vermittlung (z.B. durch Vorgesetzte)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

19 [19] Sind externe Experten in den Schulungsprozess eingebunden?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

20 [20] Falls ja, für welche Aufgaben?

Bitte geben Sie Ihre Antwort hier ein:

21 [21] Falls ja, welche externen Experten binden Sie ein?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Rechtsanwälte

- Wirtschaftsprüfer
- Unternehmensberater (außer Wirtschaftsprüfer)
- Sonstiges:

22 [22] Falls ja, können Sie die Kosten für die externe Beratung beziffern (pro Jahr)?

Bitte wählen Sie die zutreffenden Punkte aus und schreiben Sie einen Kommentar dazu:

- Kosten für Rechtsanwälte
- Kosten für Wirtschaftsprüfer
- Kosten für Unternehmensberater
(außer Wirtschaftsprüfer)
- Kosten für andere

23 [23] Wie vermitteln Sie Ihren Mitarbeitern die einschlägigen rechtlichen Vorgaben?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Durch Erwähnung der einschlägigen Rechtsvorschrift (z.B. "Bestechung")
- Durch vollständige Angabe der Rechtsvorschrift im Original
- Durch Erklärung oder Beschreibung des Inhalts und der Grenzen der Rechtsvorschrift
- Durch Angabe von Beispielen oder Standardkonstellationen, die sich aus dem spezifischen Arbeitsumfeld ergeben
- Durch Erklärung der hinter der Rechtsvorschrift stehenden Überlegungen (z.B. den Auswirkungen von Korruption in Entwicklungsländern)
- Sonstiges:

24 [24] Haben Sie Maßnahmen, um zu kontrollieren, ob die Mitarbeiter das Compliance-Handbuch oder andere einschlägige Dokumente gelesen und verstanden haben?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
- Nein

25 [25] Falls ja, welche Kontrollmaßnahmen verwenden Sie?

Bitte geben Sie Ihre Antwort hier ein:

Beschreibung der möglichen Compliance-Maßnahmen im Unternehmen III

26 [26]

Welche der folgenden Maßnahmen werden in Ihrem Unternehmen angewandt, um Unregelmäßigkeiten (insbesondere Straftaten) zu entdecken, und wie wichtig sind diese Maßnahmen?

(Skala von 1-10 mit 1 als "nicht wichtig" und 10 als "sehr wichtig")

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Interne Audits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Externe Audits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Besonderer Ansprechpartners (Ombudsmann), der vertraulich kontaktiert werden kann	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Spezielle Hotline zur Mitteilung von Unregelmäßigkeiten („Whistleblowing“)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Garantien für eine anonyme (also sanktionsfreie und vertrauliche) Mitteilung	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Belohnungen für relevante Informationen	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compliance-Beauftragter oder Compliance-Abteilung	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27 [27] Haben Sie noch weitere als die vorgenannten Maßnahmen und wie wichtig schätzen sie diese auf der Skala von 1-10 ein?

Bitte geben Sie Ihre Antwort hier ein:

28 [28] Wie viele Vorfälle werden von den Mitarbeitern jährlich in ihrem Unternehmen freiwillig berichtet?

Bitte geben Sie Ihre Antwort hier ein:

29 [29] Wie viele Fälle davon werden zum Vorteil des Unternehmens begangen?

Bitte geben Sie Ihre Antwort hier ein:

30 [30] Welche organisatorischen Maßnahmen greifen in Ihrem Unternehmen, wenn ein Mitarbeiter gegen rechtliche Vorgaben verstößt?

Bitte geben Sie Ihre Antwort hier ein:

31 [31] Welche internen Sanktionen sind vorgesehen, wenn ein Mitarbeiter gegen rechtliche Vorgaben verstößt?

Bitte geben Sie Ihre Antwort hier ein:

32 [32]

Wie wichtig sind interne Sanktionen in Ihrem Unternehmen?

(Skala von 1-10 mit 1 als "nicht wichtig" und 10 als "sehr wichtig")

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

Interne Sanktionen 1 2 3 4 5 6 7 8 9 10
 ○ ○ ○ ○ ○ ○ ○ ○ ○ ○

42 [42] Falls Ihrem Unternehmen dieser Aspekt wichtig ist, welche konkreten Maßnahmen ergreifen Sie, um diese Ziele zu erreichen?

Bitte geben Sie Ihre Antwort hier ein:

43 [43] Leistet Ihr Unternehmen besondere Beiträge, um das Wohlergehen der Gesellschaft zu befördern (z.B. Spenden an Schulen oder andere soziale Aktivitäten)?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

44 [44] Falls ja, welche konkreten Aktivitäten sind dies?

Beantworten Sie diese Frage nur, wenn folgende Bedingungen erfüllt sind:

° Die Antwort war 'Ja' bei Frage '43 [43]' (Leistet Ihr Unternehmen besondere Beiträge, um das Wohlergehen der Gesellschaft zu befördern (z.B. Spenden an Schulen oder andere soziale Aktivitäten)?)

Bitte geben Sie Ihre Antwort hier ein:

45 [45] Unterstützt Ihr Unternehmen politische Parteien (insbes. durch Spenden)?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

46 [46]

Ein Compliance-Programm zur Vermeidung von illegalem oder unethischem Verhalten Compliance kann folgende Komponenten umfassen.

- (1) Maßnahmen zur Information und Schulung,
- (2) Maßnahmen zur Entdeckung von regelwidrigem oder unethischem Verhalten,
- (3) Interne Sanktionen,
- (4) Besonderes Engagement der obersten Leitungsebene,
- (5) Maßnahmen zur Beförderung ethischen Verhaltens.

Hat Ihr Unternehmen neben den bereits genannten Maßnahmen weitere ergriffen, um Compliance und insbesondere die Vermeidung von Straftaten zu fördern (bitte angeben)?

Bitte geben Sie Ihre Antwort hier ein:

Compliance-Ermittlungen I (Umfang und Kosten)

50 [50] Haben innerhalb der letzten fünf Jahre straf- oder ordnungswidrigkeitenrechtliche Ermittlungen in Ihrem Unternehmen stattgefunden?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

51 [51] Wie viele straf- oder ordnungswidrigkeitenrechtliche Ermittlungen haben in den letzten fünf Jahren in Ihrem Unternehmen stattgefunden?

Bitte geben Sie Ihre Antwort hier ein:

52 [52]

Welche Fälle betrafen diese Ermittlungen (z.B. Bestechung)?

(bitte listen Sie die drei wichtigsten Fälle nach ihrer praktischen Bedeutung auf, wobei Nr. 1 der bedeutendste Bereich ist)

Bitte geben Sie Ihre Antwort(en) hier ein:

1.
2.
3.

53 [53]

Falls straf- oder ordnungswidrigkeitenrechtliche Ermittlungen in Ihrem Unternehmen stattgefunden haben: Hat das Compliance-Programm die Ermittlungen effektiv unterstützt?

(Skala von 1-10 mit 1 als „nicht effektiv“ und 10 als „sehr effektiv“)

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

- | | | | | | | | | | | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Unterstützung durch Compliance-Programm | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

54 [54]

In welcher Hinsicht war das Compliance-Programm hilfreich?

Bitte geben Sie Ihre Antwort hier ein:

55 [55] Haben Sie in Ihrem Unternehmen spezielle Regelungen/Abläufe dazu, von wem und wie (Compliance) Ermittlungen vorgenommen werden?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

56 [56] Wer führt die Ermittlungen durch?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Interne Mitarbeiter
 Externer Rechtsanwalt
 Externer Wirtschaftsprüfer
 Externer Unternehmensberater (außer Wirtschaftsprüfer)
 Sonstiges:

57 [57] Falls die Ermittlungen (auch) intern durchgeführt werden: Wer/welche Abteilung übernimmt der Ermittlungen?

Bitte geben Sie Ihre Antwort hier ein:

58 [58] Falls externe Experten die Ermittlungen durchführen: Warum sind diese involviert?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Bessere Expertise
 Größere Objektivität
 Mangelnde interne Ressourcen
 Besser für das Image des Unternehmens

Weil die staatlichen Ermittlungsbehörden die Einschaltung externer Experten erwarten

Sonstiges:

59 [59] Können Sie die Kosten in EUR für externe Experten beziffern, die Ermittlungen innerhalb der letzten fünf Jahre durchgeführt haben?

Bitte wählen Sie die zutreffenden Punkte aus und schreiben Sie einen Kommentar dazu:

<input type="checkbox"/> Kosten für Rechtsanwälte	<input type="text"/>
<input type="checkbox"/> Kosten für Wirtschaftsprüfer	<input type="text"/>
<input type="checkbox"/> Kosten für Unternehmensberatungen (außer Wirtschaftsprüfer)	<input type="text"/>
<input type="checkbox"/> Kosten für andere	<input type="text"/>

Compliance-Ermittlungen II (Kooperation von Mitarbeitern und Versicherungen)

60 [60]

Erwarten Sie von Ihren Mitarbeitern eine vollumfängliche Kooperation während der Ermittlungen?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

61 [61] Haben Sie Vorkehrungen getroffen, falls ein Mitarbeiter seine persönliche Verwicklung in eine illegale Handlung zugeben müsste?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

62 [62] Falls ja, wie sehen diese Vorkehrungen aus?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Belehrung des Mitarbeiters, dass seine Aussage in einem Strafverfahren gegen ihn verwendet werden könnte
- Belehrung des Mitarbeiters, dass er Schweigen kann, wenn er sich selbst belasten würde
- Möglichkeiten für den Mitarbeiter, einen Rechtsanwalt zu kontaktieren
- Sonstiges:

63 [63] Falls in Ihrem Unternehmen innerhalb der letzten fünf Jahre (Compliance) Ermittlungen stattgefunden haben: Hat Ihr Unternehmen ein Amnestie-Programm für kooperative Mitarbeiter erlassen?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja
 Nein

64 [64] Übernimmt Ihr Unternehmen die Kosten einer rechtlichen Beratung, die ein Mitarbeiter wegen der internen Ermittlungen in Anspruch nimmt?

Bitte wählen Sie nur eine der folgenden Antworten aus:

- Ja

Nein

65 [65] Falls ja, für welche Mitarbeiter gilt dies?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Organmitglieder
 Alle anderen Mitarbeiter (ohne Organmitglieder)

66 [66] Hat Ihr Unternehmen für den Fall von Compliance-Verstößen eine der folgenden Versicherungen abgeschlossen?

Bitte wählen Sie alle zutreffenden Antworten aus:

- D&O Versicherung für Organmitglieder
 D&O Versicherung für Compliance-Beauftragte, die nicht Organmitglied sind
 Vermögensschadenshaftpflichtversicherung
 Straf-Rechtsschutzversicherung zugunsten von Organmitgliedern
 Straf-Rechtsschutzversicherung zugunsten von Compliance-Beauftragte, die nicht Organmitglied sind
 Straf-Rechtsschutzversicherung zugunsten anderer Mitarbeiter (außer Organmitglieder und Compliance-Beauftragte)

	1	2	3	4	5	6	7	8	9	10
2. Verbesserung	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Verbesserung	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

72 [72] Falls zutreffend: Was war Anlass für die Verbesserung(en)?

Bitte wählen Sie alle zutreffenden Antworten aus:

Änderung der gesetzlichen Regelungen

Ermittlungen gegen andere Unternehmen

Ermittlungen im eigenen Unternehmen

Externer Rat (z.B. Wirtschaftsprüfer, Anwälte)

Erhöhter Imagegewinn

Öffentliche Diskussion

Sonstiges:

73 [73]

Für wie effektiv erachten Sie das aktuelle Compliance-Programm Ihres Unternehmens, um Straftaten zu vermeiden und aufzudecken?

(Skala von 1-10 mit 1 als „ineffektiv“ und 10 als „effektiv“)

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Aktuelles Programm	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

74 [74] Gibt es Pläne das Compliance-Programm Ihres Unternehmens zu ändern?

Bitte wählen Sie nur eine der folgenden Antworten aus:

Ja

Nein

75 [75] Falls ja, in welcher Hinsicht?

Bitte geben Sie Ihre Antwort hier ein:

Bewertung der Compliance-Maßnahmen II

76 [76]

Welche Mittel (Motivation, Sanktionen, Anreize) konnten und könnten Sie und Ihr Unternehmen dazu bewegen, ein Compliance-Programm zur Vermeidung und Aufdeckung von Kriminalität der Mitarbeiter des Unternehmens zu errichten?

Zunächst: Welche Bedeutung haben die folgenden allgemeinen Erwägungen?

(Skala von 1-10 mit 1 als „geringer Anreiz“ und 10 als „hoher Anreiz“)

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Ethische Überlegungen	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ruf des Unternehmens (in der Öffentlichkeit)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Erwartungen der Anteilseigner (Shareholder expectations)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Erwartungen der Geschäftspartner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Markterwartungen	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

77 [77]

Welche Bedeutung hätte die gesetzliche Vorgabe zur Errichtung von Compliance-Programmen?

(Skala von 1-10 mit 1 als „geringer Anreiz“ und 10 als „großer Anreiz“)

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Rechtliche Verpflichtung zur Errichtung eines Compliance-Programms (ohne spezielle Sanktionen falls die Errichtung unterlassen wird)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rechtliche Verpflichtung mit besonderen zivilrechtlichen Sanktionen falls die Errichtung unterlassen wird	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rechtliche Verpflichtung mit besonderen strafrechtlichen Sanktionen falls die Errichtung unterlassen wird	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

78 [78]

Wenn der Gesetzgeber auf eine zwingende Vorgabe zur Errichtung von Compliance-Programmen verzichtet: Welche Bedeutung haben/hätten die folgenden Maßnahmen, um ein Compliance-Programm zur Vermeidung und Aufdeckung von Kriminalität der Mitarbeiter des Unternehmens zu errichten?

(Skala von 1-10 mit 1 als „geringer Anreiz“ und 10 als „hoher Anreiz“)

Bitte wählen Sie die zutreffende Antwort für jeden Punkt aus:

	1	2	3	4	5	6	7	8	9	10
Strafrechtliche Sanktionen für den handelnden Mitarbeiter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strafrechtliche Sanktionen für die mangelnde Überwachung von Mitarbeitern durch den/die Vorgesetzten	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strafrechtliche Sanktionen für das Unternehmen für Straftaten seiner Mitarbeiter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Die Gewährung eines Bonus für das Unternehmen im Falle einer strafrechtlichen Verantwortlichkeit für Straftaten seiner Mitarbeiter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Der Ausschluss der strafrechtlichen Verantwortlichkeit des Unternehmens im Falle von Straftaten seiner Mitarbeiter, soweit ein effektives Compliance-Programm vorliegt	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Die Möglichkeit einer Strafmilderung für das Unternehmen im Falle von Straftaten seiner Mitarbeiter, soweit ein effektives Compliance-Programm vorliegt	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Die Einstellung des Strafverfahrens gegen das Unternehmen im Falle von Straftaten seiner Mitarbeiter, soweit ein effektives Compliance-Programm vorliegt	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Zivilrechtlicher Schadenersatz des handelnden Mitarbeiters	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Zivilrechtlicher Schadenersatz für die mangelnde Überwachung von Mitarbeitern durch den/die Vorgesetzten	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Zivilrechtlicher Schadenersatz seitens des Unternehmens für Straftaten seiner Mitarbeiter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Die Gewährung eines Bonus für das Unternehmen in Falle der zivilrechtlichen Verantwortlichkeit für Straftaten seiner Mitarbeiter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

79 [79]

Gibt es weitere Maßnahmen, die vorgehend nicht erwähnt wurden und die einen Anreiz zur Errichtung eines Compliance-Programms bieten?

Falls ja, wie hoch schätzen Sie diesen Anreiz auf er vorgenannten Skala von 1-10 ein?

Bitte geben Sie Ihre Antwort hier ein:

80 [80] Sollte der deutsche Gesetzgeber eine rechtliche Verpflichtung oder Anreize für die Erstellung eines Compliance-Programms schaffen, was würden Sie als effektivste Maßnahme zur Vermeidung von Straftaten ansehen?

Bitte wählen Sie alle zutreffenden Antworten aus:

- Die präzise und detaillierte Vorgabe der Elemente von Compliance-Programmen mit wenig Spielraum für Selbstregulierung
- Die Einführung eines allgemeinen Standards für Compliance-Programme mit Raum für Selbstregulierung
- Keine näheren Compliance-Vorgaben

81 [82] Haben Sie weitere, bisher nicht genannte Ideen, wie Compliance-Programme zur Vermeidung und Aufdeckung von Kriminalität in Unternehmen implementiert oder verbessert werden können?

Bitte geben Sie Ihre Antwort hier ein:

Vielen Dank für die Teilnahme an der Befragung!

Falls Sie noch Anmerkungen oder Fragen haben, wenden Sie sich bitte an:

Max-Planck-Institut für ausländisches und internationales Strafrecht
Günterstalstraße 73
79100 Freiburg
0761-7081-248
m.engelhart@mpicc.de

Übermittlung Ihres ausgefüllten Fragebogens:
Vielen Dank für die Beantwortung des Fragebogens.

B. Questionnaire 2

Paper Version

Compliance-Programme zur Verhütung von Wirtschafts- kriminalität



– Fragebogen –

Der folgende Fragebogen ist Teil einer internationalen Studie der strafrechtlichen Abteilung des *Max-Planck-Instituts für ausländisches und internationales Strafrecht* in Freiburg in Zusammenarbeit mit *Deloitte*. Sie analysiert die Verbreitung, den Inhalt und die Auswirkungen von Compliance-Programmen.

Die vorliegende Befragung vertieft einzelne Aspekte, die durch eine ausführliche Befragung Ende 2012/Anfang 2013 erhoben wurden. Eine Teilnahme an der vorliegenden Befragung ist **unabhängig** davon möglich, ob Sie den vorhergehenden Fragebogen ausgefüllt haben oder nicht.

Der Fragebogen kann auch anonym ohne Angabe Ihres Namens oder des Namens Ihres Unternehmens ausgefüllt werden!

A. COMPLIANCE-MAßNAHMEN

1. Vorhandene Compliance-Maßnahmen

Hat Ihr Unternehmen spezielle Maßnahmen ergriffen, die der Verhinderung und/oder Aufdeckung von Rechtsverstößen, insbesondere von Ordnungswidrigkeiten und Straftaten, dienen (sog. Compliance-Maßnahmen)?

- Ja Nein

ANMERKUNG: Wenn nein, dann bitte direkt zu *Frage 4* zu springen.

2. Gründe für Compliance-Maßnahmen

Aus welchen Gründen beschäftigen Sie sich (als Unternehmen) mit dem Thema Compliance (Mehrfachnennungen möglich)?

- Gute Unternehmensführung
 Gesetzliche Notwendigkeit
 Gesellschaftliche Forderung
 Risikominimierung
 Kundenanforderung
 Unternehmenswachstum

3. Vom Compliance-Programm erfasste Regelungen

Falls Ihr Unternehmen Compliance-Maßnahmen ergriffen hat: Welches sind die drei wichtigsten Maßnahmen?

Bitte listen Sie die Maßnahmen nach ihrer praktischen Bedeutung auf, wobei Nr. 1 die bedeutendste Maßnahme ist.

1.

2.

3.

4. Bedeutung von Compliance-Aspekten

Welche Bedeutung haben folgende Compliance-Aspekte für Sie / in Ihrem Unternehmen (Bitte ankreuzen; Mehrfachnennungen möglich)?

- Erpressung

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Terrorfinanzierung

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Produkthaftung(-sicherheit)

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Außenhandelsrecht

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Bilanzvergehen / (Finanz-)Buchhaltung

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Sicherheit

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Marktmanipulation

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Geldwäsche

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Diebstahl / Unterschlagung / Untreue

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Betrug

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

hohe Bedeutung

- Umweltschutz

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Datenschutz

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Interessenskonflikte

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Arbeitsschutz / Gesundheit

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Insiderhandel

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Kartell- und Wettbewerbsrecht

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

- Bestechung / Korruption

keine Bedeutung

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 hohe Bedeutung

B. EFFEKTIVITÄT VON STRATEGIEN ZUR EINFÜHRUNG VON COMPLIANCE-PROGRAMMEN

5. Allgemeine Ansätze zur Verhinderung von Kriminalität

Für wie effektiv halten Sie die folgenden bestehenden (oder z.B. durch Verbesserungen noch optimierte) möglichen Ansätze, um die Begehung von Kriminalität (Straftaten und Ordnungswidrigkeiten) in Unternehmen zu verhindern?

- *Wirksame Compliance-Programme* zur Verhinderung und Aufdeckung von Kriminalität (Straftaten und Ordnungswidrigkeiten)

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche Sanktionsdrohungen und Sanktionen (einschließlich Freiheitsstrafen) *gegen die jeweils handelnden Personen*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche Sanktionsdrohungen und Sanktionen (insbes. Freiheitsstrafen) *gegen Vorgesetzte*, deren Untergebene Taten begehen (im Falle der Verletzung von Aufsichtspflichten durch Vorgesetzte)

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche Sanktionsdrohungen und Sanktionen (insbes. hohe Geldstrafen) *gegen das Unternehmen selbst* im Falle der Begehung von Taten durch Mitarbeiter

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

6. Sanktionen zur Verhinderung von Kriminalität

a) Sanktionen *gegen den handelnden Mitarbeiter*

Für wie effektiv halten Sie die folgenden bestehenden bzw. möglichen Sanktionen gegen den *handelnden Mitarbeiter*, um die Begehung von Kriminalität (Straftaten und Ordnungswidrigkeiten) in Unternehmen zu verhindern?

- Empfindliche *Freiheitsstrafen* für Straftaten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche *Geldstrafen* für Straftaten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche *Geldbußen* für Ordnungswidrigkeiten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Straftaten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Ordnungswidrigkeiten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Abschöpfung des Erlangten (bei Straftaten und Ordnungswidrigkeiten ohne die Möglichkeit des Abzugs von Aufwendungen)

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

b) Sanktionen gegen den Vorgesetzten

Für wie effektiv halten Sie die folgenden bestehenden bzw. möglichen Sanktionen gegen *den Vorgesetzten* im Falle der Verletzung von Aufsichtspflichten, die zu Taten untergebener Mitarbeiter führen, um die Begehung von Kriminalität (Straftaten und Ordnungswidrigkeiten) in Unternehmen zu verhindern?

- Empfindliche *Freiheitsstrafen* für Straftaten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche *Geldstrafen* für Straftaten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche *Geldbußen* für Ordnungswidrigkeiten

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Straftaten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Ordnungswidrigkeiten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Abschöpfung des Erlangten (bei Straftaten und Ordnungswidrigkeiten ohne die Möglichkeit des Abzugs von Aufwendungen)

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

c) Sanktionen gegen das Unternehmen

Für wie effektiv halten Sie die folgenden bestehenden bzw. möglichen Sanktionen gegen *das Unternehmen* im Falle von Taten von Mitarbeitern, um die Begehung von Kriminalität (Straftaten und Ordnungswidrigkeiten) in Unternehmen zu verhindern?

- Empfindliche *Geldstrafen* für Straftaten des Unternehmens

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Empfindliche *Geldbußen* für Ordnungswidrigkeiten des Unternehmens

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Einsetzung eines *externen Compliance-Beauftragten*, der die Umsetzung interner Compliance-Maßnahmen des Unternehmens überwacht

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Verpflichtung des Unternehmens zur *Einführung eines Compliance-Programms*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- *Verbot bestimmter Geschäfte/Tätigkeiten* des Unternehmens

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- *Auswechslung der Geschäftsführung* des Unternehmens

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Einsetzung eines *Treuhänders*, der zeitweilig die Geschäftsführung des Unternehmens übernimmt

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Betriebsschließung

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Straftaten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Öffentliche Bekanntgabe der Verurteilung für *Ordnungswidrigkeiten*

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

- Abschöpfung des Erlangten (bei Straftaten und Ordnungswidrigkeiten ohne die Möglichkeit des Abzugs von Aufwendungen)

ineffektiv

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 effektiv

7. Direkte gesetzliche Verpflichtung zur Einführung von Compliance-Maßnahmen

Bislang besteht nur für wenige Rechtsbereiche eine gesetzliche Pflicht zur Einführung einzelner Compliance-Maßnahmen.

Für den Fall, dass der Gesetzgeber entsprechende Regelungen einführen würde: Welche Bedeutung hätten für Sie die folgenden gesetzgeberischen Maßnahmen, um in *Ihrem Unternehmen* Compliance-Maßnahmen zur Verhinderung und Aufdeckung von Kriminalität (Straftaten und Ordnungswidrigkeiten) einzuführen?

- Gesetzliche Verpflichtung zur Einführung von Compliance-Maßnahmen *ohne* straf- oder ordnungswidrigkeitenrechtliche Sanktion für den Fall der Nicht-Einführung

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Gesetzliche Verpflichtung zur Einführung von Compliance-Maßnahmen mit *empfindlicher Geldbuße* gegen das Unternehmen (Ordnungswidrigkeit) für den Fall der Nicht-Einführung

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Gesetzliche Verpflichtung zur Einführung von Compliance-Maßnahmen mit *empfindlicher Geldstrafe* gegen das Unternehmen (Straftat) für den Fall der Nicht-Einführung

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

8. Indirekte gesetzliche Verpflichtung zur Einführung von Compliance-Maßnahmen

Wenn der Gesetzgeber keine direkte Pflicht zur Einführung eines Compliance-Programms vorsieht: Welche Bedeutung haben (bei vorhandenen Vorschriften) bzw. hätten (falls eine solche Vorschrift eingeführt werden würde) für Sie die folgenden gesetzgeberischen Maßnahmen, um in *Ihrem Unternehmen* Compliance-Maßnahmen zur Verhinderung und Aufdeckung von Kriminalität (Straftaten und Ordnungswidrigkeiten) einzuführen?

a) Sanktionen gegen den handelnden Mitarbeiter

- Strafrechtliche Vorschriften mit empfindlichen Strafen *für den handelnden Mitarbeiter*

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Ordnungswidrigkeitenrechtliche Vorschriften mit empfindlichen Geldbußen *für den handelnden Mitarbeiter*

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Zivilrechtliche Vorschriften mit empfindlichen Sanktionen (Schadenersatz, Vertragsstrafe etc.) *für den handelnden Mitarbeiter*

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

b) Sanktionen gegen Vorgesetzte

- Strafrechtliche Vorschriften mit empfindlichen Strafen *für Vorgesetzte* im Falle der Verletzung von Aufsichtspflichten, die zu Taten untergebener Mitarbeiter führen

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Ordnungswidrigkeitenrechtliche Vorschriften mit empfindlichen Geldbußen *für Vorgesetzte* im Falle der Verletzung von Aufsichtspflichten, die zu Taten untergebener Mitarbeiter führt

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

- Zivilrechtliche Vorschriften mit empfindlichen Sanktionen (Schadenersatz, Vertragsstrafe etc.) *für Vorgesetzte* im Falle der Verletzung von Aufsichtspflichten, die zu Taten untergebener Mitarbeiter führt

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

c) Sanktionen gegen das Unternehmen

- Strafrechtliche Vorschriften mit empfindlichen Strafen *für das Unternehmen* im Falle von Taten von Unternehmensmitarbeitern (Unternehmensstrafrecht)

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

- Strafrechtliche Vorschriften mit empfindlichen Strafen *für das Unternehmen* im Falle von Taten von Mitarbeitern (Unternehmensstrafrecht), wobei die Strafbarkeit bei Vorliegen eines effektiven Compliance-Programms ausgeschlossen ist

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

- Ordnungswidrigkeitenrechtliche Vorschriften mit empfindlichen Geldbußen *für das Unternehmen* im Falle von Taten von Mitarbeitern

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

- Ordnungswidrigkeitenrechtliche Vorschriften mit empfindlichen Geldbußen *für das Unternehmen* im Falle von Taten von Unternehmensmitarbeitern, wobei die Verantwortlichkeit bei Vorliegen eines effektiven Compliance-Programms ausgeschlossen ist

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

- Zivilrechtliche Vorschriften mit empfindlichen Sanktionen (Schadenersatz, Vertragsstrafe etc.) *für das Unternehmen* im Falle von Taten von Mitarbeitern

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

sehr wichtig

- Zivilrechtliche Vorschriften mit empfindlichen Sanktionen (Schadenersatz, Vertragsstrafe etc.) *für das Unternehmen* im Falle von Taten von Unter-

nehmensmitarbeitern, wobei die Verantwortlichkeit bei Vorliegen eines effektiven Compliance-Programms ausgeschlossen ist

unwichtig

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 sehr wichtig

9. Aufwand/Nutzen des Compliance-Managements

Überwiegt für Sie eher Aufwand oder eher Nutzen des Compliance-Managements?

- Aufwand überwiegt
- Hält sich die Waage
- Nutzen überwiegt

C. BEDEUTUNG VON KRIMINALITÄT

10. Gesamtwirtschaftliche Bedeutung von Kriminalität

Für wie bedeutend erachten Sie Kriminalität (Straftaten und Ordnungswidrigkeiten) *gegen Unternehmen* insgesamt in Deutschland?

unbedeutend

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 bedeutend

Für wie bedeutend erachten Sie Kriminalität (Straftaten und Ordnungswidrigkeiten) *aus Unternehmen heraus* insgesamt in Deutschland?

unbedeutend

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 bedeutend

11. Bedeutung von Kriminalität für Ihr Unternehmen

Wie bedeutend ist Kriminalität (Straftaten und Ordnungswidrigkeiten) *gegen Ihr Unternehmen*?

unbedeutend

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 bedeutend

Wie bedeutend ist Kriminalität (Straftaten und Ordnungswidrigkeiten) *aus Ihrem Unternehmen heraus*?

unbedeutend

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

 bedeutend

D. UNTERNEHMEN UND INTERVIEWPARTNER

12. Beschreibung des Unternehmens

Welche *Rechtsform* hat Ihr Unternehmen (z.B. AG, GmbH)?

.....

Falls zutreffend: Ist das Unternehmen *börsennotiert*?

Ja Nein

In welcher *Branche*/welchen *Branchen* (z.B. Gesundheitssektor) ist Ihr Unternehmen überwiegend tätig?

.....

Wie viele *Mitarbeiter* hat Ihr Unternehmen insgesamt weltweit?
(*grobe Schätzung genügt*)

.....

Wie hoch war der letzte jährliche *Umsatz* des Unternehmens weltweit in EUR?
(*grobe Schätzung genügt*)

.....

13. Position

Welche *Position* haben Sie im Unternehmen?

- Chief Compliance Officer
- Chefsyndikus
- Head of Enterprise Risk
- Head of GRC
- Leitender Angestellter in der Compliance Funktion
- Andere:

14. Chief Compliance Officer

An wen berichtet der *Chief Compliance Officer* in Ihrem Unternehmen?

- CEO
- Vorstand Recht
- CFO
- CRO
- COO
- Andere:

II. Tables T-Test

The following section provides the results of the paired samples test (t-Test) performed with SPSS.⁵⁴¹ For each analysis of the results of the first questionnaire (A.) and the second questionnaire (B.), two tables are given: the “paired samples correlation” and the “paired samples test”.

After the description of the pairs (variables), the table “paired samples correlation” displays in the first column the number of valid (non-missing) results used when calculating the t-test. Missing data was left out and not substituted by an average result, so that the number of results can differ from pair to pair. The next column shows the correlation. This is the correlation coefficient of the pair of variables indicated. It is a measure of the strength and direction of the (linear) relationship between the two variables. The correlation coefficient can range from -1 to +1, with -1 indicating a perfect negative correlation, +1 indicating a perfect positive correlation, and 0 indicating no correlation at all (a variable correlated with itself would always have a correlation coefficient of 1). In accordance with common usage, a correlation up to .2 is classified as a “very weak correlation”, above .2 up to .5 as a “weak correlation”, above .5 up to .7 as a “medium correlation”, above .7 up to .9 as a “strong correlation” and above .9 up to 1 as a “very strong correlation”. The last column shows the significance. This is the p-value associated with the correlation. Here, correlation is significant at the .05 level.

The results of the table “paired samples test” are listed in the following order: The first column after the description of the compared pairs is labeled “Mean” and it is the average difference between the two variable means. The “Std. Deviation” in the second column is the standard deviation of the mean paired difference. This and the “Std. Error of the Mean” are calculated with the average mean in the first column. Standard Error Mean is the estimated standard deviation of the compared samples mean. This value is determined by dividing the standard deviation of the compared samples by the square root of sample size (number of pairs). It provides a measure of the variability of the sample mean (with “0” having no variability and “1” having maximum variability).

Columns four and five are lower and upper confidence intervals for the mean difference. The confidence interval for the mean specifies a range of values within which the unknown population parameter, in this case the mean, may lie. It is given by $\bar{x} \pm t_{df;1-\alpha/2} \cdot s/\sqrt{n}$ (with $df = n - 1$) where “s” is the sample deviation of the observations and “n” is the number of valid observations. The t-value in the equation is given in common statistics books,⁵⁴² with the degrees of freedom being n-1 and the p-value being 1-alpha/2. Alpha is the confidence level. According to common usage a (“conservative”) 95% (.95) confidence interval of the difference is

⁵⁴¹ See also supra p. 32.

⁵⁴² See e.g. *Bortz/Schuster, Statistik*, p. 590.

used. In the sixth column the respective t-score, the ratio of the mean of the difference to the standard error of the difference, is given. The seventh column provides the degrees of freedom. The degrees of freedom for the paired observations is the number of observations minus 1, as the test is conducted on the sample of the paired differences.

The eighth column provides the p-value for the difference of means. This is the two-tailed p-value computed using the t-distribution. It is the probability of observing a greater absolute value of t under the null hypothesis. If the p-value is less than the pre-specified alpha level (here .05), one can conclude that the mean difference between the two variables of the respective pair is statistically significantly different from zero. A p-value below .05 is considered “significant” (*), a value below .01 is “very significant” (**) and a value below .001 “clearly significant” (***). Values below 0.1 are considered “marginally significant” (“†”). Values greater than 0.1 are not considered significant.

A. Questionnaire 1

1. Evaluation of Legal Measures

Table 2: Evaluation of legal measures (paired samples correlations)⁵⁴³

Pair	N	Correlation	Sig.
1 v67a & v67b	89	,573	,000
2 v67a & v67c	87	,222	,039
3 v67a & v67d	85	,197	,070
4 v67a & v67e	85	,191	,079
5 v67a & v67f	84	-,068	,542
6 v67a & v67g	84	,119	,281
7 v67b & v67c	88	,440	,000
8 v67b & v67d	87	,211	,050
9 v67b & v67e	87	,306	,004
10 v67b & v67f	86	-,003	,982
11 v67b & v67g	86	,049	,651
12 v67c & v67d	85	,454	,000
13 v67c & v67e	84	,178	,106
14 v67c & v67f	85	,469	,000
15 v67c & v67g	84	,273	,012
16 v67d & v67e	84	,198	,070

⁵⁴³ See no. 16 a) (questionnaire, Annex I.A.1.)/no. 67 (online questionnaire, Annex I.A.2.). For the results, see supra p. 113.

17	v67d & v67f	84	,397	,000
18	v67d & v67g	85	,622	,000
19	v67e & v67f	85	,610	,000
20	v67e & v67g	85	,145	,187
21	v67f & v67g	85	,442	,000

v67a: Legal regulations in general
v67b: Criminal sanctions (perpetrator)
v67c: Criminal sanctions (superior)
v67d: Criminal sanctions (company)
v67e: Civil damages (perpetrator)
v67f: Civil damages (superior)
v67g: Civil damages (company)

Table 3: Evaluation of legal measures (paired samples test)

Pair	Paired Differences					t	df	Sig. (2-tailed)	
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference					
				Lower	Upper				
1	v67a & v67b	-.865	1,817	,193	-1,248	-.483	-4,493	88	,000
2	v67a & v67c	-.126	2,587	,277	-.678	,425	-.456	86	,650
3	v67a & v67d	-.106	2,952	,320	-.743	,531	-.331	84	,742
4	v67a & v67e	-.459	2,543	,276	-1,007	,090	-1,664	84	,100
5	v67a & v67f	,107	3,271	,357	-.603	,817	,300	83	,765
6	v67a & v67g	-.333	2,987	,326	-.982	,315	-1,023	83	,309
7	v67b & v67c	,739	2,065	,220	,301	1,176	3,355	87	,001
8	v67b & v67d	,770	2,811	,301	,171	1,369	2,556	86	,012
9	v67b & v67e	,391	2,233	,239	-.085	,867	1,633	86	,106
10	v67b & v67f	,965	3,035	,327	,314	1,616	2,949	85	,004
11	v67b & v67g	,535	2,965	,320	-.101	1,171	1,673	85	,098
12	v67c & v67d	,071	2,439	,265	-.455	,597	,267	84	,790
13	v67c & v67e	-.393	2,598	,283	-.957	,171	-1,386	83	,169
14	v67c & v67f	,224	2,316	,251	-.276	,723	,890	84	,376
15	v67c & v67g	-.214	2,725	,297	-.806	,377	-.721	83	,473
16	v67d & v67e	-.369	2,920	,319	-1,003	,265	-1,158	83	,250
17	v67d & v67f	,238	2,745	,299	-.358	,834	,795	83	,429
18	v67d & v67g	-.165	2,176	,236	-.634	,305	-.698	84	,487
19	v67e & v67f	,624	1,988	,216	,195	1,052	2,892	84	,005
20	v67e & v67g	,188	2,913	,316	-.440	,817	,596	84	,553
21	v67f & v67g	-.435	2,566	,278	-.989	,118	-1,564	84	,122

Annotations see table 2.

2. Direct Enforcement Measures for Compliance Programs

Table 4: Direct enforcement strategies (paired samples correlations)⁵⁴⁴

Pair	N	Correlation	Sig.
1 v77a & v77b	87	,434	,000
2 v77a & v77c	88	,340	,001
3 v77b & v77c	87	,799	,000

v77a: Legal obligation without specific sanctions;

v77b: Legal obligations with specific civil sanctions;

v77c: Legal obligations with criminal law sanctions.

Table 5: Direct enforcement strategies (paired samples test)

Pair	Mean	Std. Deviation	Paired Differences			t	df	Sig. (2-tailed)
			Std. Error Mean	95% Confidence Interval of the Difference				
1 v77a & v77b	-1,667	2,671	,286	-2,236	-1,097	-5,821	86	,000
2 v77a & v77c	-2,239	2,808	,299	-2,834	-1,644	-7,479	87	,000
3 v77b & v77c	-,598	1,253	,134	-,865	-,331	-4,451	86	,000

Annotations see table 4.

3. Indirect Enforcement Measures for Compliance Programs

Table 6: Indirect enforcement measures (paired samples correlations)⁵⁴⁵

Pair	N	Correlation	Sig.
1 v78a & v78b	82	,618	,000
2 v78a & v78c	80	,433	,000
3 v78a & v78d	66	,234	,058
4 v78a & v78e	77	,082	,478
5 v78a & v78f	77	,061	,596
6 v78a & v78g	76	,184	,111
7 v78a & v78h	80	,311	,005
8 v78a & v78i	77	,304	,007
9 v78a & v78j	79	,246	,029
10 v78a & v78k	70	,185	,125
11 v78b & v78c	80	,581	,000
12 v78b & v78d	66	,336	,006

⁵⁴⁴ See no. 18 b) (questionnaire, Annex I.A.1./no. 77 (online questionnaire, Annex I.A.2.). For the results, see supra p. 136.

⁵⁴⁵ See no. 18 c) (questionnaire, Annex I.A.1./no. 78 (online questionnaire, Annex I.A.2.). For the results, see supra p. 139.

13	v78b & v78e	77	,359	,001
14	v78b & v78f	77	,340	,002
15	v78b & v78g	76	,407	,000
16	v78b & v78h	80	,187	,096
17	v78b & v78i	77	,527	,000
18	v78b & v78j	79	,357	,001
19	v78b & v78k	70	,341	,004
20	v78c & v78d	65	,334	,007
21	v78c & v78e	76	,372	,001
22	v78c & v78f	77	,364	,001
23	v78c & v78g	75	,312	,006
24	v78c & v78h	78	,138	,227
25	v78c & v78i	75	,424	,000
26	v78c & v78j	77	,610	,000
27	v78c & v78k	68	,344	,004
28	v78d & v78e	66	,440	,000
29	v78d & v78f	66	,296	,016
30	v78d & v78g	64	,218	,084
31	v78d & v78h	66	,139	,267
32	v78d & v78i	65	,184	,141
33	v78d & v78j	66	,296	,016
34	v78d & v78k	63	,696	,000
35	v78e & v78f	78	,581	,000
36	v78e & v78g	76	,602	,000
37	v78e & v78h	77	,001	,996
38	v78e & v78i	75	,253	,028
39	v78e & v78j	76	,227	,049
40	v78e & v78k	70	,341	,004
41	v78f & v78g	76	,544	,000
42	v78f & v78h	77	,232	,043
43	v78f & v78i	75	,394	,000
44	v78f & v78j	76	,399	,000
45	v78f & v78k	70	,516	,000
46	v78g & v78h	76	,105	,366
47	v78g & v78i	74	,333	,004
48	v78g & v78j	75	,208	,074
49	v78g & v78k	69	,303	,012
50	v78h & v78i	78	,764	,000
51	v78h & v78j	80	,567	,000
52	v78h & v78k	71	,490	,000
53	v78i & v78j	78	,800	,000
54	v78i & v78k	70	,517	,000
55	v78j & v78k	71	,559	,000

v78a: Criminal liability (perpetrator);

v78b: Criminal liability (superior for insufficient supervision);

- v78c: Criminal liability (company);
v78d: Privileges in case of criminal liability of the company for crimes of employees;
v78e: Exclusion from criminal liability of the company in case of effective compliance program;
v78f: Mitigation of criminal sentence of the company in case of effective compliance program;
v78g: Suspension of criminal proceedings against company in case of effective compliance program;
v78h: Civil damages (perpetrator);
v78i: Civil damages (superior for insufficient supervision);
v78j: Civil damages (company);
v78k: Privileges in case of civil liability of the company for crimes of employees.

Table 7: Indirect enforcement measures (paired samples test)

Pair	Mean	Paired Differences		95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
		Std. Deviation	Std. Error Mean	Lower	Upper			
1 v78a & v78b	,085	1,807	,200	-,312	,482	,428	81	,670
2 v78a & v78c	-,100	2,208	,247	-,591	,391	-,405	79	,687
3 v78a & v78d	2,197	3,264	,402	1,395	2,999	5,468	65	,000
4 v78a & v78e	,078	3,068	,350	-,619	,774	,223	76	,824
5 v78a & v78f	,286	3,124	,356	-,423	,995	,803	76	,425
6 v78a & v78g	-,197	2,723	,312	-,820	,425	-,632	75	,529
7 v78a & v78h	1,250	2,684	,300	,653	1,847	4,166	79	,000
8 v78a & v78i	,896	2,599	,296	,306	1,486	3,026	76	,003
9 v78a & v78j	,532	2,819	,317	-,100	1,163	1,676	78	,098
10 v78a & v78k	2,071	3,155	,377	1,319	2,824	5,494	69	,000
11 v78b & v78c	-,150	1,917	,214	-,577	,277	-,700	79	,486
12 v78b & v78d	2,091	3,122	,384	1,323	2,858	5,441	65	,000
13 v78b & v78e	,065	2,587	,295	-,522	,652	,220	76	,826
14 v78b & v78f	,273	2,644	,301	-,327	,873	,905	76	,368
15 v78b & v78g	-,224	2,342	,269	-,759	,311	-,833	75	,408
16 v78b & v78h	1,150	2,947	,330	,494	1,806	3,490	79	,001
17 v78b & v78i	,935	2,123	,242	,453	1,417	3,864	76	,000
18 v78b & v78j	,456	2,640	,297	-,136	1,047	1,534	78	,129
19 v78b & v78k	1,943	2,943	,352	1,241	2,645	5,523	69	,000
20 v78c & v78d	2,338	3,124	,387	1,564	3,113	6,035	64	,000
21 v78c & v78e	,237	2,555	,293	-,347	,821	,808	75	,422
22 v78c & v78f	,455	2,573	,293	-,129	1,039	1,550	76	,125
23 v78c & v78g	-,067	2,511	,290	-,644	,511	-,230	74	,819
24 v78c & v78h	1,372	3,016	,341	,692	2,052	4,018	77	,000
25 v78c & v78i	,987	2,402	,277	,434	1,539	3,557	74	,001
26 v78c & v78j	,675	2,061	,235	,207	1,143	2,875	76	,005
27 v78c & v78k	2,000	2,967	,360	1,282	2,718	5,558	67	,000

28	v78d & v78e	-2,197	2,957	,364	-2,924	-1,470	-6,035	65	,000
29	v78d & v78f	-1,924	3,302	,406	-2,736	-1,113	-4,735	65	,000
30	v78d & v78g	-2,391	3,407	,426	-3,242	-1,540	-5,614	63	,000
31	v78d & v78h	-1,030	3,642	,448	-1,925	-,135	-2,299	65	,025
32	v78d & v78i	-1,369	3,453	,428	-2,225	-,514	-3,197	64	,002
33	v78d & v78j	-1,727	3,326	,409	-2,545	-,910	-4,219	65	,000
34	v78d & v78k	-,111	2,336	,294	-,699	,477	-,378	62	,707
35	v78e & v78f	,269	2,243	,254	-,236	,775	1,060	77	,292
36	v78e & v78g	-,303	2,079	,238	-,778	,172	-1,269	75	,208
37	v78e & v78h	1,273	3,467	,395	,486	2,060	3,222	76	,002
38	v78e & v78i	,947	2,852	,329	,291	1,603	2,875	74	,005
39	v78e & v78j	,474	3,075	,353	-,229	1,176	1,343	75	,183
40	v78e & v78k	2,071	3,009	,360	1,354	2,789	5,760	69	,000
41	v78f & v78g	-,461	2,230	,256	-,970	,049	-1,801	75	,076
42	v78f & v78h	1,052	3,052	,348	,359	1,745	3,025	76	,003
43	v78f & v78i	,720	2,587	,299	,125	1,315	2,411	74	,018
44	v78f & v78j	,250	2,723	,312	-,372	,872	,800	75	,426
45	v78f & v78k	1,700	2,639	,315	1,071	2,329	5,389	69	,000
46	v78g & v78h	1,526	3,113	,357	,815	2,238	4,274	75	,000
47	v78g & v78i	1,243	2,536	,295	,656	1,831	4,217	73	,000
48	v78g & v78j	,787	2,947	,340	,109	1,465	2,312	74	,024
49	v78g & v78k	2,188	3,045	,367	1,457	2,920	5,970	68	,000
50	v78h & v78i	-,410	1,647	,186	-,782	-,039	-2,200	77	,031
51	v78h & v78j	-,763	2,318	,259	-1,278	-,247	-2,942	79	,004
52	v78h & v78k	,704	2,733	,324	,057	1,351	2,171	70	,033
53	v78i & v78j	-,372	1,530	,173	-,717	-,027	-2,146	77	,035
54	v78i & v78k	1,029	2,576	,308	,414	1,643	3,340	69	,001
55	v78j & v78k	1,408	2,556	,303	,804	2,013	4,644	70	,000

Annotations see table 6.

B. Questionnaire 2

1. General Approaches

Table 8: General approaches (paired samples correlations)⁵⁴⁶

Pair	N	Correlation	Sig.
1 v1a & v1b	139	,334	,000
2 v1a & v1c	139	,339	,000
3 v1a & v1d	139	,230	,007

⁵⁴⁶ See no. 5 of the questionnaire (Annex I.B.). For the results, see supra p. 158.

4	v1b & v1c	139	,581	,000
5	v1b & v1d	139	,237	,005
6	v1c & v1d	139	,556	,000

v1a: Effective compliance programs;
v1b: Sanctions against the perpetrator;
v1c: Sanctions against the superior;
v1d: Sanctions against the company.

Table 9: General approaches (paired samples test)

Pair	Paired Differences					t	df	Sig. (2-tailed)	
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference					
				Lower	Upper				
1	v1a & v1b	,3453	2,4722	,2097	-,0693	,7599	1,647	138	,102
2	v1a & v1c	,8201	2,3934	,2030	,4187	1,2215	4,040	138	,000
3	v1a & v1d	,8201	2,7669	,2347	,3561	1,2842	3,495	138	,001
4	v1b & v1c	,4748	2,0335	,1725	,1338	,8159	2,753	138	,007
5	v1b & v1d	,4748	2,9101	,2468	-,0132	,9629	1,924	138	,056
6	v1c & v1d	0,0000	2,1803	,1849	-,3657	,3657	0,000	138	1,000

Annotations see table 8.

2. Sanctions Against the Perpetrator (Prevention)

Table 10: Sanctions against the perpetrator (paired samples correlations)⁵⁴⁷

Pair	N	Correlation	Sig.	
1	v2a & v2b	135	,765	,000
2	v2a & v2c	136	,580	,000
3	v2a & v2d	137	,602	,000
4	v2a & v2e	136	,553	,000
5	v2a & v2f	137	,304	,000
6	v2b & v2c	134	,820	,000
7	v2b & v2d	135	,448	,000
8	v2b & v2e	134	,416	,000
9	v2b & v2f	135	,419	,000
10	v2c & v2d	136	,375	,000
11	v2c & v2e	135	,405	,000
12	v2c & v2f	136	,371	,000
13	v2d & v2e	136	,889	,000

⁵⁴⁷ See no. 6 a) of the questionnaire (Annex I.B.). For the results, see supra p. 162.

14	v2d & v2f	137	,386	,000
15	v2e & v2f	136	,301	,000

- v2a: Imprisonment (criminal offenses);
v2b: Fines (criminal offenses);
v2c: Fines (regulatory offenses);
v2d: Publication conviction (criminal offenses);
v2e: Publication conviction (regulatory offenses);
v2f: Forfeiture (criminal & regulatory offenses).

Table 11: Sanctions against the perpetrator (paired samples test)

Pair		Paired Differences				t	df	Sig. (2-tailed)	
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference Lower Upper				
1	v2a & v2b	,3481	1,5078	,1298	,0915	,6048	2,683	134	,008
2	v2a & v2c	,6985	2,1023	,1803	,3420	1,0550	3,875	135	,000
3	v2a & v2d	,4745	2,2363	,1911	,0966	,8523	2,483	136	,014
4	v2a & v2e	1,0294	2,4158	,2072	,6197	1,4391	4,969	135	,000
5	v2a & v2f	,1095	2,7431	,2344	-,3540	,5730	,467	136	,641
6	v2b & v2c	,3881	1,3760	,1189	,1529	,6232	3,265	133	,001
7	v2b & v2d	,1630	2,6151	,2251	-,2822	,6081	,724	134	,470
8	v2b & v2e	,7313	2,7370	,2364	,2637	1,1990	3,093	133	,002
9	v2b & v2f	-,1852	2,4983	,2150	-,6105	,2401	-,861	134	,391
10	v2c & v2d	-,2206	2,8459	,2440	-,7032	,2620	-,904	135	,368
11	v2c & v2e	,3333	2,8179	,2425	-,1463	,8130	1,374	134	,172
12	v2c & v2f	-,5956	2,6843	,2302	-1,0508	-,1404	-2,587	135	,011
13	v2d & v2e	,5735	1,2918	,1108	,3545	,7926	5,178	135	,000
14	v2d & v2f	-,3650	2,8488	,2434	-,8463	,1164	-1,499	136	,136
15	v2e & v2f	-,9338	3,0821	,2643	-1,4565	-,4111	-3,533	135	,001

Annotations see table 10.

3. Sanctions Against the Superior (Prevention)

Table 12: Sanctions against the superior (paired samples correlations)⁵⁴⁸

Pair	N	Correlation	Sig.	
1	v3a & v3b	135	,836	,000
2	v3a & v3c	135	,743	,000
3	v3a & v3d	135	,742	,000

⁵⁴⁸ See no. 6 b) of the questionnaire (Annex I.B.). For the results, see supra p. 165.

4	v3a & v3e	136	,686	,000
5	v3a & v3f	135	,550	,000
6	v3b & v3c	134	,863	,000
7	v3b & v3d	134	,677	,000
8	v3b & v3e	135	,636	,000
9	v3b & v3f	134	,571	,000
10	v3c & v3d	134	,611	,000
11	v3c & v3e	135	,625	,000
12	v3c & v3f	134	,490	,000
13	v3d & v3e	135	,921	,000
14	v3d & v3f	134	,610	,000
15	v3e & v3f	135	,566	,000

- v3a: Imprisonment (criminal offenses);
- v3b: Fines (criminal offenses);
- v3c: Fines (regulatory offenses);
- v3d: Publication conviction (criminal offenses);
- v3e: Publication conviction (regulatory offenses);
- v3f: Forfeiture (criminal & regulatory offenses).

Table 13: Sanctions against the superior (paired samples test)

Pair	Paired Differences						t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error	95% Confidence Interval of the Difference					
				Lower	Upper				
1	v3a & v3b	,2074	1,4041	,1208	-,0316	,4464	1,716	134	,088
2	v3a & v3c	,7037	1,7665	,1520	,4030	1,0044	4,629	134	,000
3	v3a & v3d	,3111	1,9257	,1657	-,0167	,6389	1,877	134	,063
4	v3a & v3e	,6397	2,1141	,1813	,2812	,9982	3,529	135	,001
5	v3a & v3f	,2519	2,4909	,2144	-,1722	,6759	1,175	134	,242
6	v3b & v3c	,4552	1,2300	,1063	,2450	,6654	4,284	133	,000
7	v3b & v3d	,0522	2,0894	,1805	-,3048	,4093	,289	133	,773
8	v3b & v3e	,3852	2,2024	,1896	,0103	,7601	2,032	134	,044
9	v3b & v3f	-,0522	2,3662	,2044	-,4565	,3521	-,256	133	,799
10	v3c & v3d	-,3881	2,3167	,2001	-,7839	,0078	-1,939	133	,055
11	v3c & v3e	-,0593	2,2651	,1950	-,4448	,3263	-,304	134	,762
12	v3c & v3f	-,4776	2,6092	,2254	-,9234	-,0318	-2,119	133	,036
13	v3d & v3e	,3259	1,1051	,0951	,1378	,5140	3,427	134	,001
14	v3d & v3f	-,0896	2,4509	,2117	-,5083	,3292	-,423	133	,673
15	v3e & v3f	-,4296	2,5758	,2217	-,8681	,0088	-1,938	134	,055

Annotations see table 12.

4. Sanctions Against the Company (Prevention)

Table 14: Sanctions against the company (paired samples correlations) ⁵⁴⁹

Pair	N	Correlation	Sig.
1 v4a & v4b	134	,924	,000
2 v4a & v4c	134	,406	,000
3 v4a & v4d	134	,387	,000
4 v4a & v4e	133	,361	,000
5 v4a & v4f	134	,319	,000
6 v4a & v4g	133	,254	,003
7 v4a & v4h	132	,123	,161
8 v4a & v4i	133	,389	,000
9 v4a & v4j	134	,292	,001
10 v4a & v4k	133	,394	,000
11 v4b & v4c	135	,357	,000
12 v4b & v4d	135	,403	,000
13 v4b & v4e	134	,330	,000
14 v4b & v4f	135	,280	,001
15 v4b & v4h	133	,126	,147
16 v4b & v4i	134	,317	,000
17 v4b & v4j	135	,279	,001
18 v4b & v4k	134	,353	,000
19 v4c & v4d	135	,558	,000
20 v4c & v4e	134	,548	,000
21 v4c & v4f	135	,463	,000
22 v4c & v4g	134	,436	,000
23 v4c & v4h	133	,186	,033
24 v4c & v4i	134	,341	,000
25 v4c & v4j	135	,309	,000
26 v4c & v4k	134	,273	,001
27 v4d & v4e	134	,432	,000
28 v4d & v4f	135	,387	,000
29 v4d & v4g	134	,203	,018
30 v4d & v4h	133	-,002	,986
31 v4d & v4i	134	,228	,008
32 v4d & v4j	135	,271	,001
33 v4d & v4k	134	,300	,000
34 v4e & v4f	134	,587	,000
35 v4e & v4g	133	,469	,000

⁵⁴⁹ See no. 6 c) of the questionnaire (Annex I.B.). For the results, see supra p. 169.

36	v4e & v4h	132	,327	,000
37	v4e & v4i	133	,335	,000
38	v4e & v4j	134	,341	,000
39	v4e & v4k	133	,227	,009
40	v4f & v4g	134	,685	,000
41	v4f & v4h	133	,416	,000
42	v4f & v4i	134	,499	,000
43	v4f & v4j	135	,448	,000
44	v4f & v4k	134	,313	,000
45	v4g & v4h	133	,585	,000
46	v4g & v4i	133	,450	,000
47	v4g & v4j	134	,401	,000
48	v4g & v4k	133	,299	,000
49	v4h & v4i	132	,387	,000
50	v4h & v4j	133	,481	,000
51	v4h & v4k	132	,211	,015
52	v4i & v4j	134	,863	,000
53	v4i & v4k	133	,461	,000
54	v4j & v4k	134	,436	,000
55	v4b & v4g	134	,213	,013

- v4a: Fines (criminal offenses);
- v4b: Fines (regulatory offenses);
- v4c: Appointment compliance-monitor;
- v4d: Obligation to implement compliance program;
- v4e: Prohibition of business activities;
- v4f: Replacement of the executive board;
- v4g: Appointment trustee (with executive powers);
- v4h: Plant shutdown;
- v4i: Publication conviction (criminal offenses);
- v4j: Publication conviction (regulatory offenses);
- v4k: Forfeiture (criminal & regulatory offenses).

Table 15: Sanctions against the company (paired samples test)

Pair		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error	95% Confidence Interval of the Difference				
					Lower	Upper			
1	v4a & v4b	,1866	,8942	,0772	,0338	,3394	2,415	133	,017
2	v4a & v4c	,6567	2,7231	,2352	,1914	1,1220	2,792	133	,006
3	v4a & v4d	,4851	2,7276	,2356	,0190	,9511	2,059	133	,041
4	v4a & v4e	-,0301	2,7769	,2408	-,5064	,4462	-,125	132	,901
5	v4a & v4f	,1642	2,8816	,2489	-,3282	,6566	,660	133	,511

6	v4a & v4g	1,5188	3,3203	,2879	,9493	2,0883	5,275	132	,000
7	v4a & v4h	1,7424	4,0486	,3524	1,0453	2,4395	4,945	131	,000
8	v4a & v4i	,2030	2,8571	,2477	-,2871	,6931	,819	132	,414
9	v4a & v4j	,6642	3,1239	,2699	,1304	1,1980	2,461	133	,015
10	v4a & v4k	,1429	2,7196	,2358	-,3236	,6093	,606	132	,546
11	v4b & v4c	,4889	2,8254	,2432	,0079	,9698	2,010	134	,046
12	v4b & v4d	,3111	2,6835	,2310	-,1457	,7679	1,347	134	,180
13	v4b & v4e	-,2090	2,8339	,2448	-,6932	,2753	-,854	133	,395
14	v4b & v4f	-,0222	2,9510	,2540	-,5246	,4801	-,087	134	,930
15	v4b & v4g	1,3582	3,3771	,2917	,7812	1,9352	4,656	133	,000
16	v4b & v4h	1,5714	4,0100	,3477	,8836	2,2592	4,519	132	,000
17	v4b & v4i	,0373	3,0023	,2594	-,4757	,5503	,144	133	,886
18	v4b & v4j	,4889	3,1406	,2703	-,0457	1,0235	1,809	134	,073
19	v4b & v4k	-,0373	2,8001	,2419	-,5158	,4411	-,154	133	,878
20	v4c & v4d	-,1778	2,4824	,2136	-,6003	,2448	-,832	134	,407
21	v4c & v4e	-,7388	2,5009	,2160	-1,1661	-,3115	-3,420	133	,001
22	v4c & v4f	-,5111	2,7396	,2358	-,9775	-,0448	-2,168	134	,032
23	v4c & v4g	,8582	3,0489	,2634	,3373	1,3792	3,258	133	,001
24	v4c & v4h	1,0526	4,0719	,3531	,3542	1,7511	2,981	132	,003
25	v4c & v4i	-,4701	3,1544	,2725	-1,0091	,0688	-1,725	133	,087
26	v4c & v4j	0,0000	3,2713	,2815	-,5569	,5569	0,000	134	1,000
27	v4c & v4k	-,5075	3,1759	,2744	-1,0501	,0352	-1,850	133	,067
28	v4d & v4e	-,5299	2,7766	,2399	-1,0043	-,0554	-2,209	133	,029
29	v4d & v4f	-,3333	2,8911	,2488	-,8255	,1588	-1,340	134	,183
30	v4d & v4g	1,0448	3,5707	,3085	,4347	1,6549	3,387	133	,001
31	v4d & v4h	1,2857	4,4391	,3849	,5243	2,0471	3,340	132	,001
32	v4d & v4i	-,2761	3,3704	,2912	-,8520	,2998	-,948	133	,345
33	v4d & v4j	,1778	3,3253	,2862	-,3883	,7438	,621	134	,536
34	v4d & v4k	-,3284	3,0774	,2658	-,8542	,1975	-1,235	133	,219
35	v4e & v4f	,1866	2,3689	,2046	-,2182	,5913	,912	133	,364
36	v4e & v4g	1,5414	2,9427	,2552	1,0366	2,0461	6,041	132	,000
37	v4e & v4h	1,7879	3,7028	,3223	1,1503	2,4254	5,548	131	,000
38	v4e & v4i	,2105	3,1287	,2713	-,3261	,7472	,776	132	,439
39	v4e & v4j	,7015	3,1623	,2732	,1611	1,2418	2,568	133	,011
40	v4e & v4k	,1429	3,2384	,2808	-,4126	,6983	,509	132	,612
41	v4f & v4g	1,3433	2,2846	,1974	,9529	1,7337	6,806	133	,000
42	v4f & v4h	1,5865	3,4688	,3008	,9915	2,1814	5,275	132	,000
43	v4f & v4i	,0224	2,7241	,2353	-,4431	,4878	,095	133	,924
44	v4f & v4j	,5111	2,9010	,2497	,0173	1,0049	2,047	134	,043
45	v4f & v4k	-,0373	3,0716	,2653	-,5622	,4875	-,141	133	,888
46	v4g & v4h	,2331	3,0745	,2666	-,2943	,7604	,874	132	,384
47	v4g & v4i	-1,2707	3,0801	,2671	-1,7990	-,7424	-4,758	132	,000
48	v4g & v4j	-,8433	3,2533	,2810	-1,3992	-,2874	-3,001	133	,003
49	v4g & v4k	-1,3684	3,3721	,2924	-1,9468	-,7900	-4,680	132	,000
50	v4h & v4i	-1,5152	3,6161	,3147	-2,1378	-,8925	-4,814	131	,000

51	v4h & v4j	-1,0376	3,3742	,2926	-1,6163	-,4588	-3,546	132	,001
52	v4h & v4k	-1,5833	3,9848	,3468	-2,2694	-,8972	-4,565	131	,000
53	v4i & v4j	,5000	1,4906	,1288	,2453	,7547	3,883	133	,000
54	v4i & v4k	-,0150	2,8123	,2439	-,4974	,4673	-,062	132	,951
55	v4j & v4k	-,5075	2,9219	,2524	-1,0067	-,0082	-2,010	133	,046

Annotations see table 14.

5. Direct Enforcement Strategies

Table 16: Direct enforcement strategies (paired samples correlations)⁵⁵⁰

Pair	N	Correlation	Sig.
1 v5a & v5b	137	,262	,002
2 v5a & v5c	137	,142	,099
3 v5b & v5c	137	,677	,000

v5a: Legal obligation without sanctions;

v5b: Legal obligations with regulatory fine;

v5c: Legal obligations with criminal fine.

Table 17: General approaches (paired samples test)

Pair	Mean	Std. Deviation	Std. Error Mean	Paired Differences		t	df	Sig. (2-tailed)
				Lower	Upper			
1 v5a & v5b	-1,8248	3,2196	,2751	-2,3688	-1,2808	-6,634	136	,000
2 v5a & v5c	-2,0438	3,7551	,3208	-2,6782	-1,4093	-6,370	136	,000
3 v5b & v5c	-2,190	2,1410	,1829	-,5807	,1428	-1,197	136	,233

Annotations see table 16.

6. Sanctions Against the Perpetrator (Compliance)

Table 18: Sanctions against the perpetrator (paired samples correlations)⁵⁵¹

	N	Correlation	Sig.
1 v6a & v6b	131	,842	,000
2 v6a & v6c	131	,759	,000
3 v6b & v6c	131	,873	,000

v6a: Criminal sanctions;

v6b: Regulatory sanctions;

v6c: Civil sanctions.

⁵⁵⁰ See no. 7 of the questionnaire (Annex I.B.). For the results, see supra p. 175.

⁵⁵¹ See no. 8 a) of the questionnaire (Annex I.B.). For the results, see supra p. 178.

Table 19: Sanctions against the perpetrator (paired samples test)

Pair	Paired Differences					t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
				Lower	Upper			
1 v6a & v6b	,2824	1,3603	,1188	,0473	,5176	2,376	130	,019
2 v6a & v6c	,1908	1,7057	,1490	-,1040	,4857	1,281	130	,203
3 v6b & v6c	-,0916	1,2118	,1059	-,3011	,1179	-,865	130	,389

Annotations see table 18.

7. Sanctions Against the Superior (Compliance)

Table 20: Sanctions against the superior (paired samples correlations)⁵⁵²

Pair	N	Correlation	Sig.
1 v7a & v7b	127	,862	,000
2 v7a & v7c	129	,809	,000
3 v7b & v7c	129	,909	,000

v7a: Criminal sanctions;

v7b: Regulatory sanctions;

v7c: Civil sanctions.

Table 21: Sanctions against the superior (paired samples test)

Pair	Paired Differences					t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
				Lower	Upper			
1 v7a & v7b	,3701	1,2267	,1089	,1547	,5855	3,400	126	,001
2 v7a & v7c	,1938	1,4311	,1260	-,0555	,4431	1,538	128	,127
3 v7b & v7c	-,2016	,9632	,0848	-,3694	-,0337	-2,377	128	,019

Annotations see table 20.

⁵⁵² See no. 8 b) of the questionnaire (Annex I.B.). For the results, see supra p. 181.

8. Sanctions Against the Company (Compliance)

Table 22: Sanctions against the company (paired samples correlations)⁵⁵³

Pair	N	Correlation	Sig.
1 v8a & v8b	129	,729	,000
2 v8a & v8c	129	,758	,000
3 v8a & v8d	129	,603	,000
4 v8a & v8e	129	,666	,000
5 v8a & v8f	129	,574	,000
6 v8b & v8c	130	,679	,000
7 v8b & v8d	130	,876	,000
8 v8b & v8e	130	,571	,000
9 v8b & v8f	130	,774	,000
10 v8c & v8d	130	,718	,000
11 v8c & v8e	130	,816	,000
12 v8c & v8f	130	,653	,000
13 v8d & v8e	130	,588	,000
14 v8d & v8f	130	,820	,000
15 v8e & v8f	130	,744	,000

v8a: Criminal liability;

v8b: Criminal liability (exclusion in case of effective compliance program);

v8c: Regulatory liability;

v8d: Regulatory liability (exclusion in case of effective compliance program);

v8e: Civil liability;

v8f: Civil liability (exclusion in case of effective compliance program).

Table 23: Sanctions against the company (paired samples test)

Pair	Paired Differences					t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
				Lower	Upper			
1 v8a & v8b	-,0233	1,9783	,1742	-,3679	,3214	-,134	128	,894
2 v8a & v8c	,4109	1,7749	,1563	,1016	,7201	2,629	128	,010
3 v8a & v8d	,0155	2,3485	,2068	-,3936	,4246	,075	128	,940
4 v8a & v8e	,1860	2,1131	,1860	-,1821	,5542	1,000	128	,319
5 v8a & v8f	,0465	2,4427	,2151	-,3790	,4721	,216	128	,829
6 v8b & v8c	,3846	2,1327	,1871	,0145	,7547	2,056	129	,042
7 v8b & v8d	,0385	1,3606	,1193	-,1976	,2746	,322	129	,748
8 v8b & v8e	,1615	2,4897	,2184	-,2705	,5936	,740	129	,461

⁵⁵³ See no. 8 c) of the questionnaire (Annex I.B.). For the results, see supra p. 183.

9	v8b & v8f	,0231	1,8446	,1618	-,2970	,3432	,143	129	,887
10	v8c & v8d	-,3462	1,9597	,1719	-,6862	-,0061	-2,014	129	,046
11	v8c & v8e	-,2231	1,5515	,1361	-,4923	,0462	-1,639	129	,104
12	v8c & v8f	-,3615	2,1852	,1917	-,7407	,0177	-1,886	129	,061
13	v8d & v8e	,1231	2,3951	,2101	-,2925	,5387	,586	129	,559
14	v8d & v8f	-,0154	1,6186	,1420	-,2963	,2655	-,108	129	,914
15	v8e & v8f	-,1385	1,8996	,1666	-,4681	,1912	-,831	129	,407

Annotations see table 22.

9. Cross Criminal Analysis

Table 24: Cross criminal analysis (paired samples correlations)⁵⁵⁴

Pair	N	Correlation	Sig.
1 v2a & v3a	136	,682	,000
2 v2a & v3b	135	,600	,000
3 v2a & v4a	134	,377	,000
4 v2a & v6a	131	,408	,000
5 v2a & v7a	129	,376	,000
6 v2a & v8a	129	,318	,000
7 v2a & v8b	130	,174	,048
8 v2b & v3a	134	,470	,000
9 v2b & v3b	133	,637	,000
10 v2b & v4a	132	,350	,000
11 v2b & v6a	129	,318	,000
12 v2b & v7a	127	,233	,008
13 v2b & v8a	127	,147	,100
14 v2b & v8b	128	,109	,220
15 v3a & v4a	134	,401	,000
16 v3a & v6a	131	,342	,000
17 v3a & v7a	129	,504	,000
18 v3a & v8a	129	,375	,000
19 v3a & v8b	130	,225	,010
20 v3b & v4a	133	,527	,000
21 v3b & v6a	130	,258	,003
22 v3b & v7a	128	,389	,000
23 v3b & v8a	128	,298	,001
24 v3b & v8b	129	,217	,013
25 v4a & v6a	129	,205	,020
26 v4a & v7a	127	,254	,004

⁵⁵⁴ See no. 5 of the questionnaire (Annex I.B.). For the results, see supra p. 187.

27	v4a & v8a	128	,440	,000
28	v4a & v8b	129	,391	,000
29	v6a & v7a	129	,793	,000
30	v6a & v8a	129	,529	,000
31	v6a & v8b	130	,418	,000
32	v7a & v8a	128	,663	,000
33	v7a & v8b	128	,560	,000
34	v8a & v8b	129	,729	,000

v2a: Imprisonment perpetrator (criminal offenses);

v2b: Fines perpetrator (criminal offenses);

v3a: Imprisonment superior (criminal offenses);

v3b: Fines superior (criminal offenses);

v4a: Fines company (criminal offenses)

v6a: Criminal sanctions perpetrator ;

v7a: Criminal sanctions superior;

v8a: Criminal liability company;

v8b: Criminal liability company (exclusion in case of effective compliance program).

Table 25: Cross criminal analysis (paired samples test)

Pair	Paired Differences						t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference					
				Lower	Upper				
1	v2a & v3a	,5368	1,9164	,1643	,2118	,8618	3,266	135	,001
2	v2a - v3b	,7556	2,0350	,1751	,4091	1,1020	4,314	134	,000
3	v2a & v4a	,2164	2,5291	,2185	-,2157	,6486	,991	133	,324
4	v2a & v6a	,2977	2,5681	,2244	-,1462	,7416	1,327	130	,187
5	v2a & v7a	,3411	2,5905	,2281	-,1102	,7924	1,495	128	,137
6	v2a & v8a	,4264	2,8388	,2499	-,0682	,9209	1,706	128	,090
7	v2a & v8b	,4231	3,2514	,2852	-,1411	,9873	1,484	129	,140
8	v2b & v3a	,1866	2,4346	,2103	-,2294	,6026	,887	133	,377
9	v2b & v3b	,4286	1,9199	,1665	,0993	,7579	2,574	132	,011
10	v2b & v4a	-,1061	2,5510	,2220	-,5453	,3332	-,478	131	,634
11	v2b & v6a	0,0000	2,7358	,2409	-,4766	,4766	0,000	128	1,000
12	v2b & v7a	0,0000	2,8396	,2520	-,4987	,4987	0,000	126	1,000
13	v2b & v8a	,0866	3,1371	,2784	-,4643	,6375	,311	126	,756
14	v2b & v8b	,1094	3,3491	,2960	-,4764	,6951	,369	127	,712
15	v3a & v4a	-,3209	2,6574	,2296	-,7750	,1332	-1,398	133	,164
16	v3a & v6a	-,2443	2,8826	,2518	-,7425	,2540	-,970	130	,334
17	v3a & v7a	-,1938	2,4688	,2174	-,6239	,2363	-,892	128	,374
18	v3a & v8a	-,1085	2,8811	,2537	-,6104	,3934	-,428	128	,669
19	v3a & v8b	-,1231	3,3248	,2916	-,7000	,4539	-,422	129	,674

20	v3b & v4a	-,5489	2,2444	,1946	-,9338	-,1639	-2,820	132	,006
21	v3b & v6a	-,4538	2,9231	,2564	-,9611	,0534	-1,770	129	,079
22	v3b & v7a	-,4219	2,6041	,2302	-,8773	,0336	-1,833	127	,069
23	v3b & v8a	-,3438	2,9254	,2586	-,8554	,1679	-1,329	127	,186
24	v3b & v8b	-,3566	3,2108	,2827	-,9160	,2028	-1,261	128	,209
25	v4a & v6a	,0620	3,0253	,2664	-,4650	,5891	,233	128	,816
26	v4a & v7a	,0709	2,8762	,2552	-,4342	,5759	,278	126	,782
27	v4a & v8a	,1719	2,6056	,2303	-,2839	,6276	,746	127	,457
28	v4a & v8b	,1705	2,8315	,2493	-,3227	,6638	,684	128	,495
29	v6a & v7a	,0310	1,5659	,1379	-,2418	,3038	,225	128	,822
30	v6a & v8a	,1085	2,4598	,2166	-,3200	,5371	,501	128	,617
31	v6a & v8b	,1231	2,8421	,2493	-,3701	,6163	,494	129	,622
32	v7a & v8a	,0781	2,0529	,1815	-,2809	,4372	,431	127	,668
33	v7a & v8b	,0625	2,4487	,2164	-,3658	,4908	,289	127	,773
34	v8a & v8b	-,0233	1,9783	,1742	-,3679	,3214	-,134	128	,894

Annotations see table 24.

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