

THE EVOLUTION OF THE INCENTIVES FOR ANTI-CORRUPTION CORPORATE COMPLIANCE PROGRAMS IN THE INTERNATIONAL LEGAL ORDER

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Abstract: The corporate compliance programs have proliferated worldwide in the last two decades. This innovative study explores the role of the International Anti-Corruption Regime (IACR) in this phenomenon. Analyzing documents from 18 international actors, it identifies 52 directly promoting compliance programs, beginning in 2002, after the regime's 1996 inception. These promotions are primarily in non-binding instruments, which present compliance programs as an anti-corruption strategy for business, government, and collective actions. This mapping reveals a transition in the IACR's inception of these programs, starting from a bribery-focused to a broader anti-corruption approach, and more recently endorsing a connection with the Environmental, Social, and Governance (ESG) agenda. This article also offers insights about the link between the IACR and countries' legal reforms promoting compliance. Shedding light on compliance program evolution within the IACR, the study contributes to understanding the strategy's rise and to an emerging legal scholarship in international compliance studies.

Keywords: International Law; Anti-Corruption; Corporate Compliance Programs; Legal Incentives

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INTRODUCTION

While corporate compliance was a topic of interest in a limited number of countries in the 2010s, nowadays, anti-corruption systems are adopted in companies worldwide.¹ The increase in the number and importance of corporate compliance programs is related to a phenomenon that the literature recognizes as the “era of compliance.”² In general lines, compliance programs are organization’s internal systems and procedures for helping to ensure that the organization – and those working there – comply with legal requirements and internal policies and procedures.³ While scholars and policymakers have highlighted the spread of corporate compliance programs, they have not devoted sufficient attention to the influence of legal drivers of this diffusion. Commentators have assumed that the development of international anti-corruption conventions, along with subsequent domestic regulations that establish liability or impose more severe penalties on legal persons involved in corruption, has led companies to implement anti-corruption measures.⁴

It is indisputable that the International Anti-Corruption Regime (hereinafter “IACR”) has played a crucial role in coordinating states’ domestic responses to corruption, influencing whether and how states regulate it.⁵ Since the start of the twenty-first century, numerous states have enacted anti-corruption statutes and regulations, driving several legal reforms around the world.⁶ This framework serves as a significant incentive for companies to establish compliance programs, reducing the risk of sanctions for corruption.⁷ However, there is more to the story.

Seeking insights into the treatment of anti-corruption corporate compliance programs (hereinafter “compliance programs”) within the IACR, I mapped over one hundred documents from 18 international actors, aiming to contribute to an understanding of the factors that have positioned this strategy at the core of anti-corruption policies for both businesses and governments around the world.⁸ This article reveals that direct incentives for compliance programs are notably absent in international anti-corruption conventions. Instead, references to compliance programs

¹ OECD. (2020). *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*. www.oecd.org/daf/anti-bribery/Corporate-anti-corruption-compliance-drivers-mechanisms-and-ideas-for-change.pdf.

² See, e.g., Richard S. Gruner, *General Counsel in an Era of Compliance Programs and Corporate Self-Policing*, 46 EMORY LAW JOURNAL 1113 (1997); Sean J. Griffith, *Corporate Governance in an Era of Compliance*, 57 WILLIAM AND MARY LAW REVIEW 2075 (2016); Robert C. Bird & Stephen K. Park, *The Domains of Corporate Counsel in an Era of Compliance*, 53 AMERICAN BUSINESS LAW JOURNAL 203 (2016); Rory Van Loo, *Regulatory Monitors: Policing Firms in the Compliance Era*, 119 COLUMBIA LAW REVIEW 369 (2019); Asaf Eckstein, *The Virtue of Common Ownership in an Era of Corporate Compliance*, 105 IOWA LAW REVIEW 507 (2020).

³ SFO. *Evaluating a Compliance Programme*. https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/evaluating-a-compliance-programme/#_ftn3, on 20 Jan. 2024.

⁴ See, e.g., Kevin E. Davis & Veronica R. Martinez, *Transnational Anti-bribery Law*, in THE CAMBRIDGE HANDBOOK OF COMPLIANCE 924 (Benjamin van Rooij & D. Daniel Sokol ed., 2021).

⁵ See, e.g., BARNALI CHOUDHURY & MARTIN PETRIN, *CORPORATE DUTIES TO THE PUBLIC* (2019).

⁶ OECD. (2020). *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*. <https://www.oecd.org/corruption/corporate-anti-corruption-compliance.htm>; MATTESON ELLIS, *THE FCPA IN LATIN AMERICA: COMMON CORRUPTION RISKS AND EFFECTIVE COMPLIANCE STRATEGIES FOR THE REGION* (2016).

⁷ See, e.g., Kevin E. Davis & Veronica R. Martinez, *Transnational Anti-bribery Law*, in THE CAMBRIDGE HANDBOOK OF COMPLIANCE 924 (Benjamin van Rooij & D. Daniel Sokol ed., 2021).

⁸ See section 2.

are observed in non-binding instruments of the IACR, demonstrating a diffusion through soft law mechanisms. The first mention was traced back to a document published by Transparency International (TI) in 2002 that encourages companies to adopt compliance programs.⁹ The first founded document that stimulates governments to create incentives for companies to adopt compliance was published by the International Chamber of Commerce (ICC) in 2005.¹⁰ This demonstrates a precursor role of private international initiatives in the promotion of compliance programs, even though the majority of documents found in this study that mention compliance programs are from international organizations.

This study found 52 documents – from international organizations (39%), private international initiatives (35%), intergovernmental initiatives (12%), international financial institutions (2%), or from multiple actors (12%) – that specifically promote compliance programs as a strategy against corruption in the last two decades. These documents offer different justifications for the implementation of such a strategy. Most of those stimulate companies to adopt compliance programs as mechanisms to support them in their fight against corruption (63%), with an emphasis on the idea that companies should oppose corruption not just because it is illegal but also because controlling it is beneficial for businesses. Other documents urged states to establish legal incentives for companies to adopt compliance programs as part of their comprehensive public policy against corruption (19%), often assuming that the state's role in fighting corruption should extend beyond merely penalizing companies for misconduct. Some instruments target both companies and governments (10%). Moreover, there are instruments that described compliance programs as a relevant tool in collective actions (8%),¹¹ which are initiatives involving both private and public

⁹ TI and Social Accountability International. (2002). *Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International*. <https://www.news.admin.ch/news/message/attachments/5465.pdf>

¹⁰ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>.

¹¹ “[...] there is consensus that Collective Action can take four main forms according to the length and breadth of the involved activities (from longer to shorter-term endeavours, encompassing sectorial or project-specific goals) as well as whether they are of a voluntary nature or involve some form of enforceability or external monitoring: **Anti-Corruption Declarations**: Voluntary, principle-based, ethical public statements and commitments regarding integrity principles that can be fostered by a group of companies or a group of companies jointly with other actors from civil society – e.g., an anti-corruption NGO – and/or the public sector – e.g., an anticorruption agency. **Standard-Setting Initiatives**: Development of specific anti-corruption frameworks and standards tailored to address specific sector problems and weaknesses such as a code of ethics, code of best practices, etc., that are developed with the help of business associations or similar organizations, and that help in standardizing certain integrity policies within a specific sector and align individual members practices. **Capacity-Building Initiatives**: Companies jointly share their know-how, resources and tools from their compliance programmes, and with the help of their compliance practitioners, to offer concrete capacity building and training opportunities for other companies that are part (or not) of their supply and value chains, in particular SMEs, as well as for public officials and organizations, and other practitioners from civil society organizations. The aim of these initiatives is to help create or enhance compliance systems and tools in smaller and/or less resourceful organizations. **Integrity Pacts**: Agreements that involve a higher level of commitment from their members, and that are most commonly used in specific public tenders or bidding for large projects in infrastructure, sports events, for procurement procedures, etc., with the aim of preventing bribery, conflicts of interest, etc. They can incorporate an external monitoring and certification process which can include sanctions in case of non-compliance, from lesser ones to even exclusion from the initiative. These distinct types are not rigid. Certain Collective Action initiatives can mix many elements of the different types at the same time or can

actors aiming to combat corruption in specific sectors, understanding that the effective fight against corruption needs collective engagement. Compliance programs within the IACR can serve as instruments for anti-corruption corporate policies, strategies within anti-corruption regulatory frameworks, or tools in collective actions, illustrating the diverse avenues for their dissemination.

The mapping also demonstrates a change in the approach to the model of compliance programs in these documents. In general, the oldest documents promoted compliance programs focused on bribery, followed by a wave of documents that address corruption in a broader sense. More recently, IACR actors have been publishing documents that stimulate compliance programs aligned with an Environmental, Social, and Governance (ESG) approach. These findings offer valuable insights into the historical development and evolving dynamics of the discourse surrounding compliance programs within the IACR.

This study also uncovers that the IACR began advocating for compliance programs as a strategy against corruption in 2002, a significant period after its establishment marked by the Inter-American Convention Against Corruption (hereinafter referred to as the OAS Convention). The recommendations within the IACR for governments to reform their legal systems to promote corporate compliance programs also came later compared to the paradigmatic legal reform within a domestic framework, which occurred in the United States in 1991. The IACR's push for compliance programs appears to be part of a broader movement towards their proliferation. However, this does not discount the potential of the IACR to influence states in legal reform for compliance. As illustrated in this study, some countries, both in the Global North and the Global South, adopted incentives for promoting corporate compliance programs after the IACR made recommendations in this regard. Future research can delve deeper into the relationship between the IACR and domestic regulations concerning compliance programs.

This study contributes to the understanding of the global rise of compliance programs, taking a step towards bridging a gap in the existing literature. Although the compliance programs has “become a key mechanism to markets, societies, and modes of governance across a variety of public and private domains,”¹² scholars do not have a comprehensive understanding of “what mechanism and intervention play a role in shaping it.”¹³ Corporate compliance programs have also not been “adequately systematized from a theoretical perspective”¹⁴ and are “largely absent from the mainstream corporate law literature.”¹⁵ Furthermore, this study offers an original overview of the IACR compared to previous studies on the international anti-corruption

evolve in time from one type to another according to the needs and demands of the involved stakeholders.” (WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*. https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf, at 4).

¹² Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols, *The Transnationalization of Anti-corruption Law: An Introduction and Overview*, in *THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW 1* (Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols ed., 2021), at ii.

¹³ Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols, *The Transnationalization of Anti-corruption Law: An Introduction and Overview*, in *THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW 1* (Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols ed., 2021), at 2.

¹⁴ Stefano Manacorda & Francesco Centonzo, *Preface*, in *CORPORATE COMPLIANCE ON A GLOBAL SCALE* (Stefano Manacorda & Francesco Centonzo ed., 2022), at v.

¹⁵ Sean. J. Griffith, *Corporate Governance in an Era of Compliance*, 57 *WILLIAM AND MARY LAW REVIEW* 2075 (2016), at 2080.

field, as its focuses on a specific and central element of this regime: the compliance programs.

The rest of this article unfolds in four parts. Part 2 addresses the lack of consensus on which actors and instruments are part of the IACR, defining the regime and providing an overview of it, and explains the structure of this article. Part 3 maps how and when the IACR approaches compliance programs. Part 4 analyzes the legal instruments of the IACR that directly promote compliance, revealing that the regime has elected compliance programs as a strategy against corruption and demonstrates the changes in the approach to the model of compliance programs in these documents over time. Part 5 offers concluding remarks and suggests new studies on compliance programs from international and comparative perspectives.

I. THE INTERNATIONAL ANTI-CORRUPTION REGIME (IACR)

The IACR lacks precise boundaries, as it is composed of an uncoordinated network of rules, laws, processes, and norms that operate to control corruption, which constantly changes and grows.¹⁶ Different scholars incorporate different documents into the IACR, and these documents are produced for various types of international actors, each of which often has distinct priorities and strategies when it comes to anti-corruption efforts.¹⁷ The different approaches in the literature on the IACR can be attributed to the significant development in this field over the past two decades. Another contributing factor is the diverse nature of these instruments, encompassing both soft and hard law, for instance, which presents challenges in conducting a comprehensive analysis.

In a paper focused on initiatives by international actors that have been reflected in legal instruments, Jose-Miguel Bello y Villarino describes and analyses the evolution of international legal efforts to combat corruption into four overlapping phases.¹⁸ First, there is the “transborder” period, which is characterized by the expansion of domestic anti-bribery regulations, particularly the Foreign Corrupt Practices Act (FCPA) from United States beyond national borders.¹⁹ This period also covers the OECD Convention, which the author understands as the “global FCPA.”²⁰ The second period is the “international” phase, which encompasses regional and global instruments that address not only bribery but also other types of corruption and their connection to state development.²¹ As part of this period, Villarino listed the United Nations Convention Against Corruption (hereinafter UN Convention) as a global instrument. As regional instruments, he describes the OAS Convention, enacted in the scope of Organization of

¹⁶ Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols, *The Transnationalization of Anti-corruption Law: An Introduction and Overview*, in *THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW 1* (Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols ed., 2021).

¹⁷ Susan Rose-Ackerman, *The Role of International Actors in Fighting Corruption*, in *ANTI-CORRUPTION POLICY: CAN INTERNATIONAL ACTORS PLAY A CONSTRUCTIVE ROLE? 3* (Susan Rose-Ackerman & Paul D. Carrington ed., 2014).

¹⁸ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 *HARVARD INTERNATIONAL LAW JOURNAL*, 343 (2022).

¹⁹ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 *HARVARD INTERNATIONAL LAW JOURNAL*, 343 (2022), at 349.

²⁰ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 *HARVARD INTERNATIONAL LAW JOURNAL*, 343 (2022), at 351.

²¹ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 *HARVARD INTERNATIONAL LAW JOURNAL*, 343 (2022), at 358.

American States (OAS), the African Union Convention on Preventing and Combating Corruption,²² and the European Framework.²³ Third, there is the “transnational” period, wherein different actors operating within the boundaries of international law, not necessarily states, develop mechanisms to address corrupt behaviors (or suspicions of corruption) within their domains of business.²⁴ As part of this phase, the author lists the Financial Action Task Force’s (FATF) actions to fight corruption, the World Bank sanctions for corrupt practices, the work of the ICC, and the Revised World Trade Organization Global Procurement Agreement (Revised WTO GPA). The fourth and last phase that Villarino identifies is the “disruptive approach,” which sets these new initiatives apart by prioritizing anti-corruption as their primary objective rather than treating it as a secondary or subsidiary goal.²⁵ He further notes that many of the initiatives of the fourth phase remain unimplemented proposals (such as the human right to live free of corruption or establishing an international anti-corruption court), with the Extractive Industries Transparency Initiative (EITI) being a notable exception.

Prior to Villarino’s study, Jan Wouters, Cedric Ryngaert, and Ann Sofie Cloots (WRC) emphasized that the IACR has seen substantial strengthening since the 1990s, with significant but not sufficient progress made at both global and regional levels.²⁶ In the authors’ effort to provide an overview of this regime, they categorize various international anti-corruption instruments into three distinct groups based on the type of instrument. The first category contains the “international anti-corruption instruments,” in which the author includes the UN Convention, the European Instruments,²⁷ and “other regional anti-corruption instruments,” encompassing instruments from OECD²⁸

²² “Some other minor regional treaties that predate these broader conventions can also be included here [...] Southern African Development Community (“SADC”) Protocol Against Corruption (2001) and the lesser-known, not in force and barely ratified Economic Community of West African States (“ECOWAS”) Protocol on the Fight Against Corruption” (Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022), at 358-359).

²³ “EU Convention Against Corruption Involving EU Officials, the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption and its recommendations.” (Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022), at 358).

²⁴ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022), at 377.

²⁵ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022), at 382.

²⁶ Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

²⁷ The authors divided the European instruments into those produced by the European Union (*Convention on the Protection of the European Communities' Financial Interests, Protocol to the Convention on the Protection of the European Communities' Financial Interests, Convention on the Fight Against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, Council Framework Decision 200315681JHA on Combating Corruption in the Private Sector*) and those produced by the Council of Europe (*Twenty Guiding Principles for the Fight Against Corruption, Criminal Law Convention and Additional Protocol to the Criminal Law Convention on Corruption, Civil Law Convention on Corruption*), see Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

²⁸ The authors listed as part of the OECD instruments the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and added, “The OECD adopted a number of recommendations, such as the 1996 recommendation of the Development Assistance Committee on *Anti-Corruption Proposals for Bilateral Aid Procurement*; the 1998 recommendation on improving ethical conduct in the public service; the 2006 *OECD Council Recommendation on Bribery*

and Africa,²⁹ as well as the OAS Convention. The second category covers “anti-corruption initiatives in international financial institutions,” divided into *World Bank* and “other multilateral financial institutions” initiatives.³⁰ The last category refers to “private initiatives,” encompassing efforts from TI, the ICC, and “other fora,” which mention the actions by the Freedom House and the Partnering Against Corruption Initiative (PACI), an initiative from the World Economic Forum (WEF).

Cecily Rose, in turn, conducted an in-depth analysis of the instruments produced by key organizations in developing international anti-corruption law.³¹ She focuses on four actors: the OECD, the UN – specifically the UN Office on Drugs and Crime (UNODC), the EITI, and the FATF. Rose highlights the comparisons and contrasts among these international institutions that have approached the creation of relevant anti-corruption norms in distinct ways and at contrasting times. She concludes that the international anti-corruption instruments formulated by these actors, including the non-binding ones, were designed to have domestic consequences, aiming to permeate domestic legal systems by implementing national laws and other regulations prohibiting corrupt conduct. Consequently, these actors hold considerable power as they exercise significant control over the generation of anti-corruption norms that influence domestic legal systems. For Rose, this power, especially concerning domestic legal systems, raises questions about the legitimacy of these institutions and the instruments they produce.

Although several scholars have examined the evolution of the IACR, as described above, there remains a lack of consensus regarding its constituent instruments.³² In this article, I chose to investigate the incentives for compliance programs in all actors listed by Rose, Villarino, and WRC. While this paper explores

*and Officially Supported Export Credits; the 2009 Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions; and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. In 2010, the OECD adopted the 10 Principles for Transparency and Integrity in Lobbying. Corruption is also mentioned in s VII of the OECD Guidelines for Multinational Enterprises, which were first adopted in 1976 and updated, for the fifth time, in May 2011. In addition, as was the case for the CoE [Council of Europe], the OECD has published a number of guidelines and tools related to anti-corruption efforts, such as the ‘OECD Bribery Awareness Handbook for Tax Examiners’ and the Principles for Donor Action in Anti-Corruption.” (Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013), at 228).*

²⁹ Wouters, Ryngaert, and Cloots listed as part of the African instruments the *African Union Convention on Preventing and Combating Corruption*, the *Southern African Development Community Protocol Against Corruption*, and the *Economic Community of West African States Protocol on the Fight Against Corruption*. (Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013)).

³⁰ The authors did not detail what these institutions would be, only affirming that “With the World Bank taking on the pioneering role, the other multilateral financial institutions followed suit. The policies of each of the individual institutions cannot be described in detail. Suffice it to say that all these institutions have in some way addressed the problem of corruption. Adopting policies for both internal and/or external corrupt practices.” (Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013), at 234).

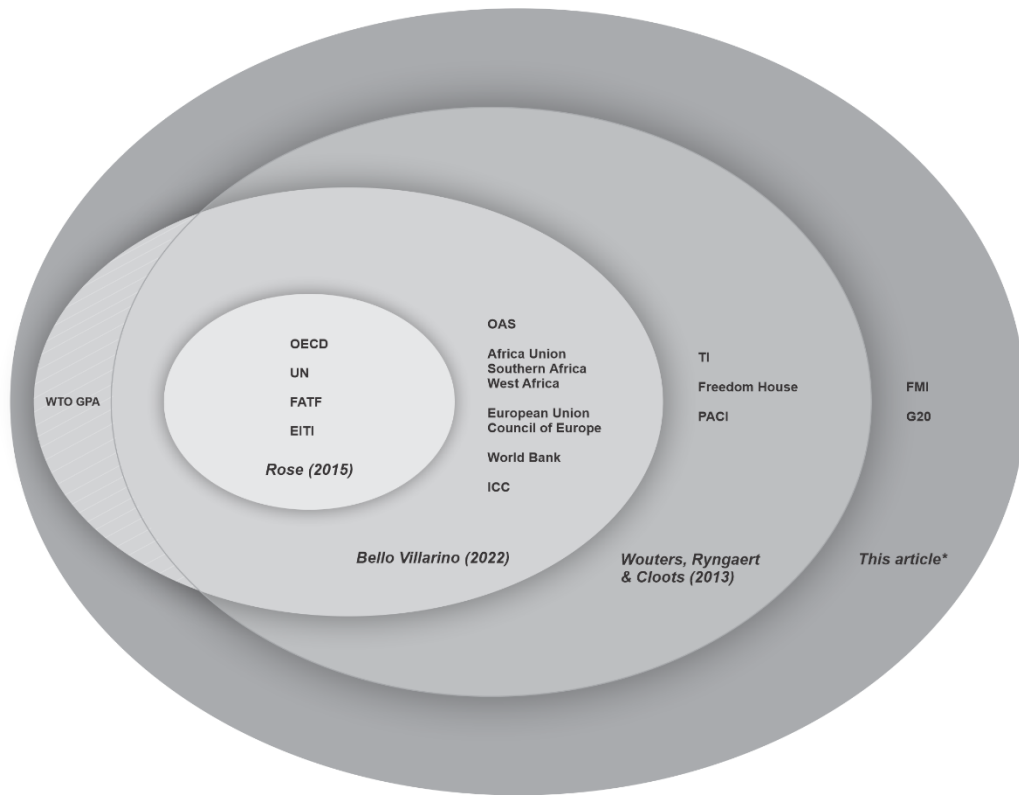
³¹ CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS* (2015).

³² The literature analyzed, as well as this article, is not comprehensive in terms of international anti-corruption law as it does not discuss, for instance, some regional conventions such as the *Beijing Declaration on Fighting Corruption* and the *Arab Anti-Corruption Convention*.

the regime listed by these scholars, it goes beyond it by including documents not examined, such as some recommendations, best practices, and guidelines. I examined not only the current versions of these documents but also previous versions to determine *if* and *when* the reference to compliance programs first appeared. I chose to analyze also non-binding documents because, as highlighted by Rose, they have updated and promoted the implementation of conventions, as in the case of the OECD Convention, as well as played a relevant role in shaping anti-corruption domestic laws.³³ Furthermore, I have included two additional actors in this study that the selected literature has not addressed: the Group of Twenty (G20), which has notably promoted compliance programs, and the International Monetary Fund (IMF), which lacks a policy to explicitly promote compliance programs in contrast to the World Bank. Group Figure 1 below illustrates the scope of this article.

³³ See, e.g., KEVIN E. DAVIS, BETWEEN IMPUNITY AND IMPERIALISM: THE REGULATION OF TRANSNATIONAL BRIBERY (2019).

Figure 1: Actors analyzed in the selected literature on the international anti-corruption regime and in this article



I categorized these IACR actors into four groups: international organizations, intergovernmental initiatives, international financial institutions, and international private initiatives. The European Union, which has no mention of compliance programs in its framework, was not included in these categories due to its distinct

characteristics.³⁴ In the course of this article,³⁵ among the international organizations analyzed, I could not find incentives for compliance programs in the African framework³⁶ (Africa Union,³⁷ Southern Africa,³⁸ and West Africa³⁹) and Council of

³⁴ On the official European Commission page, the anti-corruption legislation and policies of the European Union are listed in categories (European Commission. *EU Legislation on Anti-corruption*. https://home-affairs.ec.europa.eu/policies/internal-security/corruption/eu-legislation-anti-corruption_en, on 6 Dec. 2023). As main anti-corruption legislations, the following are highlighted: (i) Convention on Fighting Corruption Involving Officials of the EU or Officials of EU Countries (1997); (ii) Council Framework Decision on Combating Corruption in the Private Sector (2003); and (iii) Council Decision 2008/852/JHA. Among the legislation to protect the EU's financial interests: (iv) Directive (EU) 2017/1371; (v) Regulation (EU, Euratom) 2020/2092; (vi) Council Regulation (EU) 2017/1939; (vii) Regulation (EU, Euratom) 883/2013. Within sectoral legislation: (viii) 5th Anti-Money Laundering Directive (AMLD); (ix) Directive (EU) 2018/1673; (x) Directive 2014/42/EU; (xi) Council Decision 2007/845/JHA; (xii) Council Decision 2005/212/JHA; (xiii) Regulation (EU) 2018/1805; (xiv) Directive (EU) 2019/1937; EU Rules on Public Procurement (the link directs to the page: European Commission. *Legal Rules and Implementation*. https://single-market-economy.ec.europa.eu/single-market/public-procurement/legal-rules-and-implementation_en, on 6 Dec. 2023, which listed): (xv) Directive 2014/24/EU, (xvi) Directive 2014/25/EU, (xvii) Directive 2014/23/EU; (xviii) Directive (EU) 2010/24; (xix) Directive (EU) 2011/16. Such legislation does not address anti-corruption compliance programs. The 5th Anti-Money Laundering Directive (AMLD) mentions "the development of internal policies, controls and procedures, including model risk management practices, customer due diligence, reporting, record-keeping, internal control, compliance management including, where appropriate with regard to the size and nature of the business, the appointment of a compliance officer at management level, and employee screening" for the purposes of money laundering and terrorism, including references to FATF Recommendations, which are also mapped in this article. However, as the compliance program mentioned in these documents does not have an anti-corruption purpose, such provisions were not considered for the purposes of this article. On the same official page, Internal Rules for EU Institutions are listed, but they were not analyzed as they are not directed towards corporations. The page also informs that on May 3, 2023, the Commission presented a new Proposal to combat corruption. The Proposal includes provisions for compliance programs. Article 18 stipulates that mitigating circumstances will be considered "where the offender is a legal person and it has implemented effective internal controls, ethics awareness, and compliance programs to prevent corruption prior to or after the commission of the offense" (EUR-Lex. *Document 52023PC0234*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>, on 6 Dec. 2023).

³⁵ For details on how I conducted the search for documents related to compliance programs in each framework, see the corresponding footnotes provided for each framework.

³⁶ The African Framework, as outlined by Villarino and WRC, comprises three documents: (1) ECOWAS Protocol on the Fight Against Corruption (2001); (2) SADC Protocol Against Corruption (2005); (3) AU Convention on Preventing and Combating Corruption (2006).

³⁷ The Africa Union (AU) Convention on Preventing and Combating Corruption was adopted in 2003 and entered into force in 2006 (TI. (2006). *Anti-corruption Conventions in Africa: What Civil Society Can Do to Make Them Work*. <https://uncaccoalition.org/resources/advocacy/anti-corruption-conventions-in-africa.pdf>). The Convention declares its aim to prevent, detect, punish, and eradicate corruption in Africa's public and private sectors, promote cooperation among state parties, coordinate policies and legislation, and foster socio-economic development while ensuring transparency and accountability in public affairs (AU. (2003). *African Union Convention on Preventing and Combating Corruption*. https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf). The AU Convention emphasizes the need for states to implement measures against corruption in the private sector. However, it does not explicitly refer to compliance programs.

³⁸ The Southern African Development Community (SADC), founded in 1992, has 26 protocols as part of a legally binding document committing member states to certain objectives and specific procedures, among them the Protocol on the Fight Against Corruption (SADC. *SADC Protocols*. <https://www.sadc.int/pages/sadc-protocols>, on 9 Aug. 2023). This document does not mention compliance programs.

³⁹ The Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption was adopted by ECOWAS member states in 2001 but faced challenges in reaching the

Europe framework.⁴⁰ Within intergovernmental initiatives, there were no identified incentives for compliance programs in the Revised WTO GTA⁴¹ and the FATF frameworks.⁴² Among international financial institutions, I did not find at the IMF

required threshold to come into force (TI. *ECOWAS Protocol on the Fight Against Corruption* (2001). <https://knowledgehub.transparency.org/guide/international-anti-corruption-commitments/8008>, on 9 Aug. 2023). It does not mention compliance programs.

⁴⁰ The Council of Europe is an international organization based in France that protects human rights, democracy and the rule of law (Consilium. *European Council and Council of the European Union: What's the difference?* [https://www.consilium.europa.eu/en/european-council-and-council-of-the-eu/#:~:text=Council%20of%20the%20European%20Union%20\('the%20Council'\)&text=The%20Council%20of%20Europe%20is,and%20the%20rule%20of%20law](https://www.consilium.europa.eu/en/european-council-and-council-of-the-eu/#:~:text=Council%20of%20the%20European%20Union%20('the%20Council')&text=The%20Council%20of%20Europe%20is,and%20the%20rule%20of%20law), on 6 Dec. 2023). According to WRC, the Council of Europe framework is composed of the following documents: (i) Criminal Law Convention and Additional Protocol to the Criminal Law Convention on Corruption; (ii) Civil Law Convention on Corruption; (iii) Twenty Guiding Principles for the Fight Against Corruption. No one mention compliance programs. One of the monitoring bodies of the Council of Europe is the Group of States Against Corruption (GRECO). In addition to the documents cited by WRC, they included, among the anti-corruption legal instruments adopted by the Council of Europe, (iv) the Recommendation on Codes of Conduct for Public Officials and (v) the Recommendation on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (Council of Europe. *Group of States Against Corruption*. <https://www.coe.int/en/web/greco/home>, on 6 Dec. 2023). Both do not mention compliance programs either.

⁴¹ Created in 1995, the WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field, thus contributing to economic growth and development (WTO. Overview. https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm, on 9 Aug. 2023). The WTO also establishes the legal and organizational structure to implement, monitor, and resolve conflicts related to these agreements. Presently, the WTO's collection of trade pacts includes 16 multilateral agreements (applicable to all WTO members) and two plurilateral agreements (to which only some WTO members are parties) (WTO. Overview. https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm, on 9 Aug. 2023). Villarino includes one of these plurilateral agreements, the Revised WTO Global Procurement Agreement (WTO Revised GPA), within the IACR. The primary objective of this agreement is to facilitate the reciprocal opening of government procurement markets among its participating parties (WTO. *Agreement on Government Procurement*. https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm, on 9 Aug. 2023). The WTO Revised GPA was published in 2012 and entering into force in 2014 (WTO. *Revised Agreement on Government Procurement*. https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm, on 9 Aug. 2023). In the preamble, the WTO Revised GPA recognizes the importance of transparent measures regarding government procurement, conducting procurements in a transparent and impartial manner, and avoiding conflicts of interest and corrupt practices in accordance with applicable international instruments, such as the UN Convention. Moreover, one of the general principles of the protocol is the conduct of procurement, which include that a procuring entity shall conduct it in a transparent and impartial manner, preventing corrupt practices. However, there is no specific mention regarding corporate compliance programs.

⁴² FAFT, established in 1989, is an intergovernmental body that defines itself as “the global money laundering and terrorist financing watchdog.” (FATF. *Our Topics*. <https://www.fatf-gafi.org/en/home.html>, on 20 Aug. 2023). Villarino, Rose, and WRC include FATF at the IACR. FATF does not directly address corruption. However, the organization understands that corruption and money laundering are often intrinsically linked, as corruption-related offenses are generally committed with the purpose of gaining illicit funds, and money laundering is the procedure used to conceal the origin of those funds obtained through illegal activity (FATF. *Corruption*. <https://www.fatf-gafi.org/en/topics/corruption.html>, on 20 Jun. 2023). FATF's objectives were outlined in the document 40 FATF Recommendations, which aims to “provide a comprehensive framework of measures to help countries tackle illicit financial flows” (FATF. *The FATF Recommendations*. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>, on 20 Jun. 2023). The Recommendations has four versions, from 1990, 1996, 2003 and 2012 (FATF. *Review of the FATF Standards and Historical Versions*. <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfrecommendations/Review-and-history-of-fatf-standards.html>, on 20 Jun. 2023). FATF emphasizes that the 40 Recommendations play a crucial role in combating corruption by promoting transparency within the financial system, enabling easier detection, investigation, and

specific documents regarding policies to promote compliance programs.⁴³ Concerning international private initiatives, I found no documents directly addressing compliance

prosecution of corruption connected to money laundering cases, and facilitating the recovery of illicitly acquired assets (FATF. *Corruption*. <https://www.fatf-gafi.org/en/topics/corruption.html>, on 20 Jun. 2023). Furthermore, FATF affirms the interrelationship between the IACR and its own framework, affirming, for instance, that the implementation of the UN Convention, including the non-binding provisions such as the establishment of, in member countries, financial intelligence units responsible for receiving, analyzing and disseminating reports of suspicious financial transactions to the competent authorities, would complement a jurisdiction's anti-money laundering program (OECD/FATF. (2012). *FATF Report: Specific Risk Factors in Laundering the Proceeds of Corruption Assistance to Reporting Institutions*. <https://www.fatf-gafi.org/en/publications/Methodsandtrends/Specificriskfactorsinthelaundryingofproceedsofcorruption-assistancetoreportinginstitutions.html>, on 20 Jun. 2023). FATF, in addition to setting international standards, conducting evaluations, and promoting measures to combat money laundering and terrorist financing on a global scale, also establishes guidelines and best practices. Among the 37 guidelines and best practices produced (FATF. *The FATF Recommendations – Guidance and Best Practices*. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>, on 20 Jun. 2023), only one deals specifically with corruption: “Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption” (FATF. (2013). *Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption*. <https://www.fatf-gafi.org/en/publications/Corruption/Bpp-fatfrecs-corruption.html>, on 20 Jun. 2023). FATF 40 Recommendations and their associated guidelines and best practices stipulate that certain private sector institutions should establish a compliance program against money laundering, which holds the potential to uncover corruption that involves money laundering. However, FATF framework does not directly promote anti-corruption compliance programs.

⁴³ The IMF's efforts in combating corruption have been subject to some criticism (e.g., TI, Human Right Watch, and Global Witness. (2020). Letter to IMF Executive Board on April 08, 2020. https://images.transparencycdn.org/images/TI_HRW_GW_Letter_IMF_COVID19_Emergency_Funding.pdf). In fact, the IMF has historically refrained from explicitly using the word “corruption” in its reports and actions, avoiding dealing with the problem (Ivana M. Rossi & Jonathan Pampolina. (2023). *Taking Stock of the Governance and Anti-Corruption Work of the IMF and the Way Forward [Event]*. OECD. <https://www.oecd-events.org/gacif2023/session/46641e7d-1af6-ed11-907a-000d3a474dec>, on 11 Aug. 2023). The shift towards a stronger stance against corruption began in 2018 when the IMF Executive Board adopted the Framework for Enhanced Engagement on Governance “to promote more systematic, effective, candid, and evenhanded engagement with member countries regarding corruption of macro critical dimensions and governance vulnerabilities linked to corruption” (IMF. (2023). *Press Release No. 23/115*. <https://www.imf.org/en/News/Articles/2023/04/11/pr23115-imf-executive-board-concludes-review-implementation-framework-enhanced-engagement-governance#:~:text=In%20April%202018%2C%20the%20IMF,governance%20vulnerabilities%20linked%20to%20corruption>, on 11 Aug. 2023). The 2018 Framework includes a systematic assessment of governance vulnerabilities and corruption with respect to all members, as well as an assessment of governmental measures to prevent bribery. Nevertheless, the 2018 framework was implemented weakly, partly due to the pandemic (Ivana M. Rossi & Jonathan Pampolina. (2023). *Taking Stock of the Governance and Anti-Corruption Work of the IMF and the Way Forward [Event]*. OECD. <https://www.oecd-events.org/gacif2023/session/46641e7d-1af6-ed11-907a-000d3a474dec>, on 11 Aug. 2023). In 2023, the IMF published the Review of the Implementation of the 2018 Framework (IMF. (2023). *Review of Implementation of the 2018 Framework for Enhanced Fund Engagement on Governance*. <https://www.imf.org/en/Publications/Policy-Papers/Issues/2023/04/11/Review-of-Implementation-of-The-2018-Framework-for-Enhanced-Fund-Engagement-on-Governance-532166>, on 11 Aug. 2023). Under these documents, there is no direct incentive for corporate compliance programs.

programs in the EITI⁴⁴ and the Freedom House⁴⁵ frameworks. In the subsequent section, I will analyze the documents within IACR where I could find direct incentives for compliance programs.

II. MAPPING COMPLIANCE PROGRAM IN THE IACR

In this section, I present the mapping of documents produced by the selected actors, as described in Section 2, aiming to gain insights into their treatment of corporate compliance programs. While the focus is on documents that expressly mention compliance programs, I included some documents that do not cite this strategy to provide a historical perspective on the actor's approach to the treatment of this strategy. The presentation of the documents by each actor follows the chronological order of publication of the analyzed documents. The Appendix to this article provides a summary of the documents described in this section that promote compliance programs.

⁴⁴ EITI is a multi-stakeholder organization registered as a non-profit association in 2003, (EITI. *Governance*. <https://eiti.org/governance>, on 3 Jul. 2023) which aims to enhance transparency and accountability in the extractive sector (oil, gas, and mineral industries) (EITI. *Our mission*. <https://eiti.org/our-mission>, on 3 Jul. 2023). The EITI Standard “requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public” (DoJ. *Extractive Industries Transparency Initiative (EITI)*. <https://www.state.gov/extractive-industries-transparency-initiative-eiti/#:~:text=The%20EITI%20Standard%20requires%20the,how%20they%20benefit%20the%20public>, on 3 Jul. 2023). The EITI Standard underwent four revisions, 2013, 2016, 2019, and 2023 (according to a search on the EITI website for the expression “EITI Standard,” on the field “Search,” on 3 Jul. 2023, *see* [https://eiti.org/search?content-type\[document\]=document&viewsreference\[enabled_settings\]\[argument\]=argument](https://eiti.org/search?content-type[document]=document&viewsreference[enabled_settings][argument]=argument)). The 2023 version is the one that cited corruption more times, stating expectation that companies that support the EITI Standard “engage in rigorous due diligence processes and publish an anti-corruption policy setting out how the company manages corruption risk, including how the company collects and takes risk-based steps to use beneficial ownership data regarding joint venture partners, contractors, and suppliers in its processes” (EITI. (2023). *The EITI Standard 2023 – Part 1*. <https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf>, at 39). While the current version highlights the contribution of the EITI Standard in the fight against corruption and encourages companies to adopt anti-corruption policies, it does not include specific provisions about compliance programs.

⁴⁵ The Freedom House is a non-governmental organization (NGO) and research institute based in the United States, which WRC includes within the IACR. Established in 1941, it has become a prominent American organization dedicated to advocating, developing programs, and conducting research in support of democracy worldwide (Freedom House. *About us*. <https://freedomhouse.org/about-us>, on 16 Oct. 2023). One of the policy recommendations from Freedom House centers on combating corruption (Freedom House. *Policy Recommendations: Combatting Corruption*. <https://freedomhouse.org/policy-recommendations/combating-corruption-and-kleptocracy>, on 16 Oct. 2023). The Freedom House understands that the corruption and kleptocracy can posing a significant threat to democracy worldwide, as “corruption undermines the freedom and the interests of ordinary citizens, and the effects are especially harmful in developing countries with limited resources and weaker anticorruption mechanisms.” While the Freedom House Policy Recommendation on Combatting Corruption provides various suggestions for U.S. policymakers concerning anti-corruption laws, there is no specific mention of corporate compliance programs.

A. International Organizations

1. OAS

The OAS is the world's oldest regional organization globally.⁴⁶ Currently, the OAS unites all 35 independent states of the Americas, serving as the region's primary political, juridical, and social governmental forum.⁴⁷

a. OAS Convention (1996)

The OAS Convention – adopted during the General Assembly of the OAS held in Venezuela in 1996 and coming into force in 1997⁴⁸ – is considered the oldest legal instrument in the IACR.⁴⁹ Its preamble declares that the member states of OAS are “convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples.”⁵⁰ The OAS Convention aims to address it to strengthen mechanisms to prevent, detect, punish, and eradicate corruption while fostering cooperation among member states to combat corruption in public functions and related acts.⁵¹ Currently, all countries in the Americas are signatories of the OAS Convention, except Cuba.⁵²

The OAS Convention consists of provisions that impose varying degrees of obligation on its members.⁵³ Among the provisions, the states must reform their legal system to make illegal offenses involving both active and passive bribery of public officials, whether domestic or foreign, including holding companies liable for these

⁴⁶ OAS dating back to the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890. Its primary objectives are to foster peace and justice among its member states, encourage solidarity and enhance collaboration with Sovereignty. (OAS. *Who we are?* https://www.oas.org/en/about/who_we_are.asp, on 2 Jun. 2023).

⁴⁷ OAS. *Who we are?* https://www.oas.org/en/about/who_we_are.asp, on 2 Jun. 2023. OAS countries members: Antigua and Barbuda, Argentina, Bahamas (Commonwealth of), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, San Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela (Bolivarian Republic of). (OAS. *Member States*. https://www.oas.org/en/member_states/default.asp, on 2 Jun. 2023.)

⁴⁸ OAS. *Background*. https://www.oas.org/juridico/english/corr_bg.htm, on 2 Jun. 2023.

⁴⁹ Altamirano, G. D. (2006). The Impact of The Inter-American Convention Against Corruption. *University of Miami Inter-American Law Review*, 38(3), 487-548; Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022).

⁵⁰ OAS (1996). *Inter-American Convention Against Corruption*. https://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf.

⁵¹ Article II. OAS (1996). *Inter-American Convention Against Corruption*. https://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf.

⁵² OAS. *B-58 Signatories and Ratifications*. https://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp, on 27 Jun. 2023.

⁵³ Giorlenny D. Altamirano, *The Impact of the Inter-American Convention Against Corruption*, 38 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 487 (2006); Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022).

illicit activities.⁵⁴ The OAS Convention does not mention compliance programs.

b. OAS Convention Recommendations (2004, 2006, 2010, 2015)

In 2001, the OAS General Assembly adopted the Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption, which defines the structure and elements of the Follow-up Mechanism for the Inter-American Convention Against Corruption (MESICIC).⁵⁵ The follow-up mechanism operates through voluntary peer reviews, examining member countries' domestic laws and institutions to determine if they accord with the provisions of the Convention.⁵⁶ The OAS follow-up mechanism involves monitoring and assisting national governments in implementing the OAS Convention and harmonizing anti-corruption regulations across member states.⁵⁷

The MESICIC issued four recommendations (2004, 2006, 2010, 2015), aiming to enhance and align with the provisions of the OAS Convention.⁵⁸ Although compliance programs are not explicitly mentioned in the recommendations, the last two editions emphasize the importance of private sector involvement in combating corruption to achieve the OAS Convention's objectives.⁵⁹ In addition, in this recommendations, both the Committee and member states are urged to promote anti-corruption practices within the private sector, especially those that identify internal corruption and enable reporting of misconduct to relevant authorities.

c. Other OAS MESICIC Documents

The MESICIC recognizes best practices in anti-corruption public policies within member states, including the promotion of compliance programs.⁶⁰ It

⁵⁴ Article IV and VIII. OAS (1996). *Inter-American Convention Against Corruption*.

https://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf.

⁵⁵ MESICIC is the acronym for *Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción*, the name of the OAS follow-up mechanism in Spanish.

⁵⁶ Giorleny D. Altamirano, *The Impact of the Inter-American Convention Against Corruption*, 38 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 487 (2006).

⁵⁷ Giorleny D. Altamirano, *The Impact of the Inter-American Convention Against Corruption*, 38 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 487 (2006).

⁵⁸ The Recommendations are drafted at the Meeting of the Conference of the States Parties under MESICIC, which has had four editions: (1) First Meeting: Washington D.C. April 1 - 2, 2004; (2) Second Meeting: Washington D.C. November 20 - 21, 2006; (3) Third Meeting: Brasília, D.F. December 9 - 10, 2010; (4) Fourth Meeting: Washington, D.C. December 14 - 15, 2015. Two documents were produced during each meeting: one containing the recommendations and another with the final minutes. I analyzed all eight documents. (OAS. *Anticorruption Portal of the Americas – The MESICIC in Documents – Meetings and recommendations*.

http://www.oas.org/en/sla/dlc/mesicic/documentos_recomendaciones.html, on 19 July 2023).

⁵⁹ OAS. (2010). *Recommendations of the Third Meeting of the Conference of States Parties of the MESICIC*. http://www.oas.org/en/sla/dlc/mesicic/docs/cepIII_recom_en.pdf; OAS. (2015).

Recommendations of the Fourth Meeting of the Conference of States Parties of the MESICIC. http://www.oas.org/en/sla/dlc/mesicic/docs/mesicic_cosp_iv_rec_eng.pdf.

⁶⁰ MESICIC also recognizes the state members' best practices and classifies them into 17 subjects. Topics on best practices: (1) Government hiring; (2) Standards of conduct to prevent conflict of interest in the public administration; (3) Understanding of ethical rules and responsibilities by public servants; (4) Equitable remuneration and probity in public service; (5) Disclosure of income, assets, and liabilities by persons who perform public functions; (6) Official duty to report acts of corruption; (7) Protection of those who report acts of corruption; (8) Rules for the conservation of public resources; (9) Government procurement; (10) Denial of favorable tax treatment for expenditures made in violation of

recognized the Mexican best practice named Register of Business Integrity, which encourages companies to combat corruption, implement ethics and integrity codes, and implement best practices.⁶¹ The MESICIC also presents the Paraguayan initiative “*Sello Integridad*.”⁶² It is a biennial recognition awarded by the Paraguayan anti-corruption agency (*Secretaría Nacional Anticorrupción*) to companies that have compliance programs aimed to promote businesses to adopt measures and actions to prevent, detect, and remedy acts of corruption and fraud, as well as efforts to foster an organizational culture of integrity.⁶³

2. OECD

The OECD is an international organization that aims to improve economic

anticorruption laws; (11) Prevention of bribery of domestic and foreign government officials; (12) Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption; (13) Criminalization of acts of corruption; (14) Criminalization of transnational bribery; (15) Criminalization of illicit enrichment; (16) Mutual technical cooperation and reciprocal assistance; (17) Extradition of those who commit acts of corruption. (OAS. *Anticorruption Portal of the Americas – Best Practices to Prevent and Combat Corruption*. <http://www.oas.org/en/sla/dlc/mesicic/buenas-practicas.html>, on 19 Jul. 2023). On July 19, 2023, given the large number of best practices documents presented by MESICIC, I applied certain criteria to select which ones to analyze. Firstly, I examined the subjects of the best practices and selected subjects 7, 9, 10, 11, and 12 (*see supra* note), as the others were related to public functions or acts that did not seem to encompass any relation with the private sector. Concerning these selected subjects, I read the titles of all the best practices and selected the ones related to compliance programs or the private sector. Regarding the 7th subject, “protection of those who report acts of corruption,” I selected and read the full documents of the following best practices: “*Paraguay: Portal de Denuncias Anticorrupción y Sistema Informático de Registro y Seguimiento de Causas*,” “*Mexico: System of Internal and External Whistleblowers of Corruption*,” and “*Panamá: Recepción de Denuncias mediante Plataforma electrónica Tu Pista Administrada por Crime Stoppers*.” Only the Paraguayan document mentioned compliance programs, but it concerned another best practice, the “*Sello Integridad*,” which is part of the 12th subject, as I will explain. Regarding the 9th subject, “government procurement,” I selected and attempted to read “*República Dominicana: Experiencia de uso en ciencias de los datos y compliance para la prevención de la* [incomplete],” but the two related documents were not available. As for the 10th subject, “denial of favorable tax treatment for expenditures made in violation of anticorruption laws,” no best practice was listed. Regarding the 11th subject, “prevention of bribery of domestic and foreign government officials,” I read “*Mexico: International Certification ISO 37001: 2016 ‘Anti-bribery Management Systems’ of the General* [incomplete],” which is about the certification of a public agency and was not pertinent to this search. Finally, concerning the 12th subject, “Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption,” I read the full text of the best practices: “*Paraguay: Sello Integridad*” and “*Mexico: Register of Business Integrity*.” Both practices were about corporate compliance programs and I have described them above.

⁶¹ OAS. (2019). *Mexico: Register of Business Integrity – Best Practices Form: Learn about the objectives and results of this strategy*. http://www.oas.org/en/sla/dlc/mesicic/docs/bp2019_sem2_mex_form_mecparticip2.pdf; OAS. (2019). *Mexico: Register of Business Integrity – Annex to the form: Presentation*. http://www.oas.org/en/sla/dlc/mesicic/docs/bp2019_sem2_mex_ppt2.pdf.

⁶² OAS. (2023). *Paraguay: Sello Integridad – Best Practices Form: Learn about the Objectives and Results of this Strategy*. http://www.oas.org/en/sla/dlc/mesicic/docs/mar2023_bp_py%20_form.pdf; OAS. (2023). *Paraguay: Sello Integridad – Presentation*. http://www.oas.org/en/sla/dlc/mesicic/docs/mar2023_bp_py%20_ppt.pdf.

⁶³ MESICIC also has two draft regulations, one on the declaration of income, assets, and liabilities and another on the protection of whistleblowers; both aim to reflect the highest international standards and serve as models that OAS state members can utilize when drafting anti-corruption laws. The first one is targeted at those who perform public duties. The second one addresses an aspirational provision of the OAS Conviction, which states that parties should consider measures within their institutional systems

performance in the world, providing a forum and knowledge hub for data and analysis, exchange of experiences, best-practice sharing, and advice on public policies and international standard-setting.⁶⁴ Currently, the OECD has 38 countries members.⁶⁵ The OECD has produced around 460 legal instruments in several subjects.⁶⁶ International agreements and decisions are legally binding for OCDE parties' members and other countries that adhere to it.⁶⁷ Recommendations and guidelines are not legally binding, but OECD membership implies an expectation that member states will do their best to implement them. Concerning the IACR, the OECD anti-corruption efforts are significant for two main reasons.⁶⁸ First, as indicated above, the OECD was a driving force in the expansion of anti-bribery law. Secondly, several of the most prominent players in international trade are OECD member states.⁶⁹

a. OECD Convention (1997)

The OECD Convention, adopted in 1997 and enforced in 1999, emerged during an era when bribery was widely accepted and even tax-deductible in certain countries.⁷⁰ The Convention's main objective was to level the playing field among a limited number of countries "in a position to regulate the supply of bribes by corporations involved in international business transactions."⁷¹ The Convention, compulsory for signatories, mandates that states criminalize the act of bribing foreign public officials in

to create, maintain, and strengthen protection systems for those who report acts of corruption (Article II, 8). It also concerns the mechanisms states should develop within their structures to enhance the fight against corruption. MESICIC also provides legislative guidelines with elements that states should consider when formulating laws related to the matters addressed in the OAS Convention. All these legislative guidelines are about creating obligations for the public administration and do not mention compliance programs to companies. (OAS. *Anticorruption Portal of the Americas – Legal Cooperation Tools – Legislative Guidelines*. <http://www.oas.org/en/sla/dlc/mesicic/leyes.html>, on 19 Jul. 2023).

⁶⁴ OECD. *Who we are*. <https://www.oecd.org/about/members-and-partners/>, on 27 Jul. 2023.

⁶⁵ OECD members: Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Türkiye, United Kingdom, and the United States. (OECD. *About*. <https://www.oecd.org/about/>, on 22 Jun. 2023).

⁶⁶ OECD. *OECD Legal Instruments*. <https://legalinstruments.oecd.org/en/about>, on 3 Feb. 2022.

⁶⁷ If a member chooses to abstain during the decision-making process, it will not be legally binding for them. (OECD. *OECD Legal Instruments*. <https://legalinstruments.oecd.org/en/about>, on 3 Feb. 2022.). The 23-decision published by OECD does not cite anti-corruption corporate compliance programs or functional equivalents. I searched it on June 29, 2023, on the *Compendium of OECD Legal Instruments*, available at <https://legalinstruments.oecd.org/en/>, on 3 Feb. 2022, for the word

"corruption" and also "compliance," one at a time, using the filter "decision" on the field "type(s)."

⁶⁸ Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

⁶⁹ Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

⁷⁰ Humboldt-Viadrina School of Governance. (2013). *Motivating Business to Counter Corruption: A Practitioner Handbook on Anti-Corruption Incentives and Sanctions*. https://www.globalcompact.de/migrated_files/wAssets/docs/Korruptionspraevention/Publikationen/motivating_business_to_counter_corruption.pdf; Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022).

⁷¹ CECILY ROSE, INTERNATIONAL ANTI-CORRUPTION NORMS (2015), at 60.

international business transactions.⁷² It does not mention compliance programs.

Following the Convention, the OECD published several recommendations and guidance documents aimed at furthering the development of anti-corruption standards among state parties.⁷³ These documents will be presented chronologically below.⁷⁴ The OECD Convention follow-up mechanism, the Working Group on Bribery in

⁷² OECD. (1997). *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0293>,

⁷³ CECILY ROSE, INTERNATIONAL ANTI-CORRUPTION NORMS (2015).

⁷⁴ I searched for non-binding documents referencing corporate anti-corruption compliance programs on March 8, 2022. I did this search manually on the OECD website in an exploratory manner, and I not intended to be exhaustive. I excluded documents from the search result that did not discuss anti-corruption compliance (such as those related to tax compliance) or recommended anti-corruption compliance for organizations other than those targeted in this article (such as state-owned enterprises, public entities, and development agencies). On June 29, 2023, I performed another search to verify and update the previously obtained results. This time, I utilized the Compendium of OECD Legal Instruments, which was accessible at <https://legalinstruments.oecd.org/en/>, on 8 Mar. 2022. I searched for “corruption” and “compliance” without applying any filters. The search yielded 28 results, namely (1) OECD/LEGAL/0378 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions; (2) OECD/LEGAL/0144 Declaration on International Investment and Multinational Enterprises; (3) OECD/LEGAL/0421 Declaration on the Fight Against Foreign Bribery - Towards a New Era of Enforcement; (4) OECD/LEGAL/0451 Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises; (5) OECD/LEGAL/0431 Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption; (6) OECD/LEGAL/0447 Recommendation of the Council on Bribery and Officially Supported Export Credits; (7) OECD/LEGAL/0413 Recommendation of the Council on Principles of Corporate Governance; (8) OECD/LEGAL/0316 Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service; (9) OECD/LEGAL/0414 Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises; (10) OECD/LEGAL/0349 Recommendation of the Council on Principles for Private Sector Participation in Infrastructure; (11) OECD/LEGAL/0411 Recommendation of the Council on Public Procurement; (12) OECD/LEGAL/0392 Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships; (13) OECD/LEGAL/0435 Recommendation of the Council on Public Integrity; (14) OECD/LEGAL/0298 Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service; (15) OECD/LEGAL/0396 Recommendation of the Council on Fighting Bid Rigging in Public Procurement; (16) OECD/LEGAL/0476 Recommendation of the Council on Foreign Direct Investment Qualities for Sustainable Development; (17) OECD/LEGAL/0379 Recommendation of the Council on Principles for Transparency and Integrity in Lobbying; (18) OECD/LEGAL/0469 Recommendation of the Council on the Ten Global Principles for Fighting Tax Crime; (19) OECD/LEGAL/0486 Recommendation on the Role of Government in Promoting Responsible Business Conduct; (20) OECD/LEGAL/0269 Recommendation of the Council concerning an OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations; (21) OECD/LEGAL/0369 Recommendation of the Council on Enhancing Integrity in Public Procurement; (22) OECD/LEGAL/0445 Recommendation of the Council on Public Service Leadership and Capability; (23) OECD/LEGAL/0438 Recommendation of the Council on Open Government; (24) OECD/LEGAL/0452 Recommendation of the Council concerning Effective Action Against Hard Core Cartels; (25) OECD/LEGAL/0327 OECD Principles of Corporate Governance; (26) OECD/LEGAL/0282 Recommendation of the Council for Facilitating International Technology Co-operation with and among Businesses; (27) OECD/LEGAL/0444 Recommendation of the Council on Global Events and Local Development; (28) OECD/LEGAL/0337 Recommendation of the Council on OECD Guidelines on Corporate Governance of State-Owned Enterprises. By applying the same exclusion criteria used in the 2022 manual search, I did not find any additional results beyond those obtained in the initial search. On June 29, 2023, I conducted another search to find updates to the documents I had initially selected in 2022. During this search, I came across the 2023 version of the Declaration on International Investment and Multinational Enterprises and the Revised Recommendation of The Council on Principles of Corporate Governance, both of which were included in the search results.

International Business Transactions (hereinafter Working Group), is responsible for monitoring the implementation and enforcement of the OECD Convention by peer review,⁷⁵ as well as push members to incorporate or give legal effect to these subsequent non-binding instruments within their domestic frameworks.⁷⁶

b. OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (1997, 2009, 2021)⁷⁷

The first version is from 1997 is named the Revised Recommendation of the Council on Bribery in International Business Transactions.⁷⁸ The document recommends that states encourage companies to establish internal control mechanisms, set standards of conduct, and disclose such actions in annual reports. The 1997 Recommendation also suggests that companies be encouraged to have communication channels and protection measures for those who do not wish to violate professional or ethical standards due to orders or pressure from superiors. In other words, while there is no explicit mention of compliance programs (the word “compliance” does not even appear in the document), there is an indication that the state should stimulate companies to adopt anti-bribery mechanisms.

The 2009 Recommendation explicitly mentions “compliance programs,” as it recommends that states encourage companies to develop and adopt adequate internal controls, ethics, and compliance programs or measures to prevent and detect bribery of foreign public officials.⁷⁹ This recommendation has the annexed Good Practice Guidance on Internal Controls, Ethics, and Compliance. This guide was formulated based on conclusions and recommendations from the Working Group and is directed at companies and professional associations, recognizing the essential role of the private sector in achieving the objectives of the OECD Convention.

In 2016, the Ministers and Representatives of the Parties to the OECD Convention made a Ministerial Declaration, title Fight Against Foreign Bribery:

⁷⁵ OECD. *OECD Working Group on Bribery in International Business Transactions*. <https://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyininternationalbusinesstransactions.htm>, on 31 Jun. 2023.

⁷⁶ CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS* (2015).

⁷⁷ Three OECD Recommendations complement the OECD Convention: *The Recommendation of The Council for Development Co-Operation Actors on Managing the Risk of Corruption* [OECD/LEGAL/0431], *The Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions* [OECD/LEGAL/0371], *The Recommendation of the Council on Bribery and Officially Supported Export Credits* [OECD/LEGAL/0447]. The last two were not described in this article because they do not mention compliance programs.

⁷⁸ OECD. (1997) *1997 Revised Recommendation of the Council on Bribery in International Business Transactions*. [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C\(97\)123/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=C(97)123/FINAL&docLanguage=En).

⁷⁹ OECD. (2009). *OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions*. <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/oecdantibriberyrecommendation2009.htm#:~:text=About%20the%202009%20Recommendation&text=The%20Recommendation%20was%20adopted%20by,Internal%20Controls%2C%20Ethics%20and%20Compliance>.

Towards a New Era of Enforcement.⁸⁰ It expressed appreciation for the Working Group's thorough analysis of issues concerning to several topics, including anti-corruption compliance programs, and encouraged the Working Group to further investigate good practices related to these matters. In addition, the Declaration invites the business community to increase cooperation with governments in the battle against foreign bribery and corruption. It also encouraged companies to widely adopt the OECD Good Practice, annexed to the 2009 Recommendation. Moreover, it urged continuous international initiatives aimed at identifying and promoting effective strategies to prevent foreign bribery and corruption. This includes the implementation of anti-corruption compliance measures and codes of conduct, as well as suitable safeguards in public procurement processes.

The 2021 Recommendation, currently in force, expands the guidance for states to promote the adoption of compliance programs.⁸¹ It has a section called "incentives for compliance," wherein it recommends that member countries should encourage their government agencies to consider compliance programs in their decisions to grant public advantages – including subsidies, licenses, contracts, and export credits – especially in the context of international business transactions. Moreover, the document recommends that such anti-corruption mechanisms should also be considered when applying penalties related to the bribery of foreign public officials, including as a potential mitigating factor. Furthermore, affirms that states must provide adequate training for their authorities to consider such mechanisms in decision-making processes, as well as to ensure easily accessible guidance on these benefits for companies. Regarding public procurement, the 2021 Recommendation states that countries should enact legislation allowing authorities to suspend or prevent participation in public procurements of companies that have bribed foreign public officials, considering the compliance programs as mitigating factors for such sanctions. Another innovation of the 2021 Recommendation is the guidance for considering the remediation measures adopted by companies, including compliance programs, in non-trial resolutions with companies that have bribed foreign public officials. This version also includes an annex, similar to the 2009 Recommendation, named Good Practice Guidance on Internal Controls, Ethics, and Compliance.

- c. Declaration on International Investment and Multinational Enterprises (1976, amended in 1979, 1984, 1991, 2000, 2011, 2023)

Since its first adoption in 1976, the Declaration has been a commitment from member states "to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress."⁸² It was amended in 1979, 1984, 1991, 2000,

⁸⁰ OECD. (2016). *Ministerial Declaration – The Fight Against Foreign Bribery: Towards a New Era of Enforcement*. <https://www.oecd.org/corruption/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf>.

⁸¹ OECD. (2021). *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>, 8 on Mar. 2022.

⁸² OECD. *OECD Declaration and Decisions on International Investment and Multinational Enterprises*. <https://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm#:~:text=First%20adopted%20in%201976%2C%20the,to%20economic%20and%20social%20progress>, on 8 Mar. 2022.

2011, and 2023.⁸³ The 2011 version is the first one to explicitly mention compliance programs, although previous versions already mentioned the need for companies to have internal control mechanisms.⁸⁴ It does so in the annex of the OECD Guidelines for Multinational Enterprises.⁸⁵ This Guidelines address the need for companies to develop and adopt internal controls, ethics, and compliance programs to prevent and detect bribery.

In 2023, an updated version of the 2011 Guidelines, named OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, was published.⁸⁶ It encompassed a broader range of forms of corruption, recommending to companies develop and adopt internal controls, ethics, and compliance programs to prevent, detect, and address not only bribery but other forms of corruption.

d. OECD Principles of Corporate Governance (1999, 2004, 2015, 2023)

The 1999 OECD Principles of Corporate Governance was the first initiative by an inter-governmental organization to develop the core elements of a good corporate governance regime.⁸⁷ It aimed to be used as a benchmark by governments as they evaluate and improve their laws and regulations, as well as to be helpful to the private sector in developing corporate governance systems and best practices.⁸⁸ It stipulates that the corporate governance structure should ensure the integrity of companies' financial and accounting reporting systems and that appropriate control systems should exist, particularly risk monitoring systems, financial controls, and compliance with the law. This version does not even mention the word "corruption."

The 2004 publication provides more detailed guidance on corporate governance structures, advising, for example, that companies, including their subsidiaries, should adopt internal programs and procedures to promote compliance with applicable laws, regulations, and standards, including anti-bribery measures.⁸⁹ Therefore, the 2004 OECD Principles of Corporate Governance represent the first version to address anti-corruption compliance programs, although it affirms that factors like the environment, corruption, and ethics are not the central focus of the initiative.

The 2015 version of the OECD Principles of Corporate Governance was designed as an appendix of the Recommendation of the Council on Principles of

⁸³ OECD. *Declaration on International Investment and Multinational Enterprises*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144>, on 27 Dec. 2023.

⁸⁴ OECD. (2012). *The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts*. <https://www.oecd.org/daf/inv/investment-policy/ConsolidatedDeclarationTexts.pdf>.

⁸⁵ OECD. (2011). *Guidelines for Multinational Enterprises*. <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

⁸⁶ OECD. (2023). *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. <https://www.oecd-ilibrary.org/deliver/81f92357-en.pdf?itemId=/content/publication/81f92357-en&mimeType=pdf>.

⁸⁷ OECD. (1999). *OECD Principles of Corporate Governance*. [https://one.oecd.org/document/C/MIN\(99\)6/En/pdf](https://one.oecd.org/document/C/MIN(99)6/En/pdf).

⁸⁸ OECD. (1999). *OECD Principles of Corporate Governance*. [https://one.oecd.org/document/C/MIN\(99\)6/En/pdf](https://one.oecd.org/document/C/MIN(99)6/En/pdf).

⁸⁹ OECD. (2004). *OECD Principles of Corporate Governance*. <https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>.

Corporate Governance.⁹⁰ However, this time, the principles were endorsed by the G20 and were referred to as the G20/OECD Principles of Corporate Governance.⁹¹ Regarding compliance programs, it is similar to the 2004 version, although it recommends that the scope of compliance should expand to cover other regulations like taxation, human rights, environment, fraud, and money laundering. Moreover, the 2015 version not only mentions extending compliance programs to subsidiaries but also recommends extending them to third parties, highlighting the importance of monitoring the actions of external entities representing the company.

In 2023, an updated version of the Recommendation of the Council on Principles of Corporate Governance was published.⁹² The main objective of this revision was to encourage corporate governance policies that foster the sustainability and resilience of corporations, thereby potentially benefiting the overall economy. There were no changes regarding compliance programs compared to the 2015 version.

e. OECD Recommendation of the Council on Public Procurement (2008, 2015)

This Recommendation has two versions, one from 2008⁹³ and another from 2015.⁹⁴ Its objective is to assist states in promoting appropriate measures for preventing corruption in public procurement. According to the OECD, improving the public procurement process is essential as it represents a massive portion of expenditures, is a crucial pillar of governance and public service delivery, and serves as a tool for achieving pressing political objectives. In order to support states in implementing the guidance of the Recommendation, the OECD has published related documents, such as the Checklist for supporting the implementation of the OECD Recommendation of the Council on Public Procurement⁹⁵ and the Public Procurement Toolbox.⁹⁶

The 2008 Recommendation encourages countries to foster close cooperation between the government and the private sector in order to maintain high standards of integrity,⁹⁷ particularly in the management of contracts related to public procurement. However, there is no specific provision regarding compliance programs. The 2015 Recommendation explicitly guides that states preserve the integrity of the public

⁹⁰ OECD. (2015) *Recommendation of the Council on Principles of Corporate Governance*. [https://legalinstruments.oecd.org/api/download/?uri=/private/temp/8e37cf70-2ca3-46a6-a340-a2acdf571752.pdf&name=OECD-LEGAL-0413-en%20\(2015%20version\).pdf](https://legalinstruments.oecd.org/api/download/?uri=/private/temp/8e37cf70-2ca3-46a6-a340-a2acdf571752.pdf&name=OECD-LEGAL-0413-en%20(2015%20version).pdf).

⁹¹ OECD. (2015). *G20/OECD Principles of Corporate Governance*. <https://www.oecd.org/corporate/ca/Corporate-Governance-Principles-ENG.pdf>.

⁹² OECD. (2023). *Recommendation of the Council on Principles of Corporate Governance*. <https://legalinstruments.oecd.org/public/doc/322/322.en.pdf>.

⁹³ OECD. (2008). *Recommendation on Enhancing Integrity in Public Procurement*. [https://one.oecd.org/document/C\(2008\)105/en/pdf](https://one.oecd.org/document/C(2008)105/en/pdf).

⁹⁴ OECD. (2015). *Recommendation of the Council on Public Procurement*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411>.

⁹⁵ OECD. (2016) *Checklist for Supporting the Implementation of the OECD Recommendation of the Council on Public Procurement*. https://www.oecd.org/gov/ethics/High-Level_Principles_Integrity_Transparency_Control_Events_Infrastructures.pdf.

⁹⁶ OECD. *Public Procurement Toolbox*. <https://www.oecd.org/governance/procurement/toolbox/>.

⁹⁷ The OECD defines integrity as “The consistent alignment of, and adherence to, shared ethical values, principles, and norms for upholding and prioritizing the public interest over private interests.” (OECD. (2019). *Recommendation of the Council on Guidelines on Anti-corruption and Integrity in State-owned Enterprises*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0451>, at 5.)

procurement system by requiring the private sector to adopt internal controls, compliance standards, and anti-corruption programs. The state should monitor the implementation of such mechanisms by companies. The Recommendation also stipulates that contracts for public procurement should include guarantees of “non-corruption” by the private sector, which the state should verify, and contractors should be encouraged to promote transparency and provide integrity training to members of their supply chains, aiming to combat corruption in subcontracting as well.

3. United Nations

The United Nations (UN) is an international organization founded in 1945 and currently composed of 193 member states.⁹⁸ Targeting member states, the UN’s most famous anti-corruption instrument is the international treaty United Nations Convention Against Corruption (hereafter UN Convention). The UN also provides guidelines aiming to implement anti-corruption strategies in their own operations.⁹⁹

a. UN Convention (2003)

The UN Convention was adopted by the UN General Assembly in 2003 and entered into force in 2005.¹⁰⁰ The UN Convention is considered the only legally binding and universal anti-corruption instrument.¹⁰¹ Currently, the UN Convention has 189 state parties, making it the most subscribed international anti-corruption instrument.¹⁰² The UN Convention is also the most comprehensive legal instrument in the international anti-corruption law realm, covering five main areas: (i) preventive measures, (ii) criminalization and law enforcement, (ii) international cooperation, (ii) asset recovery, and (iii) technical assistance and information exchange.¹⁰³ Like the OAS and OECD Conventions, it also urges states to hold companies liable for the illicit acts outlined within it.¹⁰⁴ The treaty emphasizes the importance of private sector

⁹⁸ UN. *About us*. <https://www.un.org/en/about-us>, on 1 Mar. 2022. Its objectives are listed in its founding Charter and include promoting social progress and better standards of life in larger freedom. The Charter does not specify the fight against corruption as a UN objective (UN. *United Nations Charter (full text)*. <https://www.un.org/en/about-us/un-charter/full-text>, on 1 Mar. 2022.)

⁹⁹ Chapters II, III, IV, V, and VI, respectively. UN. (2016). *Comprehensive Review of Governance and oversight within the United Nations and its Funds, Programmes and Specialized Agencies*. <https://undocs.org/en/A/RES/61/245>; UN. (2020). *Enterprise Risk Management: Approaches and Uses in United Nations System Organizations*. https://www.unjui.org/sites/www.unjui.org/files/jiu_rep_2020_5_english.pdf.

¹⁰⁰ UN. *United Nations Convention Against Corruption*. <https://www.unodc.org/unodc/en/corruption/uncac.html>, on 1 Mar. 2022.

¹⁰¹ UN. *United Nations Convention Against Corruption*. <https://www.unodc.org/unodc/en/corruption/uncac.html>, on 4 Jul. 2023.

¹⁰² UN. *Signature and Ratification Status*. <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, on 4 Jul. 2023.

¹⁰³ UN. (2004). *United Nations Convention Against Corruption*. https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf; STAR. *About UNCAC*. <https://star.worldbank.org/focus-area/uncac#:~:text=The%20Convention%20covers%20five%20main,technical%20assistance%20and%20information%20exchange>, on 1 Mar. 2022.

¹⁰⁴ Article 26 (UN. (2004). *United Nations Convention Against Corruption*. https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf). The document *On the Level: Business and Governments Against Corruption* summarizes the UN Convention recommendations regarding the fight against corruption in the private sector (UNODC. *On the Level: Business and Governments Against Corruption*.

involvement in fighting corruption and urges countries to promote this engagement, for instance, by enhancing account and audit standards in the private sector,¹⁰⁵ however it does not explicitly refer to compliance programs. Other documents produced by the UN after the Convention do, as shown below.¹⁰⁶

While the binding nature of the UN Convention allows states parties significant discretion in determining how it affects their legal systems, as “the provisions fall into many gradations, ranging from mandatory to non-mandatory, precise to vague, and absolute to qualified.”¹⁰⁷ Nevertheless, these provisions can still drive domestic anti-corruption measures, influencing discussions on what actions should be criminalized and how to address them within domestic policy.¹⁰⁸ The UN Conventions did not set forth a follow-up mechanism. However, in 2009, the UN established the Mechanism for the Review of Implementation of the UN Convention to assist members in implementing the treaty.¹⁰⁹

b. Business Against Corruption: A Framework for Action (2005, 2011)

This document results from a collaboration between the UN Global Compact,

https://www.unodc.org/documents/corruption/Publications/2014/UNODC_On_the_Level_Business_and_Government_against_Corruption.pdf, on 8 Aug. 2023).

¹⁰⁵ See Article 12 (UN. (2004). *United Nations Convention Against Corruption*.

https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf). The document *On the Level: Business and Governments Against Corruption* summarizes the UN Convention recommendations regarding the fight against corruption in the private sector (UNODC. *On the Level: Business and Governments Against Corruption*.

https://www.unodc.org/documents/corruption/Publications/2014/UNODC_On_the_Level_Business_and_Government_against_Corruption.pdf, on 8 Aug. 2023).

¹⁰⁶ The UN website’s search mechanism lacks filter options, leading to challenges in searching for instruments related to compliance programs. The results are extensive and encompass diverse types of documents, including those irrelevant to this article. For instance, a search on August 8, 2023, for “compliance program” yielded 1,184 results (UN. *Site search*. <https://www.un.org/site-search/>). For this reason, I searched the UN documents presented here through two other approaches. Firstly, I examined UN documents referenced within the materials of other investigated international actors. Secondly, I navigated the “Documents, publications and tools” page of the UNODC site, scrutinizing those listed under the “Corruption and the private sector” section. The following resources were on this list: (1) UNODC Business Integrity Portal; (2) UNODC-UN Global Compact anti-corruption e-learning tool for the private sector; (3) Anti-Corruption Policies and Measures of the Fortune Global 500; (4) Corruption Prevention to Foster SME Development (UNIDO/UNODC - 2 volumes) Volume 1 (English) - Volume 2 (English) - Volume 1 (Spanish); (5) An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide English - French - Spanish – Russian; (6) Anti-Corruption Ethics and Compliance Handbook for Business (OECD/UNODC/World Bank) English – Spanish; (7) Corporate Integrity: Incentives for Corporate Integrity in Accordance with the United Nations Convention Against Corruption – A Report; (8) A Resource Guide on State Measures for Strengthening Corporate Integrity English - Spanish – Russian; (9) *On the Level: Business and Governments Against Corruption, Toolkit of Private Sector Outreach Materials*; (10) *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. (UNODC. *Documents, Publications and Tools – Corruption and the Private Sector*.

<https://www.unodc.org/unodc/en/corruption/publications.html>, on 8 Aug. 2023). In this section, I described these documents, except for the sixth one, which is detailed in another section of this work titled “World Bank Framework,” and the tenth, the link for which on the UNODC site leads to a “Page Not Found.” (<https://star.worldbank.org/star/publication/puppet-masters>, on 8 Aug. 2023).

¹⁰⁷ CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS* (2015), at 97.

¹⁰⁸ CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS* (2015).

¹⁰⁹ UNODC. (2011). *Mechanism for the Review of Implementation of the United Nations Convention Against Corruption – Basic Documents*.

TI, and the International Business Leaders Forum. It has two editions, one from 2005¹¹⁰ and another from 2011.¹¹¹ Both editions of the guidance highlight the importance of the private sector in addressing corruption, emphasizing why corruption is detrimental to business and encouraging compliance programs. The 2005 edition states that the first step for companies to comply with the tenth principle of the UN Global Compact is to introduce anti-corruption policies and programs within their organizations and business operations. Among the recommendations, the document suggests that companies, regardless of size, adopt the TI Six-Step Implementation Process, a process for developing and implementing an anti-bribery policy.¹¹²

The 2011 document acknowledges that while there has been progress in the global fight against corruption since 2005, the problem persists. To address corruption in companies, in addition to the compliance programs, the guide suggests adopting the UN Global Compact Management,¹¹³ a management tool produced by the UN Global Compact and Deloitte aimed at corporate sustainability.¹¹⁴ Moreover, the 2011 version mentions the importance of collective action, defined in the document as a cooperative process among various stakeholders to combat corruption jointly, allowing for the alliance of organizations with similar objectives but with different perspectives on the problem, enabling new solutions that increase the impact of individual actions. The guide also states that the ultimate goal of these joint efforts should be to create fair and equal conditions for all market participants and to eliminate corruption temptations for everyone.

c. Corruption Prevention to Foster Small and Medium-Sized Enterprise Development (2007, 2012)

The United Nations Industrial Development Organization (UNIDO) and the

https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf

¹¹⁰ UN Global Compact, TI, International Business Leaders Forum. (2005). *Business Against Corruption: A Framework for Action – Implementation of the 10th UN Global Compact Principle Against Corruption*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2F7.7%2FBACtextcoverssmallFINAL.pdf.

¹¹¹ UN Global Compact, TI, International Business Leaders Forum. (2011). *Business Against Corruption: A Framework for Action*.

https://d306pr3pise04h.cloudfront.net/docs/news_events%2F8.1%2Fbac_fin.pdf.

¹¹² “Transparency International has developed a Six-Step Implementation Process based on the Business Principles for Countering Bribery. This practical guide assists companies in developing and implementing an anti-bribery policy. The TI Six-Step Implementation Process can be modified to take into account the size of a company and its ability to complete the steps within the suggested timeframe.” (UN Global Compact, TI, International Business Leaders Forum. (2005). *Business Against Corruption: A Framework for Action – Implementation of the 10th UN Global Compact Principle Against Corruption*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2F7.7%2FBACtextcoverssmallFINAL.pdf, at 11).

¹¹³ UN Global Compact, Deloitte. (2010). *UN Global Compact Management Model*.

https://d306pr3pise04h.cloudfront.net/docs/news_events%2F9.1_news_archives%2F2010_06_17%2FUN_Global_Compact_Management_Model.pdf.

¹¹⁴ “A practical yet comprehensive tool to help companies evolve their sustainability efforts. Comprised of six management steps, it guides companies of all sizes through the process of formally committing to, assessing, defining, implementing, measuring and communicating a corporate sustainability strategy. The model draws on widely accepted and understood management practices, and is designed to maximize corporate sustainability performance.” (UN. *UN Global Compact Management Model*. <https://www.unglobalcompact.org/library/231>, on 14 Dec. 2021).

United Nations Office on Drugs and Crime (UNODC)¹¹⁵ have a project on Corruption Prevention to Foster Small and Medium Sized Enterprise Development, aimed to develop a service concept and related tools to support small and medium-sized enterprises (SMEs) in defending themselves against both public and private sector corruption.¹¹⁶ The project produced two reports.

The first report, published in 2007, primarily analyzes the challenges posed to SME development by public and private sector corruption.¹¹⁷ It also discusses potential measures and tools to assist these companies in combatting corruption in their operations. The document emphasizes that although SMEs frequently implement internal measures more readily and swiftly than larger companies, relying solely on compliance programs may not be effective for them. This is often due to their limited resources and market influence, which can hinder their ability to uphold zero-tolerance corruption policies. Furthermore, SMEs face the risk of losing market share to competitors that do not adhere to such standards. Therefore, the report recommends implementing additional measures to empower SMEs against corruption, such as collective actions. The 2012 version restates the first one regarding compliance programs, focusing and deepening on tools and measures other than compliance programs to support SMEs in their fight against corruption.¹¹⁸

d. Global Compact for the 10th Principle (2009, 2012)

The UN Global Compact, launched in 2000, is a call for companies to align their strategies and operations with ten principles.¹¹⁹ This initiative is recognized as the world's largest corporate sustainability initiative, with over 16,000 members in 160 countries.¹²⁰ Such guidance aims to promote the 10th principle of the UN Global Compact, the fight against corruption by the private sector, by providing a roadmap of

¹¹⁵ UNODC is the leading entity in the fight against corruption, the guardian of the UN Convention, and the guardian of the Global Compact 10th Principle (UNODC. *UNODC Business Integrity Portal*. <https://businessintegrity.unodc.org/>, on 7 Aug. 2023).

¹¹⁶ UNIDO. *Corruption Prevention to Foster Small and Medium Sized Enterprise Development*. <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/csr-projects/corruption-prevention-foster-sme-development-unido-joins-forces-unodc>, on 8 Aug. 2023.

¹¹⁷ UNIDO, and UNODC. (2007). *Corruption Prevention to Foster Small and Medium-Sized Enterprise Development: Providing Anti-Corruption Assistance to Small Businesses in The Developing World*. https://www.unodc.org/documents/corruption/Publications/2012/UNIDO-UNODC_Publication_on_Small_Business_Development_and_Corruption_Vol1.pdf

¹¹⁸ UNIDO, and UNODC. (2012). *Corruption Prevention to Foster Small and Medium-Sized Enterprise Development*. https://www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf

¹¹⁹ The Global Compact is an initiative by the UN that aims to “Accelerate and scale the global collective impact of business by upholding the Ten Principles and delivering the SDGs through accountable companies and ecosystems that enable change. To make this happen, the UN Global Compact supports companies to: 1. Do business responsibly by aligning their strategies and operations with Ten Principles on human rights, labour, environment and anti-corruption; and 2. Take strategic actions to advance broader societal goals, such as the UN Sustainable Development Goals, with an emphasis on collaboration and innovation.” (UN Global Compact. *Who we are*. <https://unglobalcompact.org/what-is-gc/mission>, on 8 Aug. 2023).

¹²⁰ UN Global Compact. *Who we are*. <https://unglobalcompact.org/what-is-gc/mission>, on 8 Aug. 2023

resources and tools to assist companies in anti-corruption actions.¹²¹ The 10th Principle of the UN Global Compact focuses on combating corruption, and about this principle,¹²² the Global Compact has issued two documents. One, published in 2009, named Reporting Guidance on the 10th Principle Against Corruption published, in collaboration with TI.¹²³ Another, published in 2012, named Global Compact for the 10th Principle: Corporate Sustainability with Integrity – Organizational Change to Collective Action.¹²⁴

The 2009 report clarifies that the adoption of the 10th Principle commits participants not only to avoid bribery, extortion, and other forms of corruption, but also to develop policies and concrete programs to address it. This report also provides a set of elements to help any organization identify the components of a comprehensive anti-corruption program. The 2012 document expands on the recommendations related to compliance programs. It affirms that the Global Compact addresses corruption by advocating for stringent anti-corruption practices through both individual company-level changes and collaborative efforts at the national level. Companies are urged to integrate anti-corruption measures into their strategies and operations, involving codes of conduct, zero-tolerance policies, and regulations on various aspects such as gifts, politics, and travel. The report recommends that actions like anonymous hotlines, training, supply chain management, risk assessment, and disciplinary measures should support anti-corruption measures. Moreover, the report encourages collective actions.

e. Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers (2010, 2016)

The Global Compact also produced the guide Fighting Corruption in the Supply Chain, which has two versions: one from 2010¹²⁵ and another from 2016.¹²⁶ Both versions aim to guide the private sector in combating corruption in their supply chains, recognizing that most companies are both customers as well as suppliers. The documents state that tackling corruption in the supply chain should be part of a broader anti-corruption program that addresses corruption risks throughout the company, regardless of its size and scope. Both versions of the guide affirm that for all companies, combating corruption in the supply chain must be part of a larger anti-corruption

¹²¹ “Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.” (UN. *The Ten Principles of the UN Global Compact*. <https://unglobalcompact.org/what-is-gc/mission/principles>, on 7 Aug. 2023).

¹²² UN. *Global Compact*. <https://unglobalcompact.org/>, on 7 Aug. 2023.

¹²³ UN and TI. (2009) *Reporting Guidance on the 10th Principle Against Corruption*. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FUNG_C_AntiCorruptionReporting.pdf.

¹²⁴ UN Global Compact. (2012). *Global Compact for the 10th Principle: Corporate Sustainability with Integrity – Organizational Change to Collective Action*. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FGC_for_the_10th_Principle.pdf.

¹²⁵ UN. (2010). *Fighting Corruption in The Supply Chain: A Guide for Customers and Suppliers*. <https://www.unglobalcompact.bg/wp-content/uploads/2014/05/131.pdf>.

¹²⁶ UN. (2016). *Fighting Corruption in The Supply Chain: A Guide for Customers and Suppliers*. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FFighting_Corruption_Supply_Chain.pdf.

program that addresses corruption risks throughout the firm.

f. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide (2013)

In 2013, the UNODC produced a guide to assist businesses in implementing an effective anti-corruption ethics and compliance program.¹²⁷ The document highlights several reasons to demonstrate that corruption is bad for business and emphasizes that the adoption of a compliance program adds value to the company. It also states that the program not only promotes adherence to laws but also serves as a crucial element in protecting the company's reputation and the interests of investors and shareholders. Furthermore, it affirms that the adoption of a compliance program is good for all businesses as it contributes to a fair market without distortions caused by corrupt practices.

g. A Resource Guide on State Measures for Strengthening Corporate Integrity (2013)

This document, produced by UNODC, primarily aims to explore measures that countries can use to promote corporate integrity.¹²⁸ The document is structured into three sections. The first segment begins by detailing the articles of the UN Convention that provide a framework for states' engagement with the private sector. The second section presents a business case for combating corruption and the core elements of an effective anti-corruption program. The final section describes the range of sanctions and incentives that states can be used to advance the UN Convention's objectives for preventing and addressing corruption within the private sector.

The guide affirms that the implementation of a meaningful and effective anti-corruption program for business is primarily a private sector function and responsibility. However, "corporate anti-corruption programs are a primary tool for strengthening integrity and should be encouraged."¹²⁹ Thus, states should help shape the corporate investment decision for the implementation of a compliance program through a combination of enforcement sanctions and good practice incentives. As incentives that the states can give, the guide listed: penalty mitigation to encourage self-reporting of offenses and give credits to company-led prevention efforts; procurement incentives to reward good practice through procurement preference; preferential access to government benefits to reward good practice with preferential access to government, making, for instance, the access to government support or services conditional on minimum integrity practices; reputational benefits to encourage good practice through public recognition; and whistleblower awards to promote reporting of potential violations by individuals.

The guide also urges states to endorse additional measures to promote integrity,

¹²⁷ UNODC. (2013). *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide* https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf.

¹²⁸ UNODC. (2013). *A Resource Guide on State Measures for Strengthening Corporate Integrity*. https://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf.

¹²⁹ UNODC. (2013). *A Resource Guide on State Measures for Strengthening Corporate Integrity*. https://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf, at 2.

aligning with the private sector, such as collective acts, such as integrity pacts. These pacts serve as mechanisms for elevating integrity standards within projects or sectors, achieved through contractual commitments and third-party supervision. Furthermore, states can promote initiatives based on codes of conduct involving businesses to enhance awareness and fortify integrity practices on local, regional, or sectoral levels. Moreover, states can undertake public sector reforms to stimulate collaborative public-private endeavors targeting the corruption demand side, facilitated by civil services and regulatory adjustments.

h. Connecting the Business and Human Rights and the Anti-corruption Agendas (2020)¹³⁰

This report by the Working Group on Human Rights and Transnational Corporations explores the intersection of corruption and human rights within business-related activities.¹³¹ The report highlights the potential synergy between measures promoting responsible business practices, human rights, and anti-corruption efforts to reinforce each other to ensure a corporate coherent policy. The document underscores that while companies have implemented anti-corruption compliance programs to manage risks, such efforts often neglect human rights considerations due to the absence of regulatory requirements. It points out challenges to the integration, such as different department for sustainability, human rights, and anti-corruption in the companies, hindering effective communication and collaboration.

The document highlights that key actor, such as the PACI and Global Compact, have called for a holistic, integrated approach to responsible business conduct. However, despite the expectations set by these actors, businesses lag behind in implementing human rights due diligence processes alongside existing integrity and anti-corruption measures. It affirms that not many companies are genuinely focusing on such alignment. The document highlights good practices to do that, such as emphasizing a culture of integrity led by senior business leaders, considering corruption and human rights risks in employee onboarding, adopting standard codes of conduct with clauses on human rights and anti-corruption, covering human rights and corruption in non-financial audits, integrating human rights into anti-corruption training, aligning the identification of human rights and anti-corruption risks, and incorporating corruption risks into human rights due diligence through the compliance department.

The Working Group on Human Rights and Transnational Corporations also urges states to translate anti-corruption policies into action, addressing business-related human rights impacts through responsible business conduct. Recommendations for states include providing technical assistance to those lacking capacity, breaking institutional silos, introducing regulations mandating human rights due diligence, examining integrity and anti-corruption pledges with an expanded focus on human rights, reviewing withdrawal of support from companies engaged in bribery or corruption, promoting policy coherence in combating corruption and human rights

¹³⁰ I did not find this document through a search on the UN page for its name; instead, it was identified because the preliminary notes that led to this document were referenced in one of the PACI documents analyzed in this article, see WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*. https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf.

¹³¹ UN. (2020). *Connecting the Business and Human Rights and the Anti-Corruption Agendas: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (A/HRC/44/43)*. <https://digitallibrary.un.org/record/3889182>, on 6 Dec. 2023.

abuses, and enhancing integrity pact processes to monitor business respect for human rights. It also calls on civil society to promote this holistic corporate culture by, for instance, documenting cases, engaging in collective action, and advocating for innovative anti-corruption mechanisms.

i. Other UN initiatives

In 2013, the UNODC produced a document analyzing India's progress in promoting corporate integrity in alignment with the principles of the UN Convention. The document, titled *Corporate Integrity: Incentives for Corporate Integrity in Accordance with the United Nations Convention Against Corruption – A Report*, acknowledges that fines are generally the most frequently used sanction against corruption, followed by exclusion from government contracts, forfeiture, confiscation, restitution, debarment, or legal entity closure.¹³² Additionally, it recommends that states consider non-monetary sanctions for corruption, including the establishment of effective internal compliance programs and direct regulation of corporate structures.

The UNODC also produced resources to improve corporate integrity by targeting companies. The UNODC Business Integrity Portal is a “platform for strengthened dialogue and partnership between the public and the private sectors to develop and implement initiatives to counter corruption jointly.”¹³³ The site offers several resources to aid companies in developing compliance programs and other measures against corruption. For instance, the Business Hub “offers information and tools to businesses seeking to strengthen integrity in their operations by assessing their corruption risks, developing compliance programs, and participating in Collective Action activities.”¹³⁴ The UNODC also produced the *Toolkit of Private Sector Outreach Materials*, a summary of documents produced by the UN.¹³⁵ The UN, by UNODC e Global Compact, also provides *The Fight Against Corruption*, an e-learning tool for the private sector in the UN Global Compact's 10th Principle.¹³⁶

B. Intergovernmental Initiatives

1. G20

The G20 was established in 1999 and recognized in 2009 as the foremost forum for international economic collaboration.¹³⁷ It currently comprises 19 countries and the

¹³² UNODC. (2013). *Corporate Integrity: Incentives for Corporate Integrity in Accordance with the United Nations Convention Against Corruption – A Report*.

https://www.unodc.org/documents/southasia/publications/research-studies/CI_Report.pdf.

¹³³ UNODC. *UNODC Business Integrity Portal*. <https://businessintegrity.unodc.org/bip/en/index.html>, on 8 Aug. 2023.

¹³⁴ UNODC. *Business Hub*. <https://businessintegrity.unodc.org/bip/en/business-hub.html>, on 8 Aug. 2023.

¹³⁵ UNODC. *Toolkit of Private Sector Outreach Materials*.

https://www.unodc.org/unodc/en/corruption/tools_and_publications/toolkit-of-private-sector-outreach-materials.html, on 8 Aug. 2023.

¹³⁶ UNODC, and Global Compact. *The Fight Against Corruption*. <http://thefightagainstcorruption.org/>, on 8 Aug. 2023.

¹³⁷ Established in 1999 following the Asian financial crisis, the G20 emerged as a platform for Finance Ministers and Central Bank Governors to deliberate on global economic and financial matters. In response to the worldwide economic and financial crisis of 2007, the group included the Heads of Government. By 2009, it gained recognition as the foremost forum for international economic

European Union.¹³⁸ Initially centered on broader macroeconomic concerns, the G20 has progressively broadened its scope to encompass various subjects, including anti-corruption efforts.¹³⁹ None of Villarino, Rose, or WRC included the G20 initiatives within their listings of the IACR.¹⁴⁰ However, I chose to include the G20 in this article because both the OECD and UN have referenced G20 anti-corruption standards in some documents analyzed in this article. Furthermore, G20 actions can significantly stimulate anti-corruption efforts, given that its members represent around 85% of the global Gross Domestic Product (GDP), over 75% of global trade, and about two-thirds of the world's population.¹⁴¹ Consequently, I have undertaken an analysis of the G20 instruments below.¹⁴²

- a. G20 ACWG Action Plan (2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2021, 2022-2024)

The G20 Anti-Corruption Working Group (G20 ACWG), established in 2010, has the specific objective of preparing comprehensive recommendations for consideration by the leaders of G20 member countries on how to contribute to international efforts to combat corruption.¹⁴³ Since 2011, the G20 ACWG has been

collaboration. (G20. *About G20 – Overview*. <https://www.g20.in/en/about-g20/about-g20.html#overview>, on 10 Aug. 2023).

¹³⁸ Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Türkiye, United Kingdom, and the United States. (G20. *About G20 – G20 Members*. <https://www.g20.org/en/about-g20/#members>, on 10 Aug. 2023).

¹³⁹ G20. *About G20*. <https://www.g20.in/en/about-g20/about-g20.html>, on 10 Aug. 2023.

¹⁴⁰ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 HARVARD INTERNATIONAL LAW JOURNAL, 343 (2022); CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS* (2015); Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

¹⁴¹ OECD and UNDP. (2019). *G20 Contribution to the 2030 Agenda Progress and Way Forward*. www.oecd.org/dev/OECD-UNDP-G20-SDG-Contribution-Report.pdf.

¹⁴² On February 20, 2022, in my search for G20-produced documents about anti-corruption, I founded the “G20 Anti-Corruption Resources”, a virtual library hosted on the UNODC website (<https://www.unodc.org/unodc/en/corruption/g20-anti-corruption-resources/by-thematic-area.html>). This repository encompassed all G20 ACWG Action Plans (2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2021, 2022-2024). Furthermore, the library provided access to various other G20 anti-corruption instruments. Due to the considerable volume of materials available and the objective of this article, I reviewed the titles of all the documents listed in the virtual library. I selected those related to the prohibition of corrupt activities and those concerning the private sector. I selected the following papers: 1) G20 Guiding Principles on Enforcement of the Foreign Bribery Offence (2013); (2) G20 Guiding Principles to Combat Solicitation (2013); (3) G20 High Level Principles on Corruption and Growth (2014); (4) G20 High-Level Principles on Beneficial Ownership Transparency (2014); (5) G20 High-Level Principles on Private Sector Transparency and Integrity (2015); (6) G20 Principles for Promoting Integrity in Public Procurement; (7) G20 High Level Principles on the Liability of Legal Persons for Corruption (2017); (8) G20 High Level Principles on Organizing Against Corruption (2017); (9) G20 High-Level Principles for Preventing Corruption and Ensuring Integrity in State-Owned Enterprises (2018); (10) G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development (2019); (11) G20 High-Level Principles for the Development and Implementation of National Anti-Corruption Strategies. I described the documents that mention compliance programs in this section.

¹⁴³ STAR. *G20 Anti-Corruption Working Group*. <https://star.worldbank.org/g20-anti-corruption-working-group>, on 20 Feb. 2022.

publishing a multi-year anti-corruption plan.¹⁴⁴ These plans, built upon the conventions to which G20 members have signed, like the OECD and the UN Convention, and the monitoring and accountability reports to the G20, set priority goals for the corresponding period. A common theme in all the plans is the need to engage the private sector in the fight against corruption, with partnerships between governments and businesses viewed as essential in addressing the problem.

The first plan that explicitly addresses compliance programs is the plan for the 2015-2016 biennium, stating that states should encourage the private sector to adopt robust compliance programs.¹⁴⁵ The two subsequent plans, 2017-2018¹⁴⁶ and 2019-2021¹⁴⁷ do not explicitly mention compliance programs. However, they emphasize the G20's commitment to fostering a corporate culture of integrity and endorsing private-sector anti-corruption initiatives. The G20 Anti-corruption Action Plan 2022-2024 speaks once more specifically about compliance programs, highlighting that the G20 will continue to encourage and support efforts by the private sector to strengthen effective internal controls and anti-corruption ethics and compliance programs.¹⁴⁸

b. G20 Principles for Promoting Integrity in Public Procurement (2015)

Similarly to the OECD in the 2015 Recommendation of the Council on Public Procurement described above,¹⁴⁹ these principles, also published in 2015, recognize

¹⁴⁴ UNODC. (2010). *G20 Anti-corruption Action Plan 2011-2012*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2010_G20_ACWG_Action_Plan_2011-2012.pdf; UNODC. (2012). *G20 Anti-Corruption Action Plan 2013-2014*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2012_G20_ACWG_Action_Plan_2013-2014.pdf; UNODC. (2014). *G20 Anti-corruption Action Plan 2015-2016*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2014_G20_ACWG_Action_Plan_2015-2016.pdf; UNODC. (2015). *G20 Anti-corruption Action Plan 2017-2018*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2015_G20_ACWG_Action_Plan_2017-2018.pdf; UNODC. (2016). *G20 Anti-Corruption Action Plan 2019-2021*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2018_G20_ACWG_Action_Plan_2019-2021.pdf; UNODC. (2021). *G20 Anti-corruption Action Plan 2022-2024*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021_G20_Anti-Corruption_Action_Plan_2022-2024.pdf.

¹⁴⁵ UNODC. (2014). *G20 Anti-corruption Action Plan 2015-2016*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2014_G20_ACWG_Action_Plan_2015-2016.pdf.

¹⁴⁶ *G20 Anti-corruption Action Plan 2017-2018*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2015_G20_ACWG_Action_Plan_2017-2018.pdf.

¹⁴⁷ UNODC. (2016). *G20 Anti-Corruption Action Plan 2019-2021*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2018_G20_ACWG_Action_Plan_2019-2021.pdf.

¹⁴⁸ UNODC. (2021). *G20 Anti-corruption Action Plan 2022-2024*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021_G20_Anti-Corruption_Action_Plan_2022-2024.pdf.

¹⁴⁹ OECD. (2015). *Recommendation of the Council on Public Procurement*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411>.

the high risks of corruption in public procurement.¹⁵⁰ This G20 document states that, given the vast resources and close interaction between the public and private sectors, public procurement processes are particularly vulnerable to corruption and other misconduct, leading to inefficient allocation of public resources and decreased citizens' trust in good governance. As one of the strategies to address the problem, the document suggests that states promote a culture of integrity by encouraging contractors to develop internal controls and compliance standards, including anti-corruption programs, and find ways to give proper recognition to contractors with effective anti-corruption mechanisms in place.

c. G20 High-Level Principles on Private Sector Transparency and Integrity (2015)

Unlike the other G20 documents presented here, which are addressed to states, the G20 High-Level Principles on Private Sector Transparency and Integrity, published in 2015, are directed toward companies.¹⁵¹ The document asserts that the G20 seeks to encourage the commitment of companies, ranging from small enterprises to large corporations, to improve internal controls, ethics and compliance, transparency, and integrity. The document also affirms that the G20 will continue to collaborate with companies and other stakeholders, including the B20¹⁵² and C20,¹⁵³ to promote compliance through collective action and public-private dialogues, as well as support the development and implementation of anti-corruption programs in companies.

d. G20 High-Level Principles on the Liability of Legal Persons for Corruption (2017)

Dated as of 2017, this document established principles aimed at identifying mechanisms and practices useful for states in establishing and enforcing the liability of legal persons for corruption and related offenses.¹⁵⁴ The 13th principle guides states to promote the private sector to develop anti-corruption actions. The 14th principle asserts

¹⁵⁰ UNODC. (2015). *G20 Principles for Promoting Integrity in Public Procurement*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Public-Sector-Integrity-and-Transparency/G20-Principles_for_Promoting_Integrity_in_Public_Procurement_2015.pdf.

¹⁵¹ UNODC. (2015). *G20 High-Level Principles on Private Sector Transparency and Integrity*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Private-Sector-Integrity-and-Transparency/G20_High_Level_Principles_on_Private_Sector_Transparency_and_Integrity_2015.pdf.

¹⁵² “The Business 20 (B20) represents the voice of business in the G20, an intergovernmental forum representing the world’s major economies. It acts as a platform for dialogue between businesses and the G20 presidency, which rotates each year, with input from civil society and international organisations. [...] Given the B20’s influence on both government policies and the private sector, it is crucial that issues of business ethics and integrity are central to B20 recommendations.” (Basel Institute on Governance. *B20 and Anti-corruption*. <https://baselgovernance.org/b20-collective-action-hub/b20-anti-corruption>, on 1 Mar. 2022).

¹⁵³ “C20 is one of the official Engagement Groups of the G20. It provides a platform for Civil Society Organizations (CSO) around the world to bring forth the political dialogue with the G20. The Civil 20 process involves a wide variety of organizations and networks far beyond the G20 countries and it is structured around the C20 Guiding Principles.” (C20. *About C20*. <https://civil-20.org/index.php/about-c20/>, on 1 Mar. 2022).

¹⁵⁴ UNODC. (2017). *G20 High-Level Principles on the Liability of Legal Persons for Corruption*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Bribery/G20_High_Level_Principles_on_the_Liability_of_Legal_Persons_for_Corruption_2017.pdf.

that the state may, for this purpose, consider the existence of corporate anti-corruption ethics and compliance programs or measures in decisions regarding public procurement or other processes aimed at granting public benefits, such as export credits. Moreover, this instrument states that governments should recognize the efforts made by companies to develop and implement such anti-corruption strategies. In addition, it suggests that when appropriate and consistent with the member country's legal system, these efforts can be considered in judicial proceedings, for example, as a mitigating factor of the sanction or as a defense.

e. G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development (2019)

The compendium lists best practices in infrastructure development, including compliance programs and guidelines for the private sector.¹⁵⁵ Moreover, it cites Indonesia's anti-corruption action as an example of good practice. Indonesia has developed a voluntary program called the National Movement for Integrity Development in the Business Sector with the slogan "Professional with Integrity – PROFIT." The document also highlights integrity pacts as a good practice. These are a form of collective action aimed at assessing and mitigating corruption risks by the government, businesses, and civil society together.

C. International Financial Institutions

1. World Bank Group

The World Bank Group is an international financial organization that aims to provide sustainable solutions to reduce poverty and build shared prosperity in developing countries, with 189 member countries.¹⁵⁶ The World Bank Group is formed by five institutions: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID).¹⁵⁷ While the IBRD and IDA – which together constitute the World Bank – provide financing, policy advice, and technical assistance to governments, the IFC, MIGA, and ICSID focus on bolstering the private sector.¹⁵⁸

The World Bank Group is recognized as a relevant international actor involved

¹⁵⁵ UNODC. (2019). *G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Sectors/G20_Compndium_of_Good_Practices_for_Promoting_Integrity_and_Transparency_in_Infrastructure_Development_2019.pdf.

¹⁵⁶ World Bank. *Who we are*. <https://www.worldbank.org/en/who-we-are>, on 11 Aug. 2023. The origins of the World Bank Group can be traced back to 1944, when countries came together to assist in the reconstruction of Europe and Japan following World War II. (World Bank. *Getting to Know the World Bank*, https://www.worldbank.org/en/news/feature/2012/07/26/getting_to_know_theworldbank, on 11 Aug. 2023).

¹⁵⁷ World Bank. *Who we are*. <https://www.worldbank.org/en/who-we-are>, on 11 Aug. 2023.

¹⁵⁸ World Bank. *Who we are*. <https://www.worldbank.org/en/who-we-are>, on 11 Aug. 2023.

in anti-corruption activity.¹⁵⁹ In the 1996 Annual Meeting of the World Bank and the IMF, the President of the World Bank Group referred to “the cancer of corruption,” a comparison that resonated worldwide and is emblematic of a stand against corruption.¹⁶⁰ Since then, the World Bank Group has taken several actions against corruption. For example, in 2004, they implemented a rule stating that companies bidding on significant projects financed by the Bank must confirm that they have taken measures to prevent any person acting on their behalf from engaging in bribery.¹⁶¹ In addition, the World Bank Group possesses the power to impose sanctions on companies and individuals that breach its norms in connection with projects financed by a World Bank Group entity.¹⁶² These sanctions complement the IACR.¹⁶³

a. World Bank Group Integrity Compliance Guidelines (2010)

In 2001, the World Bank Group established the Department of Institutional Integrity, currently named the Integrity Vice Presidency (INT),¹⁶⁴ an independent unit that investigates and imposes sanctions related to allegations of fraud and corruption in projects financed by the bank.¹⁶⁵ The sanctions can be imposed by reprimand, conditional non-debarment, debarment, debarment with conditional release, and/or restitution (financial or otherwise), including the temporary or permanent exclusion of

¹⁵⁹ Susan Rose-Ackerman, *The Role of International Actors in Fighting Corruption*, in ANTI-CORRUPTION POLICY: CAN INTERNATIONAL ACTORS PLAY A CONSTRUCTIVE ROLE? 3 (Susan Rose-Ackerman & Paul D. Carrington ed., 2014).

¹⁶⁰ World Bank. *Wolfensohn Cancer of Corruption Speech*. <https://www.worldbank.org/en/news/video/2022/08/12/wolfensohn-cancer-of-corruption>, on 20 Mar. 2022; Diagne, M. Two Decades on, the World Bank Group Remains Committed to our Fight Against Corruption. *World Bank Blog*, 9 Dec. 2020. <https://blogs.worldbank.org/governance/two-decades-world-bank-group-remains-committed-our-fight-against-corruption>, on 20 Mar. 2022.

¹⁶¹ TI (2004). *World Bank Move to Reduce Private Sector Bribery Welcomed by Transparency International*. <https://www.transparency.org/en/press/world-bank-move-to-reduce-private-sector-bribery-welcomed-by-transparency-i>, on 22 Dec. 2023.

¹⁶² AFA. (2023). *Presentation of Various Regulatory Frameworks for Promoting Business Integrity Across the World*. https://www.agence-francaise-anticorruption.gouv.fr/files/2023-05/AFA%27s%20Presentation%20FR%20UK%20US%20WBG%20Standards_May%202023_English%20version.pdf.

¹⁶³ OECD, UNODC, World Bank. (2013). *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*. <https://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>. To Arlen, “The World Bank sanctions regime allows the bank to exclude individuals and entities for a variety of violations—including both paying bribes and committing fraud. Rather than relying on external authorities to determine whether actionable misconduct occurred – such as local authorities in the recipient country or authorities with jurisdiction over an entity involved in corrupting or defrauding the recipient country – the World Bank regime empowers its own officials to identify and investigate misconduct *sua sponte*.” (Jennifer Arlen, *Foreword*, in FIGHTING FRAUD AND CORRUPTION AT THE WORLD BANK: A CRITICAL ANALYSIS OF THE SANCTIONS SYSTEM (Stefano Manacorda & Constantino Grasso, 2018, at xi).

¹⁶⁴ Diagne, M. Two Decades on, the World Bank Group Remains Committed in our Fight Against Corruption. *World Bank Blog*, 9 Dec. 2020. <https://blogs.worldbank.org/governance/two-decades-world-bank-group-remains-committed-our-fight-against-corruption>, on 20 Mar. 2022.

¹⁶⁵ In addition to investigation and punishment, the INT aims to “create and maintain a trust-based, inclusive organizational culture that encourages ethical conduct, a commitment to compliance with the law and a culture in which Misconduct is not tolerated.” (World Bank. *Integrity Vice Presidency*. <https://www.worldbank.org/en/about/unit/integrity-vice-presidency>, 20 Feb. 2022).

firms or individuals from involvement in projects funded by the World Bank Group.¹⁶⁶

In 2010, the INT introduced an incentive mechanism for compliance programs within the World Bank Group's scope of operations, by changing the institution's sanction standard: the Integrity Compliance Guidelines.¹⁶⁷ Under this approach, the sanctioned party is no longer automatically released after fulfilling some sanctions.¹⁶⁸ Often, sanctions additionally require the sanctioned entity to implement remedial measures, including, for example, the development and demonstrated implementation of a compliance program.¹⁶⁹

b. Agreement for Mutual Enforcement of Debarment Decisions (2010)

In 2010, the World Bank Group and the other four leading multilateral development banks (African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group) signed an agreement providing for mutual and reciprocal enforcement of debarment decisions.¹⁷⁰ The agreement does not mention compliance programs.¹⁷¹ However, the convergence among the multilateral development banks and, in certain respects, towards a broader convergence among a larger group of international actors,¹⁷² can lead companies doing business with these banks to adopt compliance programs both as a preventative measure and, if wrongful actions have already taken place, as a means of possible mitigation of the severity of sanctions.¹⁷³

c. World Bank Sanctioning Guidelines (2011)

The World Bank Group also offers mitigation incentives for sanctions through its voluntary disclosure program, which rewards a company's cooperation and remedial

¹⁶⁶ AFA. (2023). *Presentation of Various Regulatory Frameworks for Promoting Business Integrity Across the World*. https://www.agence-francaise-anticorruption.gouv.fr/files/2023-05/AFA%27s%20Presentation%20FR%20UK%20US%20WBG%20Standards_May%202023_English%20version.pdf.

¹⁶⁷ World Bank. (2010). *Summary of World Bank Group Integrity Compliance Guidelines*. <https://thedocs.worldbank.org/en/doc/06476894a15cd4d6115605e0a8903f4c-0090012011/original/Summary-of-WBG-Integrity-Compliance-Guidelines.pdf>.

¹⁶⁸ World Bank. (2020). *Integrity Compliance at the World Bank Group: Frequently Asked Questions*. <https://thedocs.worldbank.org/en/doc/da26092a692560030e0f2dd5c0a8c07b-0090012020/original/ICO-FAQs-4-2020.pdf>.

¹⁶⁹ AFA. (2023). *Presentation of Various Regulatory Frameworks for Promoting Business Integrity Across the World*. https://www.agence-francaise-anticorruption.gouv.fr/files/2023-05/AFA%27s%20Presentation%20FR%20UK%20US%20WBG%20Standards_May%202023_English%20version.pdf.

¹⁷⁰ Norbert Seiler & Jelena Madir, *Fight against Corruption: Sanctions Regimes of Multilateral Development Banks*, 15 JOURNAL OF INTERNATIONAL ECONOMIC LAW 28 (2012).

¹⁷¹ Asian Development Bank. (2010). *Agreement for Mutual Enforcement of Debarment Decisions*. <https://www.adb.org/documents/agreement-mutual-enforcement-debarment-decisions>, on 22 Feb. 2024.

¹⁷² Frank A. Fariello Jr. & Conrad C. Daly, *Coordinating the Fight against Corruption among MDBS: The Past, Present, and Future of Sanctions*, 45 GEORGE WASHINGTON INTERNATIONAL LAW REVIEW 270 (2013).

¹⁷³ Norbert Seiler & Jelena Madir, *Fight against Corruption: Sanctions Regimes of Multilateral Development Banks*, 15 JOURNAL OF INTERNATIONAL ECONOMIC LAW 28 (2012).

actions.¹⁷⁴ The World Bank Sanctioning Guidelines prescribe a number of mitigating factors that the relevant decision-makers should consider, including the establishment or improvement of an effective compliance program, which reflects genuine remorse and intention to reform, or may be seen as a calculated step to reduce the severity of the sentence.¹⁷⁵ The Guidelines also provide recommendations on how compliance programs can be imposed or used as a mitigation factor in World Bank Group sanctions. For instance, there is the sanction of debarment with conditional release, where the imposed conditions may include the implementation or improvement of a compliance program.¹⁷⁶

d. Anti-Corruption Ethics and Compliance Handbook for Business (2013)

In 2013, the World Bank, together with the OECD and the UNODC, published the Anti-Corruption Ethics and Compliance Handbook for Business, aiming to provide a useful resource for companies based in G20 countries and around the world to implement compliance programs.¹⁷⁷ The Handbook compiles international conventions and related documents on the subject produced by various international actors, guiding companies to the best existing practices. The cooperation among international actors in promoting the anti-corruption agenda, and specifically the compliance programs, becomes even clearer when we observe a collective document like this one.

D. International Private Initiatives

1. ICC

The International Chamber of Commerce (ICC) serves as the institutional representative of 45 million companies across more than 170 countries.¹⁷⁸ ICC seeks to promote world trade and investment based on free and fair competition, harmonizes trade practices and formulates terminology and guidelines for importers and exporters,

¹⁷⁴ Humboldt-Viadrina School of Governance. (2013). *Motivating Business to Counter Corruption: A Practitioner Handbook on Anti-Corruption Incentives and Sanctions*.

https://www.globalcompact.de/migrated_files/wAssets/docs/Korruptionspraevention/Publikationen/motivating_business_to_counter_corruption.pdf.

¹⁷⁵ World Bank. (2011). *World Bank Sanctioning Guidelines*.

<https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/World%20Bank%20Group%20Sanctioning%20Guidelines%20January%202011.pdf>.

For more information, see Norbert Seiler & Jelena Madir, *Fight against Corruption: Sanctions Regimes of Multilateral Development Banks*, 15 JOURNAL OF INTERNATIONAL ECONOMIC LAW 28 (2012).

¹⁷⁶ World Bank. (2011). *World Bank Sanctioning Guidelines*.

<https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/World%20Bank%20Group%20Sanctioning%20Guidelines%20January%202011.pdf>;

Norbert Seiler & Jelena Madir, *Fight against Corruption: Sanctions Regimes of Multilateral Development Banks*, 15 JOURNAL OF INTERNATIONAL ECONOMIC LAW 28 (2012).

¹⁷⁷ OECD, UNODC, World Bank. (2013). *Anti-Corruption Ethics and Compliance Handbook for Business*. <https://web-archiv.oecd.org/2019-10-21/256329-Anti-CorruptionEthicsComplianceHandbook.pdf>.

¹⁷⁸ ICC. *Our Mission, History and Values*. <https://iccwbo.org/about-icc-2/our-mission-history-and-values/>.

and provides a range of practical services to business.¹⁷⁹

- a. ICC Rules Against Corruption (1977, 1996, 1999, 2005, 2011)
 - i. Recommendations to Combat Extortion and Bribery in Business Transactions (1977)

This instrument was produced in 1977 by the Commission on Ethical Practices, an *ad hoc* commission established by the ICC in 1975.¹⁸⁰ This occurred in the context of the repercussions of the global bribery scandals that took place in the 1970s.¹⁸¹ The Commission, composed of individuals from both developed and developing countries holding high positions in businesses and governments, conducted a survey to assess the existence of legislation prohibiting extortion and bribery worldwide.¹⁸² It concluded that while such regulations exist in most countries, the effectiveness of their enforcement varies considerably.¹⁸³ The Commission released the 1977 guideline to address this issue, advocating for complementary and mutually reinforcing actions by states, businesses, and intergovernmental bodies.¹⁸⁴ It was the ICC who “first realised the importance of intergovernmental cooperation in combating international corruption”¹⁸⁵ and “the first business organization to issue anti-corruption rules.”¹⁸⁶

In addition to the foreword, the document has two parts: one directed at governments and the other at businesses. Concerning governments, the 2017 Recommendations advise states to prevent bribery and extortion through several measures. Regarding business, it targets individuals or entities engaged in business to promote self-regulation in the international business arena in a section named Rules of Conduct to Combat Extortion and Bribery. The Rules are crafted as a voluntary framework applicable to enterprises of all sizes and in all countries, outlining five basic rules and six guidelines for their implementation. This aims to help companies establish

¹⁷⁹ Antonio Argandoña, *The 1996 ICC Report on Extortion and Bribery in International Business Transactions*, 6 BUSINESS ETHICS, THE ENVIRONMENT AND RESPONSIBILITY 134 (1997). Founded in 1919 in the aftermath of World War I, the International Chamber of Commerce (ICC) was established as a response to the absence of a global framework concerning governing trade, investment, finance, and commercial relations. It was founded by a group of industrialists, financiers, and traders who referred to themselves as the “Merchants of Peace” and believed that the private sector was best suited to establish global business standards. (ICC. *Our Mission, History and Values*. <https://iccwbo.org/about-icc-2/our-mission-history-and-values/>, on 5 Jun. 2023).

¹⁸⁰ ICC, *Commission on Ethical Practices Recommendations to Combat Extortion and Bribery in Business Transactions*, 17 INTERNATIONAL LEGAL MATERIALS 417 (1978). <http://www.jstor.org/stable/20691864>, at 418.

¹⁸¹ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>.

¹⁸² ICC, *Commission on Ethical Practices Recommendations to Combat Extortion and Bribery in Business Transactions*, 17 INTERNATIONAL LEGAL MATERIALS 417 (1978). <http://www.jstor.org/stable/20691864>.

¹⁸³ ICC, *Commission on Ethical Practices Recommendations to Combat Extortion and Bribery in Business Transactions*, 17 INTERNATIONAL LEGAL MATERIALS 417 (1978). <http://www.jstor.org/stable/20691864>.

¹⁸⁴ ICC, *Commission on Ethical Practices Recommendations to Combat Extortion and Bribery in Business Transactions*, 17 INTERNATIONAL LEGAL MATERIALS 417 (1978). <http://www.jstor.org/stable/20691864>.

¹⁸⁵ Joseph Mase, *Fighting Transnational Corruption*, 9 AMICUS CURIAE 4 (1998), at 4.

¹⁸⁶ ICC. (2011). *ICC Rules on Combating Corruption*. <https://iccwbo.org/wp-content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>, at 3.

effective control systems to prevent extortion and bribery, focusing on the process of obtaining and retaining business with the public or private sector. The document does not expressly mention “compliance programs.”

ii. Revisions to the ICC Rules of Conduct on Extortion and Bribery in International Business Transactions (1996)

During the 1990s, a new wave of corruption scandals emerged, reigniting global attention toward responding to it.¹⁸⁷ In 1994, the ICC established an *ad hoc* committee to review the 1977 Recommendations.¹⁸⁸ The 1996 document emphasized that the 1977 Recommendations generated interest in intergovernmental fora, such as the OECD and the UN, and motivated corporations in various countries to establish or strengthen their internal rules of fair practices, using the Rules of Conduct as a guide. The ICC asserts that, at the time, virtually all countries prohibit extortion and bribery, unlike in 1977.

The 1996 document expands the 1977 recommendations for governments to include international organizations, underscoring the significance of these institutions in the global anti-corruption effort. However, the content of the guidelines remains largely the same. The most notable modifications in the 1996 document were the ones targeting companies. Although brief compared to the 1977 ones, the 1996 Rules for companies impose more rigorous measures by encompassing bribery in all aspects, beyond merely the acquisition and preservation of business as the 1997 version. The document also recommends that states, whether members or non-members of the OECD, adopt the 1994 OECD Recommendation on Bribery in International Business Transactions.¹⁸⁹ Moreover, the document demands actions against corruption from international financial institutions, namely the World Bank, which the ICC understands should take reasonable steps to ensure that corrupt practices do not occur in connection with projects they finance. Additionally, the document calls for more involvement of the WTO in the fight against corruption. The 1996 documents also do not expressly mention compliance programs, although they make recommendations for companies connected to a compliance program.

iii. ICC Rules of Conduct on Extortion and Bribery in International Business Transactions (1999)

The 1999 edition essentially reissues the 1996 guidelines, incorporating minor modifications.¹⁹⁰ Among the additions, the document highlights the development of

¹⁸⁷ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>.

¹⁸⁸ ICC. *1996 Revisions to the ICC Rules of Conduct on Extortion and Bribery in International Business Transactions*, 35 INTERNATIONAL LEGAL MATERIALS, 1306 (1996). <http://www.jstor.org/stable/20698610>.

¹⁸⁹ OECD, *Council Recommendation on Bribery in International Business Transactions*, 33 INTERNATIONAL LEGAL MATERIALS 1389 (1994). <http://www.jstor.org/stable/20698384>.

¹⁹⁰ ICC. (1999). *ICC Rules of Conduct: Extortion and Bribery in International Business Transactions – 1999 revised version*. https://1997-2001.state.gov/global/narcotics_law/global_forum/F810bocr.pdf.

more anti-bribery initiatives around the world.

iv. Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations (2005)

In this document, the ICC stated that due to the increasing progress in anti-corruption efforts, highlighting the UN Convention, the ICC Commission on Anti-Corruption decided to “revisit and rethink the ICC Rules of Conduct and to refine its stance on a number of integrity matters.”¹⁹¹ This was the first time that the document was not produced by an ad hoc Commission. The 2005 version of the ICC Rules brought updates compared to the previous editions, maintaining the core principles and substance.

Regarding compliance programs, although they were not explicitly mentioned in the Rules, the introduction to the document affirms that the success of the ICC Rules depends on a clear message from the company's chief executive that bribery and extortion are prohibited and that an effective compliance program will be implemented. Furthermore, in the section targeting government, it suggests that governments make the adoption of anti-corruption compliance programs a condition for major government contracts. Thus, the 2005 edition is the first that expressly mentions compliance programs.

In the section intended for international organizations and governments, the ICC acknowledges the widespread recognition and progress made in combating corruption, particularly in strengthening legal frameworks around the world. The ICC emphasizes its endorsement of the OECD and UN Conventions, as well as other regional agreements, while stressing the need for greater coordination to address the existing inconsistency and lack of common definitions from an international business perspective. Moreover, the ICC commends initiatives from institutions such as the World Bank and IMF, urging them to go even further by incorporating requirements for contractors to adopt anti-bribery compliance programs. Similarly, the ICC encourages the Global Compact Office to promote the adoption of corporate compliance programs consistent with ICC Rules among companies participating in the Global Compact. This reveals that the ICC was a pioneer among the actors of the IACR in promoting compliance programs and also urged other actors to do the same.

v. ICC Rules on Combating Corruption (2011)

The 2011 document reflects major changes compared to previous versions.¹⁹² The 2011 version has no specific provisions on governments or international organizations, declaring the focus to be a non-binding method of self-regulation for businesses, in light of the international legal instruments.¹⁹³ The 2011 edition has three

¹⁹¹ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>, at 3.

¹⁹² ICC. (2011). *ICC Rules on Combating Corruption*. <https://iccwbo.org/wp-content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>. This Commission affirms be a leading body in the development of rules of conduct, best practices, and advocacy for fighting corruption and for corporate responsibility, working closely with intergovernmental organizations, such as the UN and the OECD.

¹⁹³ The document explicitly lists these instruments. *Global Instruments*: United Nations Convention Against Corruption (UNCAC); United Nations Convention Against Transnational Organized Crime (UNTOC); OECD Convention on the Bribery of Foreign Public Officials in International Business

parts: (i) the ICC Rules on Combating Corruption; (ii) policies that companies should enact to support compliance with the Rules; and (iii) a list of the suggested elements of an effective corporate compliance program.¹⁹⁴ For the ICC, the 2011 version “mirror-images the impressive evolution of the ethics and compliance practices of leading enterprises.”¹⁹⁵

In this version, for the first time, compliance programs are included in the Rules, which outline the elements for the effectiveness of this strategy. The document also encourages collective action, such as anti-corruption pacts related to specific projects or long-term anti-corruption initiatives involving the public sector and/or peers in the respective business sectors. The preface and introduction of the document emphasize that small and medium-sized enterprises should also adopt compliance programs.

b. ICC Handbook (1999, 2003, 2008)

The summary of the 2005 ICC Rules highlights the publication by the ICC of the manual named *Fighting Corruption: A Corporate Practices Manual* in 1999 and extensively revised and republished in 2003, providing “detailed practical guidance for compliance with the ICC Rules of Conduct and the OECD.”¹⁹⁶ The analysis of these manuals was not included in this article due to their lack of accessibility, as the ICC has not made them more available. In 2008, the document was once again updated and published under the name *Fighting Corruption: International Corporate Integrity Handbook*, which is available on the ICC page and, due to this, I analyzed it in this article.¹⁹⁷

Transactions (OECD Convention); OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, including Annex II Good Practice Guidance on Internal Controls, Ethics and Compliance. *Africa*: African Union Convention on Preventing and Combating Corruption (AU Convention); Southern African Development Community Protocol Against Corruption (SADC Protocol); Economic Community of West African States Protocol on the Fight Against Corruption (ECOWAS Protocol). *Americas*: Inter-American Convention Against Corruption (OAS Convention). *Asia and Pacific region*: ADB-OECD Action Plan for Asia-Pacific (Action Plan). *Europe*: Council of Europe Criminal Law Convention; Council of Europe Civil Law Convention; Resolution of the Committee of Ministers of the Council of Europe: Agreement Establishing the Group of States Against Corruption; Resolution of the Committee of Ministers of the Council of Europe: Twenty Guiding Principles for the Fight Against Corruption; European Union Convention on the Protection of the Communities' Financial Interests and the Fight Against Corruption and two related Protocols; European Union Convention on the Fight Against Corruption involving officials of the European Communities or officials of Member States. See, Appendix A (ICC. (2011). *ICC Rules on Combating Corruption*. <https://iccwbo.org/wp-content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>, at 13).

¹⁹⁴ ICC. *ICC Rules on Combating Corruption*. <https://iccwbo.org/news-publications/policies-reports/icc-rules-on-combating-corruption/>

¹⁹⁵ ICC. (2011). *ICC Rules on Combating Corruption*. <https://iccwbo.org/wp-content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>, at 3.

¹⁹⁶ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>, at 3.

¹⁹⁷ The only version available on the ICC site is the 2008 version. See, ICC. *Fighting Corruption – International Corporate Integrity Handbook*. <https://2go.iccwbo.org/fighting-corruption.html>, on 11 Aug. 2023.

The book, among other reflections, looks ahead at priorities in the fight against corruption, including reflections on compliance programs.¹⁹⁸ It asserts that adopting ethical principles is easy, but formulating detailed compliance programs and integrating them into corporate culture are harder, highlighting that external verification of the program remains controversial. The Handbook concludes by emphasizing the importance of overcoming obstacles in the fight against corruption, given its detrimental impact on the global economy, democratic institutions, and international development, as well as in the obstacles in implementation of compliance programs.

c. Other ICC Initiatives

The ICC has been developing anti-corruption tools and specific guidelines on compliance programs elements to help companies implement the ICC Rules.¹⁹⁹ The ICC also participated in a joint publication with UN Global Compact, TI, and PACI, named *Clean Business is Good Business*.²⁰⁰ It offers a summary of arguments and information to help companies make the business case against corruption, including implementing anti-corruption programs.²⁰¹

2. TI

WRC²⁰² pointed the TI as part of the IACR.²⁰³ TI defines itself as a global movement working in over 100 countries with the mission to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.²⁰⁴ TI was founded in 1993 when corruption was a taboo topic.²⁰⁵ Witnessing the impact of corruption during his work in East Africa, retired World Bank official Peter Eigen and nine allies established a small organization to address this taboo, which later became TI.²⁰⁶

¹⁹⁸ Fritz Heimann & Mark Pieth, *Moving Anti-corruption to the Next Level*, in FIGHTING CORRUPTION: INTERNATIONAL CORPORATE INTEGRITY HANDBOOK 209 (Fritz Heimann & François Vincke ed., 2008).

¹⁹⁹ The documents concerning elements could be part of compliance programs and not about compliance programs themselves; thus, I did not analyze them in this article. For instance, they published the ICC Guidelines on Gifts and Hospitality, the ICC Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Enterprises, and the ICC Guidelines on Whistleblowing. See, ICC, *ICC Rules on Combating Corruption*. <https://iccwbo.org/news-publications/policies-reports/icc-rules-on-combating-corruption/>.

²⁰⁰ ICC, TI, UN Global Compact, and PACI. (2008). *Clean Business is Good Business*. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2Fclean_business_is_good_business.pdf.

²⁰¹ The ICC has also been developing anti-corruption tools and specific guidelines on compliance programs elements to help companies implement the ICC Rules. For instance, they published the ICC Guidelines on Gifts and Hospitality, the ICC Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Enterprises, and the ICC Guidelines on Whistleblowing.

²⁰² Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013)

²⁰³ “The Corruption Perceptions Index (CPI) is the most widely used global corruption ranking in the world. It measures how corrupt each country’s public sector is perceived to be, according to experts and businesspeople.” (TI. *The ABCs of the CPI: How the Corruption Perceptions Index is Calculated*. <https://www.transparency.org/en/news/how-cpi-scores-are-calculated>, on 5 Dec. 2023).

²⁰⁴ TI. *About*. <https://www.transparency.org/en/about>, on 5 Dec. 2023.

²⁰⁵ TI. *Our Story*. <https://www.transparency.org/en/our-story>, on 5 Dec. 2023.

²⁰⁶ TI. *Our Story*. <https://www.transparency.org/en/our-story>, on 5 Dec. 2023.

The PACI mentions that the origins of their Principles, which promote compliance programs, lie in the TI Business Principles for Countering Bribery from 2002.²⁰⁷ Furthermore, the Business Against Corruption: A Framework for Action – published by UN, TI, and International Business Leaders Forum in 2005 –, among other documents here analyzed, also references the TI Business Principles for Countering Bribery.²⁰⁸ Therefore, the analysis of TI’s push for compliance programs will start with this pioneering document and its updates.

- a. Business Principles for Countering Bribery (2002, 2003, 2004, 2008, 2009, 2013, 2015)
 - i. Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International (2002)²⁰⁹

The Business Principles initiative began in 1999 when TI and its partners recognized the potential to complement the OECD Convention.²¹⁰ Feasibility study was conducted, leading to the formation of a Steering Committee composed of representatives from both business and civil society.²¹¹ Their collaborative effort aimed to determine if a consensus framework could be developed for private sector

²⁰⁷ WEF. (2004). *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf.

²⁰⁸ UN Global Compact, TI, International Business Leaders Forum. (2005). *Business Against Corruption: A Framework for Action – Implementation of the 10th UN Global Compact Principle Against Corruption*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2F7.7%2FBACtextcoversmallFINAL.pdf.

²⁰⁹ TI and Social Accountability International. (2002). *Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International*.

<https://www.news.admin.ch/newsd/message/attachments/5465.pdf>. This document was located through a Google search using the same term “TI Business Principles for Countering Bribery 2002” on December 6, 2023. It was not listed in the official TI page results when searching for “Business Principles for Countering Bribery” using the site’s search engine. This search, on December 6, 2023, produced 42 results, none of which is this document. On the same day, a search on TI’s official page for this term, applying the “publication” filter (excluding news, blog, country profile, priority, advocacy, and events), produced four results. These results include the following documents, in this order: (i) Business Principles for Countering Bribery (2013); (ii) Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition; (iii) Assurance Framework for Corporate Anti-bribery Programs (2012); (iv) Anti-Corruption Principles for State-Owned Enterprises: A Multi-Stakeholder Initiative of Transparency International (2017). The first three will be discussed here as they are relevant to this article. The rest of the TI documents in this section I also found through a free search on Google, as they did not appear in the TI’s site search with or without filters.

²¹⁰ TI. (2004). *Business Principles for Countering Bribery: Guidance Document*.

https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

²¹¹ TI. (2004). *Business Principles for Countering Bribery: Guidance Document*.

https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

use.²¹² The Business Principles for Countering Bribery are a result of this effort.²¹³ The Principles are: (i) the enterprise shall prohibit bribery in any form, whether direct or indirect; (ii) the enterprise shall commit to the implementation of a program to counter bribery. This document also provides recommendations about the development of a compliance program, asserting the aim to address the need for companies to respond to increasing regulatory demands and heightened awareness of bribery risks. This document is a reissue of the 2003 document, with no alterations to the text.²¹⁴

ii. Business Principles for Countering Bribery: Guidance Document (2004)

This guidance presents the same Principles as well as the same recommendations on the scope and requirements of the compliance programs as the 2002 document.²¹⁵ However, it has the broader aim to provide background and clarification to the 2002 Business Principles. Another difference is that the 2004 document has more details on how enterprises can create and implement the anti-bribery program. For example, it outlines a Six-Step Process for program implementation.²¹⁶

Among the new information, TI asserts that the Principles are considered good practices, not best practices, as it is expected that they will further strengthen over time. In this sense, the document starts saying that it does not constitute, and does not purport to constitute, definitive statements of TI policies in anti-bribery, being inappropriate, at the time, to try to establish definitive policies in such a rapidly developing area. In addition, it makes clear that the Business Principles focus on bribery and not corruption in general.

The document highlights that an anti-bribery program is different from the traditional corporate compliance function, as it is usually understood as only ensuring observation of legal requirements. The document understands that a legally based compliance can quickly become unmanageable for international companies because of the different laws in operation in each country. Thus, its advocacy that companies should adopt an anti-bribery program, which is embed a culture of avoiding bribery into their business functions, doing more than just comply with domestic rules.

²¹² TI. (2004). *Business Principles for Countering Bribery: Guidance Document*. https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

²¹³ TI and Social Accountability International. (2002). *Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International*. <https://www.newsd.admin.ch/newsd/message/attachments/5465.pdf>.

²¹⁴ TI. (2003). *Business Principles for Countering Bribery: An Essential Tool*. <https://www.mohw.gov.tw/dl-15587-7a3701c0-05e5-4d74-bb9f-57a9390b2c58.html>.

²¹⁵ TI. (2004). *Business Principles for Countering Bribery: Guidance Document*. https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

²¹⁶ In 2005, a document regarding these steps was separately published under the name TI Six-Step Process: A Practical Guide for Companies Implementing Anti-Bribery Policies and Programmes, according to Hess (David Hess, *Partnering Against Corruption Initiative and the Business Principles for Countering Bribery*, in HANDBOOK OF TRANSNATIONAL GOVERNANCE INSTITUTION & INNOVATIONS 322 (Thomas Hale & David Held ed., 2011). However, this TI document was not located.

The guidance also declares to be stimulated vis-a-vis the new developments on the subject: the UN Convention and the introduction of the UN Global Compact 10th Principle against Corruption, which will take some time to be enforced in all signatory countries. Recognizing that companies need tools to help them break the cycle of corruption, TI affirms that the Principles, for the first time, provide a comprehensive approach to countering bribery by companies. The document also declares that the TI Principles have been evaluated widely through field-tests and workshops since the first publication and have been endorsed or adopted by leading multinationals. It affirms that the international demand – in both North and South Global and from different industry groups – shows that a tool to help companies implement a no-bribes policy is really needed.

The document states that, up until its publication, there had been a growing emphasis on requirements for the private sector in terms of business ethics and the broader concept of corporate responsibility. It asserts that, in a market economy, the short-term focus on maximizing returns to shareholders needs to be replaced by a longer-term orientation to the demands of stakeholders as a prerequisite for corporate sustainability. This includes the fight against corruption, as corrupt business practices pose a serious risk to the long-term sustainability of businesses and can significantly undermine reputation and shareholder value. For that reason, it affirms that the Business Principles are designed to strike a balance between a values-based approach and a compliance-based approach.

Regarding the company's anti-bribery measures, the document affirms that bribery can take place through agents and intermediaries, and to avoid this, it suggests that companies adopt integrity pacts. The document makes it clear that an integrity pact – a form of collective action cited in some documents analyzed in this article – is a tool developed in the 1990s by TI to help governments, businesses, and civil society in the fight against corruption in the field of public contracting. However, it is applicable across all contracting to guarantee that subsidiaries, joint venture partners, agents, contractors, and other third parties with the company have business relationships also do not engage in bribery.

iii. Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition (2008)

The document acknowledges that much of the world's business is conducted SMEs, especially in emerging economies.²¹⁷ Consequently, the adherence to an anti-bribery system by small companies is crucial to success in the global fight against corruption. It also recognizes that SMEs – which typically have fewer resources in terms of time, money, and employees – face challenges in resisting and countering bribery pressures. In contrast, large international companies had been increasingly requiring their SMEs and other suppliers to provide evidence of having appropriate anti-bribery policies and systems in place. Thus, the document aims to outline, in a clear and direct manner, the process by which smaller businesses can develop an anti-bribery compliance program aligned to their size and resources. This version presents a simplified process for implementing anti-bribery programs compared to the 2002 guide,

²¹⁷ TI. (2008). *Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition*. <https://www.transparency.org/en/publications/business-principles-for-countering-bribery-small-and-medium-enterprise-sme>.

clarifying potential issues and offering practical examples, guided by the Business Principles.

iv. Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International (2009)

The 2009 edition represents a light revision of the 2002 Business Principles, aimed at accommodating developments in key areas of good practice and aligning, where appropriate, with other leading anti-bribery codes such as the ICC Rules and the PACI Principles.²¹⁸ The document emphasizes that the value of the Principles has been proven through consultations, field testing, and workshops. It also states that although surveys indicate that companies are adopting anti-bribery policies, full implementation remains an incomplete process and a challenge for many. In this version, TI hopes that companies will increasingly utilize the Business Principles, leading to a higher and more uniform standard of anti-bribery practice worldwide, thus contributing to a more level playing field.

TI reinforces in the document that an effective anti-bribery program not only strengthens reputation but also builds the respect of employees, enhances credibility with key stakeholders, and supports an enterprise's commitment to corporate responsibility. Notably, the 2009 version introduces a new section on external verification and assurance, suggesting that the companies' board should consider commissioning external verification or assurance to enhance internal and external confidence in the program's effectiveness.

v. Business Principles for Countering Bribery: Transparency International Self-Evaluation Tool (2009)

TI's Self-Evaluation Tool (SET) is a checklist that allows companies to assess their anti-bribery programs aligned with the 2009 Business Principles for Countering Bribery.²¹⁹ With a focus on a zero-tolerance policy, the SET aims to guide companies in implementing effective anti-bribery measures, ensuring alignment with assessed risks and stakeholder confidence. The tool provides indicators that can be used for external reporting, internal performance metrics, and supports internal audit.

²¹⁸ TI. (2009). *Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International*. <https://www.pactomundial.org/wp-content/uploads/2015/04/Principios-Empresariales-para-Contrarrestar-el-Soborno-de-Transparencia-Internacional-Inglés.pdf>.

²¹⁹ TI. (2009). *Business Principles for Countering Bribery: Transparency International Self-Evaluation Tool*. https://www.transparency.org/files/content/tool/2009_TI_BusinessSelfEvaluationTool_EN.pdf.

vi. Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International (2013)²²⁰

This document is the second revision of the 2002 Business Principles, encompassing a broader scope than the 2009 revision.²²¹ In this version, TI asserts that significant changes have occurred since the initial publication. The landscape has evolved markedly with the introduction of more stringent domestic and foreign bribery laws, heightened enforcement, substantial fines, and the looming prospect of sanctions for company directors and employees, all of which have reverberated throughout the business community. Moreover, TI affirms that mounting pressures from socially responsible investment funds and indices, incorporating anti-bribery criteria into their screening procedures, contribute to the evolving landscape.

The document declares its understanding of these recent developments in anti-bribery practices and, consequently, incorporates modifications to the original text. The adjustment aims to underscore the contemporary significance of these issues in anti-bribery practices and the feedback that TI received since the last update, fostering closer alignment with other leading codes and legal instruments, notably the UN Convention. Among the changes, an additional part was incorporated into the second principle of the 2002 version: “The Programme shall represent the enterprise’s anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance,” aiming to stimulate more robust programs.

vii. Business Principles for Countering Bribery: Commentary (2015)

This document is a commentary on the 2013 edition of the Business Principles, explaining the 2013 edition’s changes, providing background to its provisions, and offering insights into implementation.²²² For instance, the document asserts that some changes aimed to stimulate companies in fostering a culture of integrity within the enterprise through the compliance program.

The document also emphasizes that the 2013 Business Principles, the version current in force, aim to serve as best practice guidance for enterprises countering bribery, influencing corporate anti-bribery practices, and serving as a reference for various frameworks, both domestically and internationally. This reflects a maturity of the Principles, unlike the 2004 version which stated that it was inappropriate, at the time, to try to establish best practices in the area. Moreover, the Commentary affirms the Business Principles’ influence as a business benchmark, fostering the development and strengthening of anti-bribery measures for enterprises globally. The document also

²²⁰ TI. (2013). *Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International*. <https://www.transparency.org/en/publications/business-principles-for-countering-bribery>.

²²¹ TI. (2013). *Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International*. <https://www.transparency.org/en/publications/business-principles-for-countering-bribery>.

²²² TI. (2015). *Business Principles for Countering Bribery: Commentary*. https://www.transparency.org/files/content/publication/2015_BusinessPrinciplesCommentary_EN.pdf.

justifies maintaining the focus on bribery, highlighting the significant impact of this misconduct on enterprises and societies.

b. Other TI initiatives

i. Assurance Framework for Corporate Anti-bribery Programs (2012)

Supported by the WEF, TI affirms to have developed this instrument in response to a grew demand for comprehensive and continuously monitored anti-bribery initiatives in business dealings.²²³ This voluntary framework aims to standardize the design of robust anti-bribery programs, providing an assurance process for companies to assess and enhance the strength and credibility of their initiatives. The document asserts that it addresses the rising expectation for enterprises to transparently communicate their anti-bribery measures to stakeholders, bridging the credibility gap created by corporate bribery scandals and skepticism among stakeholders regarding anti-bribery efforts. The Assurance Framework is part of TI's toolkit based on the Business Principles, consisting of five stages and objectives covering the environment, risk assessment, control activities, information and communication, and monitoring.

ii. Business Integrity Programme Project

This project seeks address the global challenge of corruption in various sectors, emphasizing collaboration with businesses, governments, and civil society. TI informs that the program engages in multi-stakeholder partnerships, advocating for a strong anti-corruption environment, promoting ethical business practices, and fostering anti-corruption culture. It operates through thematic projects, involving selected businesses in specific areas like business purpose, professional services, technology, and integrity tools. It also aims to facilitates multi-stakeholder collaboration through expert guidance councils and business integrity boards. One of the publications related to this project is *Stories of Change: Better Business by Preventing Corruption*.²²⁴ It highlights the benefits of strong compliance programs, such as improved business performance, promotion of fair competition, minimization of losses due to corruption, increased access to capital, and enhanced reputations.²²⁵ This project seems to have a broader scope, encompassing corruption beyond just bribe.

²²³ TI. (2012). *Assurance Framework for Corporate Anti-bribery Programs*.

https://transparency.org.au/wp-content/uploads/2020/09/Report_Corporate-Antibribery.pdf.

²²⁴ TI. (2018). *Stories of Change: Better Business by Preventing Corruption*.

https://images.transparencycdn.org/images/2018_Report_StoriesOfChange_English.pdf.

²²⁵ The document describes four case studies: the TI Business Integrity Programme: Transparency in Corporate Reporting (TRAC), focusing on driving disclosure to prevent corruption through a report series; the Indonesia case involving partnerships with Perusahaan Listrik Negara, the state-owned electricity supplier, to enhance transparency; the Italy case, where TI collaborates with large businesses to promote anti-corruption practices down the supply chain using an integrity kit for small- and medium-sized enterprises; and lastly, the Mexico case, where TI has partnered with businesses and civil society organizations to advocate for robust anti-corruption laws regulating the country's business sector. (TI. (2018). *Stories of Change: Better Business by Preventing Corruption*. https://images.transparencycdn.org/images/2018_Report_StoriesOfChange_English.pdf).

3. WEF PACI

WRC pointed PACI, an initiative from the WEF,²²⁶ as part of the IACR.²²⁷ WRC described PACI as a voluntary code of conduct initiative that corporations can choose to join.²²⁸ Presently, 80 organizations from various business sectors globally are participants,²²⁹ including some companies implicated in corruption scandals like Petrobras, which was a Forum member from 2005 to 2014, rejoined in 2020.²³⁰ PACI born in 2004²³¹ and currently positions itself as a CEO-led platform in the global anti-corruption arena, emphasizing public-private cooperation, responsible leadership, and technological advances.²³² The PACI stands that “fighting corruption in all its forms not only advances the development and well-being of society but also makes businesses stronger, more resilient to risk, more ethical and, ultimately, more sustainable.”²³³ In summary, it affirms that compliance programs are good for business, as other

²²⁶ The WEF, an NGO based in Geneva, is dedicated to demonstrating entrepreneurship in the global public interest while maintaining the highest standards of governance (WEF. *Our Mission*. <https://freedomhouse.org/policy-recommendations/combating-corruption-and-kleptocracy>, on 30 Nov. 2023). In 1973, WEF announced the Davos Manifesto, outlining a code of ethics for business leaders. It emphasizes that the purpose of professional management is to serve clients, shareholders, workers, and society, with a commitment to competitiveness, shareholder returns, employee well-being, and societal responsibility, all underpinned by the necessity of profitability for long-term sustainability (WEF. (2019). *Davos Manifesto 1973: A Code of Ethics for Business Leaders*. <https://www.weforum.org/agenda/2019/12/davos-manifesto-1973-a-code-of-ethics-for-business-leaders/>, on 30 Nov. 2023). WEF published an updated version of the Manifesto, the “Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution,” which express the WEF vision of “stakeholder capitalism” and affirm a “zero tolerance for corruption.” (WEF. (2019). *Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution*. <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>, on 30 Nov. 2023).

²²⁷ Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

²²⁸ Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, *The International Legal Framework Against Corruption: Achievements and Challenges*, 14 MELBOURNE JOURNAL OF INTERNATIONAL LAW 205 (2013).

²²⁹ WEF. *Partnering Against Corruption Initiative – PACI Signatories*. https://www3.weforum.org/docs/Partnering_Against_Corruption_Initiative_Members_2021.pdf, on 30 Nov. 2023.

²³⁰ SEC. (2020). *Form 6-K: Petrobras Returns to the World Economic Forum's Anti-Corruption Initiative*. https://www.sec.gov/Archives/edgar/data/1119639/000129281420003450/pbra20200909_6k.htm#:~:text=Rio%20de%20Janeiro%2C%20September%202019,of%20the%20World%20Economic%20Forum, on 30 Nov. 2023.

²³¹ Originally named “Industry Partnership Programme,” launched in 2004, it initially focused on combating bribery in three pilot sectors: IT and telecommunications, energy, and financial services. (WEF. *WEF History: 2004*. <https://widgets.weforum.org/history/2004.html>, on 30 Nov. 2023). The initiative changed name in 2005, and also adopted a multisector approach (Lee Tashjian, *Partnering Against Corruption Initiative Leads Industry Battle Against Corruption*, 9 LEADERSHIP AND MANAGEMENT IN ENGINEERING 123 (2009)), to address various industry, regional, country, or global anti-corruption issues based on member companies’ needs and interests (WEF. *Partnering Against Corruption Initiative*. <https://www.weforum.org/communities/partnering-against-corruption-initiative/>, on 30 Nov. 2023).

²³² WEF. *Partnering Against Corruption Initiative*. <https://www.weforum.org/communities/partnering-against-corruption-initiative/>, on 30 Nov. 2023.

²³³ WEF. (2016) *Partnering Against Corruption Initiative Global Principles for Countering Corruption: Application & General Terms of Partnership*. https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf.

documents mentioned here.

a. PACI Principles (2004, 2014)²³⁴

i. PACI Principles for Countering Bribery (2004)²³⁵

The 2004 PACI Principles comprised two key elements: (i) a commitment by the enterprise to prohibit bribery in any form and (ii) a commitment to maintaining or implementing an effective anti-bribery program.²³⁶ It also provides practical guidance applicable to companies of all sizes, assisting them in developing policies and programs to combat bribery and corruption in international business. The 2004 Principles declare the aim to give practical effect to the OECD Convention and other governmental and private sector anti-corruption initiatives, such as ICC.²³⁷

The document affirms that the 2004 Principles were built on the general industry anti-bribery principles developed in 2002 by TI, the Business Principles for Countering Bribery.²³⁸ A key distinction between PACI Principles and TI Principles strategies lies

²³⁴ The information on the “Principles for Countering Bribery” and the “Principles for Countering Corruption” is no longer present on the initiative’s homepage. In an effort to recover these principles, referenced in other documents analyzed during this article, I utilized the WEF website search mechanism with the query “Principles for Countering” on November 30, 2023. I identified five results, listed in the following order: (i) WEF. (2016) *Partnering Against Corruption Initiative Global – Principles for Countering Corruption: Application & General Terms of Partnership*. https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf; (ii) WEF. (2014). *World Economic Forum Calls on Business Leaders to Strive for Corruption-Free World*. <https://www.weforum.org/press/2014/01/world-economic-forum-calls-on-business-leaders-to-strive-for-corruption-free-world/>; (iii) WEF. (2018) *UN Global Compact Communication on Engagement*. https://www3.weforum.org/docs/WEF_UN_Global_Compact_Communication_on_Engagement2018.pdf; (iv) WEF. (2012). *Annual Meeting of the New Champions 2012*. https://www3.weforum.org/docs/AMNC12/WEF_AMNC12_Factsheet.pdf; (v) WEF. (2010). *Everybody’s Business: Strengthening International Cooperation in a More Interdependent World: Report of the Global Redesign Initiative*. https://www3.weforum.org/docs/WEF_GRI_EverybodysBusiness_Report_2010.pdf. Only the first two are relevant to this study. Furthermore, I searched for these expressions on Google, on the same date, and located the PACI Principles for Countering Bribery from 2004, which I analyzed in this section

²³⁵ In January 2004, an initial version of the PACI Principles was developed, focusing specifically on the Engineering and Construction sector. (WEF. (2004). *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf). This precursor version emerged from a core group of CEOs participating in the “Industry Partnership Programme” concerning about the detrimental impact of corruption on business and society and recognized the need for a coordinated response. (WEF. (2016). *Partnering Against Corruption Initiative Global – Principles for Countering Corruption: Application & General Terms of Partnership*. https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf). By October 2004, the document expanded to gain support from companies across various industries, adopting the name “Partnering Against Corruption – Principles for Countering Bribery.” (WEF. (2004) *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf). This set of principles resulted from collaboration within a task force composed of member companies from the WEF, TI, and the Basel Institute on Governance (WEF. (2004) *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf).

²³⁶ WEF. (2004) *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf.

²³⁷ WEF. (2004) *Partnering Against Corruption – Principles for Countering Bribery*. https://media.corporate-ir.net/media_files/irol/70/70435/PACI.pdf.

²³⁸ TI and Social Accountability International. (2002). *Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International*. <https://www.news.admin.ch/news/message/attachments/5465.pdf>.

in their approach to obtaining anti-corruption commitments.²³⁹ PACI focuses on securing commitments from top management through public declarations and the adoption of principles, with signatories publicly listed on the PACI website.²⁴⁰ In contrast, the TI approach does not prioritize public adoption of the principles.²⁴¹

ii. PACI Principles for Countering Corruption (2014)²⁴²

At the Annual PACI Task Force Meeting, in 2013, a review of the PACI Principles was discussed, considering the significant developments in corporate compliance and the emergence of several new compliance and integrity instruments.²⁴³ Following the review, the Principles were signed in 2014 by leading companies that are PACI members, under the name “PACI Principles for Countering Corruption.”²⁴⁴ This update broadens the focus beyond bribery, aligning with the evolving global fight against corruption.²⁴⁵

b. Agenda for Business Integrity (2019)²⁴⁶

In 2019, the WEF created the Global Future Council on Transparency and Anti-Corruption, comprised of experts, to develop the “Agenda for Business Integrity” that currently guides the PACI’s strategy.²⁴⁷ The Agenda outlines four pillars of leadership action for companies: (i) commitment to ethics and integrity beyond compliance; (ii) strengthening corporate culture and incentives for continuous learning and improvement; (iii) leveraging technologies;²⁴⁸ (iv) supporting collective action to

²³⁹ David Hess, *Partnering Against Corruption Initiative and the Business Principles for Countering Bribery*, in HANDBOOK OF TRANSNATIONAL GOVERNANCE INSTITUTION & INNOVATIONS 322 (Thomas Hale & David Held ed., 2011).

²⁴⁰ David Hess, *Partnering Against Corruption Initiative and the Business Principles for Countering Bribery*, in HANDBOOK OF TRANSNATIONAL GOVERNANCE INSTITUTION & INNOVATIONS 322 (Thomas Hale & David Held ed., 2011).

²⁴¹ David Hess, *Partnering Against Corruption Initiative and the Business Principles for Countering Bribery*, in HANDBOOK OF TRANSNATIONAL GOVERNANCE INSTITUTION & INNOVATIONS 322 (Thomas Hale & David Held ed., 2011).

²⁴² Analyzed together, the PACI documents reveal that the first edition of the PACI Principles for Countering Corruption is from 2014; however, I did not find the document published in that year. The article uncovered a document from 2016 that, given the context, it was understood as an edition of the PACI Principles for Countering Corruption from 2014, without modifications regarding the Principles. See, WEF. (2016). *Partnering Against Corruption Initiative Global – Principles for Countering Corruption: Application & General Terms of Partnership*.

https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf.

²⁴³ WEF. (2013). *19th PACI Task Force Meeting Summary*.

https://baselgovernance.org/sites/default/files/2019-02/wef_paci_summary_19thtaskforcemeeting.pdf.

²⁴⁴ WEF. (2014). *World Economic Forum Calls on Business Leaders to Strive for Corruption-Free World*. <https://www.weforum.org/press/2014/01/world-economic-forum-calls-on-business-leaders-to-strive-for-corruption-free-world/>, on 30 Nov. 2023.

²⁴⁵ WEF. (2016). *Partnering Against Corruption Initiative Global – Principles for Countering Corruption: Application & General Terms of Partnership*.

https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf.

²⁴⁶ On 30 Nov. 2023, information regarding the “Agenda for Business Integrity” was accessible on the current PACI principal page, unlike the ones about the “PACI Principles.”

²⁴⁷ WEF. *Overview: Partnering Against Corruption Initiative (PACI)*,

https://www3.weforum.org/docs/WEF_PACI_Community_Overview_pager.pdf.

²⁴⁸ The documents regarding the third pillar do not address compliance programs in specific.

Regarding it, the WEF released “Hacking Corruption in the Digital Era: How Tech is Shaping the Future of Integrity in Times of Crisis” (WEF. (2020). *Hacking Corruption in The Digital Era: How Tech is Shaping the Future of Integrity in Times of Crisis: Agenda for Business Integrity*.

https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_Agenda_for_Business_Integr

increase scale and impact.²⁴⁹ This marks a new phase for PACI, with more extensive goals beyond promote a robust compliance program as a strategy against corruption.

i. Ethics and Integrity Beyond Compliance: Agenda for Business Integrity (2020)

The primary pillar currently guiding the PACI strategy is a conceptual foundation that calls for businesses to commit to ethics and integrity beyond compliance.²⁵⁰ In essence, this entails a shift from merely preventing or reducing unethical conduct (compliance-based), typically focused on voluntary principles and standards aligned with OECD and UN Conventions, to encouraging individuals and organizations to manage business with integrity (values-based).²⁵¹ PACI emphasizes that values-based programs should evolve consistently, aligning with the progression of corporate social responsibility and business and human rights fields.²⁵² In this way, the programs should address not only corruption but also the high risk of human rights abuses, environmental harm, and weak rule of law in a specific market or sector, within a collective action perspective.²⁵³

ii. Good Intentions, Bad Outcomes? How Organizations Can Make the Leap from Box-Ticking Compliance to Building a Culture of Integrity (2020)

Concerning the second pillar of the Agenda for Business Integrity, which is to strengthen corporate culture and incentives to drive continuous learning and improvement, WEF published this document.²⁵⁴ It affirms that regulators often commend robust anticorruption measures within companies. However, this dominant

ity_pillar_3_2020.pdf). This publication underscores technology's role in disrupting corruption, emphasizing the use of artificial intelligence to detect corrupt practices, which increases the costs of corruption for businesses while enhancing the benefits of integrity in terms of reputation and investment risk. Notably, this document addresses both businesses and governments, advocating for collaboration to leverage technology and ensure transparency, especially during crises like the COVID-19 pandemic. One output of this pillar is the Tech for Integrity, a platform that aims to accelerate anti-corruption efforts and reduce the amount of time needed to make tangible impact (WEF. *Tech for Integrity*. <https://widgets.weforum.org/tech4integrity/index.html>, on 30 Nov. 2023).

²⁴⁹ WEF. *An Agenda for Business Integrity Four: Key Pillars of Leadership Action by Companies*. https://www3.weforum.org/docs/WEF_Pillars_English.pdf.

²⁵⁰ WEF. (2020). *Ethics and Integrity Beyond Compliance: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

²⁵¹ WEF. (2020). *Ethics and Integrity Beyond Compliance Global Future Council on Transparency and Anti-Corruption: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

²⁵² WEF. (2020). *Ethics and Integrity Beyond Compliance Global Future Council on Transparency and Anti-Corruption: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

²⁵³ WEF. (2020). *Ethics and Integrity Beyond Compliance Global Future Council on Transparency and Anti-Corruption: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

²⁵⁴ WEF. (2020). *Good Intentions, Bad Outcomes? How Organizations Can Make the Leap from Box-Ticking Compliance to Building a Culture of Integrity: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar2_good_intentions_bad_outcomes.pdf.

approach has led the companies' compliance team to be perceived as an internalized law enforcement body that responds to external pressure from government regulators and the public, focusing on sanctions. Nonetheless, it contends that merely penalizing individuals is insufficient, given that many employees have good intentions and grapple with navigating grey ethical lines. The document aims to elucidate how companies can motivate their employees to apply ethical reasoning in the intricate dilemmas confronting businesses, guiding them to act appropriately within the context of cultivating a culture of integrity.

The document also offers recommendations for the companies' board embrace an integrated approach by exploring the convergence of risk management, aligning ethics initiatives with the company's strategy, and prioritizing the mitigation of human rights and corruption risks. Additionally, it suggests a review of the companies' mission, strategy, and purpose in line with ESG principles, fostering ethical leadership to enhance the tone at the top, and promoting diversity and inclusion. The document also recommends measuring stakeholder trust, incorporating third-party due diligence checks – considered essential in any robust compliance program – from a complex and expensive process to a comprehensive one that includes assessments of stakeholder trust levels.

iii. Agenda for Business Integrity: Collective Action (2020)

Regarding the fourth pillar, this document emphasizes the crucial role of collaborative efforts across private, civil, and public sectors in combating corruption.²⁵⁵ WEF sees collective action as a safety net for individual actors, particularly in countries with an uncertain rule of law, leveling the business playing field by uniting organizations, including the most vulnerable like SMEs, in a commitment to integrity principles.²⁵⁶ It asserts that these initiatives can address governance gaps, complement legal frameworks, and prioritize practical, impactful actions over paper-based endeavors.²⁵⁷

c. The Future of Trust and Integrity (2018)

This publication is part of The Future of Trust and Integrity Project, launched in response to the 2018 financial crisis.²⁵⁸ It aimed to restore trust, integrity, and address corruption by incorporating these values into systems. The Project was drawn on the Latin American region, more specifically Argentina, coinciding with the

²⁵⁵ WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*. https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf.

²⁵⁶ The document listed four types of collective action: (i) Anti-corruption Declarations: voluntary, ethical commitments made collectively by companies, often in collaboration with civil society or the public sector; (ii) Standard-Setting Initiatives: development of sector-specific anti-corruption frameworks or standards, such as codes of ethics, to standardize integrity policies; (iv) Capacity-Building Initiatives: companies sharing resources and expertise from their compliance programs to provide training for other organizations, especially SMEs, public officials, and civil society practitioners; (v) Integrity Pacts: higher-level commitments, commonly used in public tenders, with external monitoring and certification to prevent bribery and conflicts of interest, including sanctions for non-compliance. (WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*. https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf).

²⁵⁷ WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*. https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf.

²⁵⁸ WEF. *The Future of Trust and Integrity*. <https://www.weforum.org/publications/the-future-of-trust-and-integrity/>, on 30 Nov. 2023.

Argentinian G20 presidency. It identified three key dimensions – institutional, behavioral, and technological – to bring positive change to corrupt systems. The institutional dimension emphasizes institution-building, rule of law enforcement, and robust compliance systems.²⁵⁹

The Future of Trust and Integrity document presents case studies demonstrating where business, government and civil society have successfully improved levels of trust and integrity to address corruption.²⁶⁰ One of the cases is Integrating Comprehensive Compliance Programmes to Mitigate Corruption, highlights the success of integrating comprehensive compliance programs into a global retail company’s operation, particularly in navigating diverse regulatory frameworks.²⁶¹

In the following section, I will analyze the legal instruments mapped in this study, aiming to provide an overview of the development of direct incentives to compliance programs within the IACR.

III. AN OVERVIEW OF THE IACR: 20 YEARS OF DIRECTING PUSH FOR COMPLIANCE PROGRAMS

A. The Story Told: the IACR’s Role in Corporate Liability and its Impact on Compliance Programs Spread

In the anti-corruption field, corporate liability has a landmark in the FCPA of 1977, where the United States criminalized foreign bribery.²⁶² From then on, the United States pressed for the expansion of the criminalization of bribery to level the playing field of regulatory standards worldwide, so that U.S. companies, already subject to the

²⁵⁹ The behavioral dimension focuses on organizational culture, highlighting leadership, values, and effective training. The technological dimension recognizes the importance of emerging technologies like e-government, open data, and big data analytics and reflects on their implementation. The project unfolds in three phases, starting with a focus on Latin America and Africa, specifically Mexico, Argentina, and South Africa in Phase One. Phase Two extends to South Africa to establish a global framework, while Phase Three explores the Middle East or South-East Asia, accounting for sector and regional nuances. As of now, the PACI page provides information about Phase One. (WEF. *Partnering Against Corruption Initiative*. <https://www.weforum.org/communities/partnering-against-corruption-initiative/>, on 30 Nov. 2023).

²⁶⁰ WEF. (2018). *The Future of Trust and Integrity*.

https://www3.weforum.org/docs/WEF_47529_The_Future_of_Trust_and_Integrity_report_2018.pdf.

²⁶¹ PACI has other projects not directly connected to compliance programs. In 2014, PACI introduced the PACI Vanguard (WEF. (2014). *World Economic Forum Calls on Business Leaders to Strive for Corruption-Free World*. <https://www.weforum.org/press/2014/01/world-economic-forum-calls-on-business-leaders-to-strive-for-corruption-free-world/>, on 30 Nov. 2023). Chief executives who want to fully commitment to a higher level of leadership in anti-corruption through building trust and integrity are invited to join the PACI Vanguard (WEF. *Partnering Against Corruption Initiative*. <https://www.weforum.org/communities/partnering-against-corruption-initiative/>, on 30 Nov. 2023). The Vanguard’s purpose is to identify innovative approaches to anti-corruption, emphasizing more meaningful dialogue and impactful collective action. Moreover, in 2020, PACI promoted the “Role and Responsibilities of Gatekeepers in the Fight Against Illicit Financial Flows: A Unifying Framework,” which is a self-regulatory framework for private sector intermediaries who are strategically positioned to prevent or interrupt illicit financial flows. (WEF. (2021). *The Role and Responsibilities of Gatekeepers in the Fight Against Illicit Financial Flows: A Unifying Framework*. https://www3.weforum.org/docs/WEF_Gatekeepers_A%20Unifying_Framework_One%20pager_2021.pdf).

²⁶² Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 THE JOURNAL OF LEGAL 833 (1994).

FCPA, would not compete under unequal conditions in the globalized environment.²⁶³ This effort led to the OECD Convention, known as the “global FCPA,”²⁶⁴ which came into force in 1999, mandating reforms in countries’ domestic laws to criminalize bribery of foreign public officials by individuals and entities.²⁶⁵ Later, the UN Convention, which entered into force in 2005, required signatory countries to establish liability for legal entities not only for bribery but also for involvement in various corruption offenses outlined in this Convention.

Other multilateral agreements prompted signatory countries to reform their legal systems to make them more rigorous against corruption.²⁶⁶ The oldest one within the IACR is the OAS Convention, a regional treaty that entered into force in 1997. These conventions were a central driver that led to an impressive history of legal harmonization to make corruption unlawful and hold companies accountable for such actions.²⁶⁷ The literature often suggests that the IACR, and the domestic regulations resulting from countries’ adherence to these treaties, have been a strong motivation for companies to establish compliance programs, as they strengthen corporate liability and companies may adopt internal controls to reduce the risk of sanctions.²⁶⁸ However, there is more to the story.

B. The Promotion of Compliance Programs Within IACR

The IACR treaties do not explicitly mention compliance programs, which are currently one of the most widespread anti-corruption strategies around the world.²⁶⁹ So, how IACR play a role in the diffusion of anti-corruption compliance programs? While not discounting other possible responses, this research sheds light on the fact that the IACR has directly promoted compliance programs in non-binding documents since 2002.

Notes that how this paper was conducted,²⁷⁰ no documents specifically addressing compliance programs within the African, European, EITI, FATF, Freedom House, and WTO GTA frameworks were found.²⁷¹ Furthermore, no direct incentives for compliance programs at the IMF were identified. Regarding the European Union framework, a change is on the horizon. In May 2023, a new Directive on Combating Corruption from the European Parliament and the Council was proposed and its stipulating that compliance programs will be considered a mitigating circumstance in

²⁶³ See, e.g., KEVIN E. DAVIS, *BETWEEN IMPUNITY AND IMPERIALISM: THE REGULATION OF TRANSNATIONAL BRIBERY* (2019).

²⁶⁴ Jose-Miguel Bello y Villarino, *International Anticorruption Law, Revisited*, 63 *HARVARD INTERNATIONAL LAW JOURNAL* 343 (2022), at 351.

²⁶⁵ OECD (1997). *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

²⁶⁶ SUSAN ROSE-ACKERMAN & BONNIE J. PALIFKA, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* (2016).

²⁶⁷ Erling Hjelmeng & Tina Søreide, *Bribes, Crimes and Law Enforcement*, 28 *EUROPEAN BUSINESS LAW REVIEW*, 19 (2017).

²⁶⁸ See, e.g., Kevin E. Davis & Veronica R. Martinez, *Transnational Anti-bribery Law*, in *THE CAMBRIDGE HANDBOOK OF COMPLIANCE* 924 (Benjamin van Rooij & D. Daniel Sokol ed., 2021).

²⁶⁹ OECD. (2020). *Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change*. <https://www.oecd.org/corruption/corporate-anti-corruption-compliance.htm>, on 20 Jan. 2024.

²⁷⁰ See Section 2, footnotes 34, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

²⁷¹ These actors were included in the IACR by one or more authors in the literature analyzed, see Section 2.

cases of the offense under the terms of the Directive.²⁷² From now on, I will analyze the several direct incentives to compliance programs found within the IACR.

1. The Targets

The 52 documents that directly promote compliance within the IACR, mapped in this study, have varied targets: most of them focus on companies (63%), some on governments (19%), some on both governments and companies (10%), and others on collective actions (8%). The documents targeting companies generally emphasize the idea that companies should oppose corruption not just because it is illegal but also because it is beneficial for businesses.²⁷³ Among the documents examined, the earliest one promoting corporate adoption of compliance program is from 2002 and was authored by TI. This document outlines the minimum requirements that a company should follow in implementing an effective anti-bribery compliance program. All analyzed actor categories have documents encouraging companies to adopt compliance programs. Most of these documents were produced by private international initiatives (50%).

In addition to those targeting companies, I found within the IACR documents that emphasize compliance programs as a tool in collective actions (8% of the total analyzed).²⁷⁴ They often link collective action to SMEs, acknowledging that these companies cannot combat corruption alone in a market where larger companies act corruptly. Collective actions can involve both private and public actors aiming to establish anti-corruption standards that companies commit to actively comply with, leveling the playing field for a group of companies or a sector of the market. The oldest

²⁷² Article 18 stipulates that mitigating circumstances will be considered “where the offender is a legal person and it has implemented effective internal controls, ethics awareness, and compliance programs to prevent corruption prior to or after the commission of the offense.” (EUR-Lex. *Document 52023PC0234*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>, on 6 Dez. 2023).

²⁷³ For instance, UN Global Compact, TI, International Business Leaders Forum. (2005). *Business Against Corruption: A Framework for Action – Implementation of the 10th UN Global Compact Principle Against Corruption*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2F7.7%2FBACtextcoverssmallFINAL.pdf; ICC, TI, UN Global Compact, and PACI. (2008). *Clean Business is Good Business*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FClean_business_is_good_business.pdf; UN. (2009). *Global Compact for the 10th Principle: Corporate Sustainability with Integrity*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FUNGC_AntiCorruptionReporting.pdf;

²⁷⁴ UNIDO & UNODC. (2007). *Corruption Prevention to Foster Small and Medium-Sized Enterprise Development: Providing Anti-Corruption Assistance to Small Businesses in The Developing World*.

https://www.unodc.org/documents/corruption/Publications/2012/UNIDO-UNODC_Publication_on_Small_Business_Development_and_Corruption_Vol1.pdf;

UN Global Compact. (2012). *Global Compact for the 10th Principle: Corporate Sustainability with Integrity – Organizational Change to Collective Action*.

https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FGC_for_the_10th_Principle.pdf;

UNIDO & UNODC. (2012). *Corruption Prevention to Foster Small and Medium-Sized Enterprise Development*.

https://www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf;

WEF. (2020). *Agenda for Business Integrity: Collective Action – Community Paper*.

https://www3.weforum.org/docs/WEF_Agenda_for_Business_Integrity.pdf.

document that I located focusing on collective action was published by the UN in 2007.²⁷⁵

The mapping also reveals documents recommending that governments reform their legal system to adopt legal incentives to encourage companies to implement compliance programs. Among those, 60% were produced by international organizations, 34% by intergovernmental initiatives, and 6% by private international initiatives. The oldest one was published by ICC in 2005, recommending that states established compliance programs as a requirement for government large contracts.²⁷⁶ In 2009, the OECD recommended that governments grants benefit in public binding process,²⁷⁷ and, in 2015, to require compliance in some governments contracts.²⁷⁸ OECD also published another document that suggest governments to stimulate compliance programs without specify some strategy in 2016.²⁷⁹ In 2021, a OECD document recommended the following strategies among that one located in the countries studied: reduce penalty, grants benefit in public binding process, and impacts the decision to prosecute. Regarding UN, in 2013, the UNODC published two documents. The first one recommended that governments adopt a strategy to promote compliance programs: eliminate liability; clause in non-trial resolution whit the state, requirement for governments contractors; reduce penalty; grants benefit in public binding process and as a requirement for mitigating or lifting debarment.²⁸⁰ The second one, specific to Indian context, suggesting compliance programs mandatory for certain business and as a penalty.²⁸¹ Another UN document stimulate governments to stimulate corporate compliance programs in a connection whit human rights.²⁸² Whitin

²⁷⁵ UNIDO & UNODC. (2007). *Corruption Prevention to Foster Small and Medium-Sized Enterprise Development: Providing Anti-Corruption Assistance to Small Businesses in The Developing World*. https://www.unodc.org/documents/corruption/Publications/2012/UNIDO-UNODC_Publication_on_Small_Business_Development_and_Corruption_Voll.pdf.

²⁷⁶ ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>.

²⁷⁷ OECD. (2009). *OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions*. <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/oecdantibriberyrecommendation2009.htm#:~:text=About%20the%202009%20Recommendation&text=The%20Recommendation%20was%20adopted%20by,Internal%20Controls%2C%20Ethics%20and%20Compliance>.

²⁷⁸ OECD. (2015). *Recommendation of the Council on Public Procurement*. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0411>.

²⁷⁹ OECD. (2016). *Ministerial Declaration – The Fight Against Foreign Bribery: Towards a New Era of Enforcement*. <https://www.oecd.org/corruption/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf>.

²⁸⁰ UNODC. (2013). *A Resource Guide on State Measures for Strengthening Corporate Integrity*. https://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf.

²⁸¹ UNODC. (2013). *Corporate Integrity: Incentives for Corporate Integrity in Accordance with the United Nations Convention Against Corruption – A Report*. https://www.unodc.org/documents/southasia/publications/research-studies/CI_Report.pdf

²⁸² UN. (2020). *Connecting the Business and Human Rights and the Anti-Corruption Agendas: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (A/HRC/44/43)*. <https://digitallibrary.un.org/record/3889182>, on 6 Dec. 2023.

G20, generic documents also were published in 2014,²⁸³ 2015,²⁸⁴ 2019,²⁸⁵ and 2021.²⁸⁶ A document dated from 2017 specifically suggest that governments adopt the strategies of grants benefit in public binding process and reduce penalty.²⁸⁷ Finally, within OAS, two states members initiative to promote compliance programs as a public recognition of companies that implement it are recognized as a good practice.²⁸⁸ Table 1 below summarizes the strategies recommended by the IACR for governments to adopt in promoting corporate compliance programs.

²⁸³ UNODC. (2014). *G20 Anti-corruption Action Plan 2015-2016*.

https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2014_G20_ACWG_Action_Plan_2015-2016.pdf.

²⁸⁴ UNODC. (2015). *G20 Principles for Promoting Integrity in Public Procurement*.

https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Public-Sector-Integrity-and-Transparency/G20-Principles_for_Promoting_Integrity_in_Public_Procurement_2015.pdf.

²⁸⁵ UNODC. (2019). *G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Sectors/G20_Compndium_of_Good_Practices_for_Promoting_Integrity_and_Transparency_in_Infrastructure_Development_2019.pdf.

²⁸⁶ UNODC. (2021). *G20 Anti-corruption Action Plan 2022-2024*.

https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021_G20_Anti-Corruption_Action_Plan_2022-2024.pdf.

²⁸⁷ UNODC. (2017). *G20 High-Level Principles on the Liability of Legal Persons for Corruption*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Bribery/G20_High_Level_Principles_on_the_Liability_of_Legal_Persons_for_Corruption_2017.pdf.

²⁸⁸ OAS. *Anticorruption Portal of the Americas – Best Practices to Prevent and Combat Corruption*. <http://www.oas.org/en/sla/dlc/mesicic/buenas-practicas.html>, on 19 Jul. 2023.

Table 1: Legal strategies recommended by IACR actors for governments to promote compliance programs

Legal strategy	2005	2009	2013	2014	2015	2016	2017	2019	2020	2021	2023
not specified				G20	G20	OECD		G20	G20	G20	
eliminates liability			UN								
reduce penalty			UN				G20			OECD	
clause in non-trial resolutions with the state			UN								
mandatory for certain businesses			UN								
requirement for government contractors	ICC		UN		OECD						
penalty			UN								
grants benefit in the public bidding process		OECD	UN				G20			OECD	
requirement for mitigating or lifting debarment			UN								
impacts the decision to prosecute										OECD	
public recognition								OAS			OAS

Note that both the first located documents encouraging companies (2002) and those targeting governments (2005) to stimulate compliance programs were produced by private international initiatives (TI and ICC, respectively). Private initiatives are also responsible for a significant portion of the located documents promoting compliance programs (35%). This indicates that the private sector plays a relevant role in this field and also suggests an interest from companies in the diffusion of compliance programs. This aligns with what happened in the United States previously, concerning the legal incentive for compliance set forth by the United States Sentencing Commission (USSC) in 1991. Nolan Ezra Clark asserts that this incentive, entailing a reduction in sanctions for organizations with compliance programs, was driven by a lobby of companies interested in a strategy to decrease possible sanctions in the face of stricter rules against corruption.²⁸⁹

2. Incentives for Governments to Promote Compliance Programs: A Comparison of IACR and Some Domestic Legal Reforms

The origin of compliance is contested, however, there is relative consensus that the first domestic reform aimed at creating direct legal incentives for legal persons to adopt compliance programs took place in the United States in 1991.²⁹⁰ The USSC, the institution responsible for determining the sentencing guidelines for U.S. federal courts by means of the Federal Sentencing Guidelines Manual, first provided for the reduction of penalties applied to organizations that established patterns and procedures of compliance at Sentencing Guidelines for Organizations (SGO), being this the paradigmatic incentive to compliance programs.²⁹¹ The SGO also allowed courts to impose, in specific cases, a compliance program to prevent and detect violations of law as a condition of probation.²⁹² The literature identifies the SGO as a milestone in the “era of compliance,” where compliance programs play a strategic role in companies, with a specialized industry actively supporting this strategy.²⁹³

Following the OSG, federal prosecutors started providing corporate defendants with settlements that considered compliance programs.²⁹⁴ To standardize this approach, in 1999, the Department of Justice (DoJ) Deputy Attorney General Eric H. Holder issued a policy memorandum entitled “Federal Prosecution of Corporations” (the

²⁸⁹ Nolan Ezra Clark, *Corporate Sentencing Guidelines: Drafting History* (updated by the Editors), in COMPLIANCE PROGRAMS AND THE CORPORATE SENTENCING GUIDELINES: PREVENTING CRIMINAL AND CIVIL LIABILITY (William M. Hannay ed., 2022).

²⁹⁰ E.g., Sean. J. Griffith, *Corporate Governance in an Era of Compliance*, 57 WILLIAM AND MARY LAW REVIEW 2075 (2016); Eugene F. Soltes, *Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms*, 14 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 965 (2018).

²⁹¹ §8C2.5.(f) (USSC. (1991). *1991 Federal Sentencing Guidelines Manual*. (1991, Nov.). USSC, Washington. Retrieved June 30, 2022, from <https://www.ussc.gov/guidelines/archive/1991-federal-sentencing-guidelines-manual>).

²⁹² §8D1.4.(c)(1) (USSC. (1991). *1991 Federal Sentencing Guidelines Manual*. (1991, Nov.). USSC, Washington. Retrieved June 30, 2022, from <https://www.ussc.gov/guidelines/archive/1991-federal-sentencing-guidelines-manual>).

²⁹³ David Hess, *Ethical Infrastructure and Evidence-Based Corporate Compliance and Ethics Programs: Policy Implications from the Empirical Evidence*, 12 NEW YORK UNIVERSITY JOURNAL OF LAW AND BUSINESS 317 (2016).

²⁹⁴ Sean. J. Griffith, *Corporate Governance in an Era of Compliance*, 57 WILLIAM AND MARY LAW REVIEW 2075 (2016); Eugene F. Soltes, *Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms*, 14 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 965 (2018).

“Holder Memorandum”).²⁹⁵ This document recommends prosecutors to consider in conducting an investigation, determining whether to bring charges, negotiating plea agreements, and reaching a decision as to the proper treatment of a corporate target, the corporation’s remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one.²⁹⁶ This a stance reinforced in 2019 by the DoJ “Evaluation of Corporate Compliance Programs.”²⁹⁷

The United States continued to directly encourage compliance programs through subsequent legal developments. Until 2007, ethics programs and practices of defense contractors were self-policed.²⁹⁸ Given the significant sums of federal dollars spent by agencies to acquire goods and services and the need to establish a clear and consistent policy regarding the contractor code of ethics and business conduct, the Federal Acquisition Regulation (FAR) was amended in 2007 to mandate contractor ethics programs.²⁹⁹ The 2021 version, currently in force, establishes as a general rule that contractors must implement an ongoing business ethics awareness and compliance program within 90 days of contract award.³⁰⁰

Thus, the United States adopted the strategy of promoting compliance programs by reducing penalties and imposing compliance programs as a condition of probation in 1991. Within the IACR, these strategies only appeared in 2013. Moreover, in 2009, the United States formalized that compliance programs should be taken into account by prosecutors in their decisions regarding prosecution or non-trial resolution, strategies first recommended within the IACR later, in 2021 and 2013, respectively. In contrast, the United States introduced the strategy of requiring compliance programs in some government contracts in 2007, whereas the IACR made this recommendation in 2005.

This analysis can also be extended to other countries. For instance, in 2001, Italy enacted the Legislative Decree 231 which stipulated that a compliance program adopted before an unlawful act can eliminate corporate liability if it meets regulatory

²⁹⁵ Sean. J. Griffith, *Corporate Governance in an Era of Compliance*, 57 WILLIAM AND MARY LAW REVIEW 2075 (2016); Eugene F. Soltes, *Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms*, 14 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 965 (2018); Joshi Attorneys and Counselors. *An End to “Backseat Driving”? The Thompson Memorandum and Government Tactics in White-Collar Crime Investigation and Prosecution*. <https://www.joshiattorneys.com/articles-and-publications/an-end-to-backseat-driving-the-thompson-memorandum-and-government-tactics-in-white-collar-crime-investigation-and-prosecution/>, on 22 Jan. 2024.

²⁹⁶ DoJ. (1999). *Bringing Criminal Charges Against Corporations*.

<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/charging-corps.PDF>.

²⁹⁷ O’Shea, A. et al. DOJ Updates Guidance on the Evaluation of Corporate Compliance Programs. *Harvard Law School Forum on Corporate Governance*, 20 Jun. 2020.

<https://corpgov.law.harvard.edu/2020/06/20/doj-updates-guidance-on-the-evaluation-of-corporate-compliance-programs/#12>.

²⁹⁸ GAO. (2009). *Report to Congressional Committees: Defense Contracting Integrity – Opportunities Exist to Improve DoD’s Oversight of Contractor Ethics Programs*. <https://www.gao.gov/assets/gao-09-591.pdf>.

²⁹⁹ U.S. Federal Register. (2007). *Contractor Code of Business Ethics and Conduct*. <https://www.govinfo.gov/content/pkg/FR-2007-11-23/pdf/07-5800.pdf>.

³⁰⁰ Code of Federal Regulation. *Title 48, Chapter I, Subchapter H, Part 52, Subpart 52.2, 52.203-13: Contractor Code of Business Ethics and Conduct (Nov. 2021)*, on 23 Jan. 2024. <https://www.ecfr.gov/current/title-48/chapter-1/subchapter-H/part-52/subpart-52.2/section-52.203-13>.

requirements³⁰¹ – a recommendation found within the IACR only in 2013. In contrast, Brazil reform its laws to grants benefits in the public bidding process for companies with compliance programs in 2021,³⁰² after the IACR made this recommendation in 2005, for the first time. Moreover, both Colombia³⁰³ and France,³⁰⁴ reformed their legal system in 2016 to make compliance programs mandatory for certain business, while IACR did this recommendation early, in 2013.

This research sheds light on the possibility of new studies analyzing the relationship between domestic statutes and the IACR regarding legal incentives for compliance programs. What can be asserted at this point is that legal incentives for compliance programs by states emerged earlier in local frameworks (with the paradigmatic legal development occurring in the United States in 1991) than in the IACR (which, according to this research, first encouraged governments to adopt strategies to promote corporate compliance programs in 2005).

3. The Compliance Industry

For over a decade, scholars have debated how the U.S. adjudicative model of compliance regulation has not only benefited the compliance programs industry but has also played a role in its creation.³⁰⁵ Presently, the compliance industry boasts a robust presence. It has its own professional organizations and constitutes a distinct legal practice area,³⁰⁶ with universities offering courses and degrees tailored specifically to compliance.³⁰⁷ In parallel, compliance departments within many organizations have expanded both in size and significance.³⁰⁸

This article reveals that the IACR stimulates the compliance industry. This mapped found explicit suggestions for companies to hire third parties to implement, monitor, and/or certify their compliance programs within the IACR documents. For instance, the 2009 Business Principles for Countering Bribery led by TI suggests that companies should consider commissioning external verification or assurance to

³⁰¹ Article 6. (Italy. (2001). *Decreto Legislativo 8 giugno 2001, n. 231*.

<https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-06-19&atto.codiceRedazionale=001G0293&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo=10&qId=aaa75281-73a8-48f4-a506-9b9755533a67&tabID=0.9434481816169746&title=lbl.dettaglioAtto>, on 30 Aug. 2023).

³⁰² Article 60, IV (Brazil. (2021). *Lei 14.133, de 1º de abril de 2021*. Retrieved June 30, 2022, from http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14133.htm).

³⁰³ Article 23 (Colombia. (2016). *Ley 1778 de 2016*. Retrieved June 30, 2022, from <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=67542>).

³⁰⁴ Article 17. (France. (2016). *Loi no. 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528>).

³⁰⁵ See, e.g., Mirian H. Baer, *Governing Corporate Compliance*, 50 BOSTON COLLEGE LAW REVIEW 949 (2009).

³⁰⁶ Geoffrey P. Miller, *Compliance: Past, Present and Future*, 48 UNIVERSITY OF TOLEDO LAW REVIEW 437 (2017).

³⁰⁷ D. Daniel Sokol, *Teaching Compliance*, 84 UNIVERSITY OF CINCINNATI LAW REVIEW 399 (2016).

³⁰⁸ Benjamin van Rooij & D. Daniel Sokol, *Introduction: Compliance as the Interaction between Rules and Behavior*, in THE CAMBRIDGE HANDBOOK OF COMPLIANCE 1 (Benjamin van Rooij & D. Daniel Sokol ed., 2021).

enhance internal and external confidence in the compliance program's effectiveness.³⁰⁹ The Global Compact for the 10th Principle: Corporate Sustainability with Integrity, published in 2012, asserts that certification helps companies continuously improve their compliance programs based on the recommendations given by external experts.³¹⁰ Also published in 2012, the TI Assurance Framework for Corporate Anti-bribery Programs affirms that third-party review enhances credible anti-bribery systems' demand.³¹¹ The G20 High-Level Principles on Private Sector Transparency and Integrity, from 2015, suggest that companies may seek professional advice to learn more about the compliance program most appropriate for their business.³¹² It is widely acknowledged that a robust market for compliance programs has enhanced in the last decades.³¹³ This paper structure does not permit an inference as to whether these documents have influenced the growth of this market or vice versa.

4. From Anti-Bribery to ESG

This article mapping of the development of compliance programs within the IACR over the last two decades, especially the analysis of documents revised over time, such as the Guidelines for Multinational Enterprises³¹⁴ and the ICC Rules,³¹⁵ offers an overview of the changes in how the IACR approaches compliance programs over time. In general liner, initially, the IACR focusing on incentives to compliance programs, to fight bribery, specifically bribery in transnational business, aligned with the OECD Convention. Over time, new initiatives have emerged to suggests that the compliance programs should address a broader spectrum of corrupt activities, in line whit the UN Convention. Newer documents propose an even more extensive range of objectives for anti-corruption compliance programs. The G20 Anti-corruption Action Plan 2022-2024, for instance, suggests that the analyses and solutions against corruption should consider the impacts of corruption on cross-cutting issues such as environmental and gender-

³⁰⁹ TI. (2013). *Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International*. <https://www.transparency.org/en/publications/business-principles-for-countering-bribery>.

³¹⁰ UN Global Compact. (2012). *Global Compact for the 10th Principle: Corporate Sustainability with Integrity –Organizational Change to Collective Action*. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FGC_for_the_10th_Principle.pdf.

³¹¹ TI. (2012). *Assurance Framework for Corporate Anti-Bribery Programmes*. <https://knowledgehub.transparency.org/product/assurance-framework-for-corporate-anti-bribery-programmes>.

³¹² UNODC. (2015). *G20 High-Level Principles on Private Sector Transparency and Integrity*. https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Private-Sector-Integrity-and-Transparency/G20_High_Level_Principles_on_Private_Sector_Transparency_and_Integrity_2015.pdf.

³¹³ See, e.g., Eugene F. Soltes, *Evaluating the Effectiveness of Corporate Compliance Programs: Establishing a Model for Prosecutors, Courts, and Firms*, 14 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 965 (2018).

³¹⁴ OECD. (2011). *OECD Guidelines for Multinational Enterprises*. <https://www.oecd.org/daf/inv/mne/48004323.pdf>; OECD. (2023). *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. <https://doi.org/10.1787/81f92357-en>.

³¹⁵ More specifically, ICC. (2005). *Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations*. <https://iccwbo.org/wp-content/uploads/sites/3/2005/10/Combating-Extortion-and-Bribery-ICC-Rules-of-Conduct-and-Recommendations.pdf>, and the subsequent version ICC. (2011). *ICC Rules on Combating Corruption*. <https://iccwbo.org/wp-content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>.

related matters.³¹⁶ The 2020 UN report, *Connecting the Business and Human Rights and the Anti-corruption Agendas*, suggests that anti-corruption programs should have an integrated approach to responsible business conduct, including considerations for human rights.³¹⁷ In the same year, WEF published the document *Ethics and Integrity Beyond Compliance*, stimulating that compliance programs go beyond corruption and address ESG issues.³¹⁸

The change regarding the approach of compliance programs from an anti-bribery to an ESG approach is evident when comparing documents from different decades. For instance, the TI Business Principles for Countering Bribery from 2014 recommends a program that balances a compliance-based and values-based approaches,³¹⁹ whereas the current PACI directive, from 2020, urges the adoption of compliance program with a value-based approach.³²⁰ These developments seem to reflect an ongoing effort to adapt compliance programs to changing contexts and emerging challenges, given that despite the diffusion of compliance programs, their ability to achieve what they propose is still debated.³²¹ It also can reflect the aim of some actors to use a more well-known instrument, the compliance programs, to give more legitimacy to the ESG approach – a topic currently under intense discussion.³²²

C. The IACR Before the Compliance Programs

While a connection exists between the development of the IACR and the incentive to compliance programs within it, this article highlights that references to compliance programs within the IACR have not been prevalent since its inception. Compliance programs emerged as a strategy within the IACR sometime after its origin, marked by the OAS Convention in 1997. As revealed in this article, the first incentive for compliance programs found within the IACR is from 2002, and the explosion of these incentives in the IACR occurs in the 2010s.³²³ Some documents analyzed suggest

³¹⁶ See, e.g., UNODC. (2021). *G20 Anti-corruption Action Plan 2022-2024*.

https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2021_G20_Anti-Corruption_Action_Plan_2022-2024.pdf.

³¹⁷ UN. (2020). *Connecting the Business and Human Rights and the Anti-Corruption Agendas: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (A/HRC/44/43)*. <https://digitallibrary.un.org/record/3889182>, on 6 Dec. 2023.

³¹⁸ WEF. (2020). *Ethics and Integrity Beyond Compliance: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

³¹⁹ TI. (2004). *Business Principles for Countering Bribery: Guidance Document*. https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

³²⁰ WEF. (2020). *Ethics and Integrity Beyond Compliance Global Future Council on Transparency and Anti-Corruption: Agenda for Business Integrity*. https://www3.weforum.org/docs/WEF_GFC_on_Transparency_and_AC_pillar1_beyond_compliance_2020.pdf.

³²¹ About the debate see, e.g., Benjamin van Rooij & D. Daniel Sokol, *Introduction: Compliance as the Interaction between Rules and Behavior*, in *THE CAMBRIDGE HANDBOOK OF COMPLIANCE* 924 (Benjamin van Rooij & Sokol ed., 2021).

³²² See, e.g., Simon Watkins, *The ISSB's Battle to Sort the Alphabet Soup of ESG Reporting*. *Financial Times*, <https://professional.ft.com/en-gb/blog/the-issbs-battle-to-sort-the-alphabet-soup-of-esg-reporting/>, on 27 Dec. 2023.

³²³ I found 52 documents within the IACR that directly endorse compliance programs, published between 2002 and 2023. The number of publications per year was: 1 (2002); 1 (2003); 3 (2004); 2

that compliance programs were an approach to countering corruption by companies, giving concreteness to the anti-corruption convention aims.³²⁴

CONCLUSION

We are living in the era of corporate compliance programs. Despite the relevance of this programs to businesses, governments, and societies, there is a dearth of literature on the driving forces and mechanisms that influence their development. The anti-corruption literature commonly associates the proliferation of compliance programs with the reinforcement of global anti-corruption laws, especially through conventions that stand corporate liability for corrupt practices. However, these conventions do not explicitly mention compliance programs. So, how did the International Anti-Corruption Regime (IACR) contribute to the explosion of compliance programs around the world?

This innovative article mapped documents produced by 18 international actors – including international organizations, international financial institutions, intergovernmental initiatives, and private international initiatives – seeking insights into their treatment of corporate compliance programs. I found 52 documents that expressly promote compliance programs. These direct mentions are in some non-binding instruments published after 2002 rather than in international conventions. Most of these documents promote compliance programs by encouraging businesses to adopt them, affirming that this is a good strategy for business. There are also documents targeting governments to create legal incentives for companies to adopt these programs starting from 2005, understanding that governments should promote corporate compliance programs as a public strategy against corruption. Others emphasize collective action involving groups of companies alongside various actors, suggesting that fighting corruption is a challenge that should be faced by multiple actors, including civil society.

This article concludes that besides the IACR's role in leveling the playing field regarding corporate liability for corruption, it has also elected corporate compliance programs as a strategy against corruption, which must be promoted by governments, adopted by companies, and supported by civil society. This article also demonstrates that there is a change in the approach of the model of compliance programs stimulated by these documents in the last two decades. First, the IACR promoted compliance programs specifically focused on bribery, later broadening the scope to address corruption more generally, and most recently, suggesting an ESG approach.

This study also reveals that the IACR began incentivizing compliance programs as a strategy against corruption in 2002, a long time after this regime's initial inception, which dates back to the OAS Convention in 1996. Regarding the recommendations within the IACR for governments to reform the legal system to promote corporate compliance programs, first found in 2005 within this regime, it lags behind the domestic paradigmatic legal reform to stimulate corporate compliance, which took place in the

(2005); 1 (2007); 3 (2008); 4 (2009); 2 (2010); 4 (2011); 3 (2012); 5 (2013); 2 (2014); 5 (2015); 2 (2016); 1 (2017); 2 (2018); 2 (2019); 4 (2020); 2 (2021); 3 (2023).

³²⁴ See, e.g., TI. (2004). *Business Principles for Countering Bribery: Guidance Document*.

https://www.ethics.org/wp-content/uploads/resources/Business_Principles_for_Countering_Bribery_Transparency_Intl_Guidance_Document_2004.pdf.

United States in 1991. The IACR's promotion of compliance programs appears to mirror an external movement of the rise of this mechanism. However, this does not mean that the IACR does not have the potential to influence states to reform the legal system to promote compliance programs. As illustrated in this article, some countries adopted incentives for compliance programs after the IACR's recommendations in this way. Future studies can delve into investigating the relationship between the IACR and domestic regulations regarding legal incentives for compliance programs.

This paper defines, maps, and analyzes the IACR, focusing on compliance programs, contributing to an understanding of the explosion of this strategy around the world, as well as to the development of the field of compliance program studies in international scholarship.

APPENDIX

Table 2: Recommendations on compliance programs within the IACR

Year	#*	Document	Actor(s)	Focus on	What does it say? (Emphasis add)
2002	1	Business Principles for Countering Bribery: An Initiative of Transparency International and Social Accountability International	TI and Social Accountability International	Companies	<p>“The Business Principles</p> <p>The enterprise shall prohibit bribery in any form whether direct or indirect</p> <p>The enterprise shall commit to implementation of a Programme to counter bribery” (p. 2)</p>
2003	2	Business Principles for Countering Bribery: An Essential Tool	TI	Companies	Reissue of the 2002 document.
2004	3	Business Principles for Countering Bribery: Guidance Document	TI	Companies	<p>“Business Principles for Countering Bribery: Six Step Implementation</p> <p>1. Decide to adopt an anti-bribery policy; 2. Plan implementation; 3. Develop anti-bribery programme tailored to the business; 4. Implement; 5. Monitor; 6. Evaluate.” (p. 61)</p>

2005	4	OECD Principles of Corporate Governance (second edition)	OECD	Companies	<p>“Companies are also well advised to set up internal programmes and procedures to promote compliance with applicable laws, regulations and standards, including statutes to criminalise bribery of foreign officials that are required to be enacted by the OECD Anti-bribery Convention and measures designed to control other forms of bribery and corruption. Moreover, compliance must also relate to other laws and regulations such as those covering securities, competition and work and safety conditions. Such compliance programmes will also underpin the company's ethical code. To be effective, the incentive structure of the business needs to be aligned with its ethical and professional standards so that adherence to these values is rewarded and breaches of law are met with dissuasive consequences or penalties. Compliance programmes should also extend where possible to subsidiaries.” (p. 63)</p>
	5	PACI Principles for Countering Bribery	WEF, TI and the Basel Institute on Governance.	Companies	<p>“The enterprise shall commit to the continuation or implementation of an effective Program to counter Bribery. An effective Program is the entirety of an enterprise’s anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Program that effectively makes an enterprise’s anti-corruption policy an integral part of daily practice.” (p. 6)</p>
	6	Business Against Corruption: A Framework for Action - Implementation of the 10th UN Global Compact Principle Against Corruption (first edition)	UN (Global Compact), TI, International Business Leaders Forum	Companies	<p>“The UN Global Compact suggests to participants to consider the following three elements when fighting corruption and implementing the 10th principle. Internal: As a first and basic step, introduce anti-corruption policies and programmes within their organisations and their business operations; External: Report on the work against corruption in the annual Communication on Progress; and share experiences and best practices through the submission of examples and case stories; Collective: Join forces with industry peers and with other stakeholders.” (p. 8)</p> <p>“Transparency International has developed a Six-Step Implementation Process based on the Business Principles for Countering Bribery. This practical guide assists companies in developing and implementing an anti-bribery policy. The TI Six-Step Implementation Process can be modified to take into account the size of a company and its ability to complete the steps</p>

					within the suggested timeframe.” (p. 11)
	7	Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations (fourth edition of ICC Rules)	ICC	Companies and Governments	<p>“ICC has emphasized the critical role of compliance by enterprises with self-imposed rules based on their own values, while recognizing the basic responsibility of national governments and international organizations in the fight against corruption. Adhering to strict rules defined within the enterprise will help businesses fulfill their legal obligations in a more natural and effective way. The adoption and implementation of their own integrity programs is, therefore, strongly recommended.” (p. 2)</p> <p>“Adoption of antibribery compliance programmes should be a condition for bidding on major government contracts.” (p. 12)</p>
2007	8	Corruption Prevention to Foster Small and Medium-Sized Enterprise Development: Providing Anti-corruption Assistance to Small Businesses in the Developing World (first edition)	UN (UNIDO and UNODC)	Collective action	<p>“Even though internal measures are usually implemented more easily and quicker in SMEs than in large companies, internal codes of conduct and compliance programmes alone are in many cases not helpful for SMEs, as they usually lack either the resources or the market power to stand by their zero-tolerance policies. In particular, they risk being driven out of their market by competitors that do not adhere to such standards. One way to support those companies that do not have the power to tackle the problem alone is collective action.” (p. 17)</p>
2008	9	Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition	TI	Companies	<p>“This version is a simplification of the processes written to help smaller organisations with fewer resources, through clarification of the issues and practical examples. The values held by the Business Principles are unchanged.” (p. 7)</p> <p>“These guidelines are intended to help you implement your anti-bribery Programme which addresses your structure, business and risks.” (p. 28)</p>

	10	Clean Business is Good Business: The Business Case against Corruption	ICC, TI, UN (Global Compact), PACI	Companies	<p>“What Can Your Company Do?”</p> <p>An increasing number of companies are demonstrating leadership by implementing effective anti-corruption programmes within their companies. Common features of such programmes include: [...]” (p. 2)</p>
	11	Fighting Corruption: International Corporate Integrity Handbook	ICC	Companies	<p>“Setting up a compliance programme will help an enterprise make its code a reality, and it will also be in its self-interest. For example, in a number of countries, a fully fledged compliance plan can help the enterprise show that it has used all reasonable means to avoid prohibited behavior.” (p. 79)</p>
2009	12	Business Principles for Countering Bribery: A Multi-Stakeholder Initiative led by Transparency International	TI	Companies	<p>“Enterprises should implement anti-bribery programmes both as an expression of core values of integrity and responsibility, but also to counter the risk of bribery. Risk will vary across different industries and specific companies, but no enterprise can be sure that that it will be free of risk. An effective anti-bribery programme strengthens reputation, builds the respect of employees, raises credibility with key stakeholders and supports an enterprise’s commitment to corporate responsibility.” (p. 5)</p>
	13	Business Principles for Countering Bribery: Transparency International Self-Evaluation Tool	TI	Companies	<p>“This Self-Evaluation Tool (SET) has been developed by Transparency International for use by companies to self-evaluate their anti-bribery Programmes. It aims to enable companies to appraise the strength, completeness and effectiveness of their anti-bribery policies and procedures against the framework of the Business Principles for Countering Bribery.” (p. 3)</p>
	14	Reporting Guidance on the 10th Principle Against Corruption	UN (Global Compact) and TI	Companies	<p>“The adoption of the 10th Principle sent a strong worldwide signal that the private sector and other non-state-actors share responsibility for eliminating corruption and stand ready to play their part. The 10th Principle commits Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programmes to address it. Companies are challenged to join governments, UN agencies and civil society to realize a more transparent global economy.” (p. 5)</p>
	15	Recommendation of the Council for	OECD	Companies and Governme	<p>“Member countries should encourage:</p> <p>i) Companies to develop and adopt adequate</p>

		Further Combating Bribery of Foreign Public Officials in International Business Transactions (first edition)		nts	<p>internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto, which is an integral part of this Recommendation;</p> <p>[...]</p> <p>vi) Their government agencies to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics, and compliance programmes or measures in their decisions to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits.” (p. 5)</p> <p>“Annex II: Good practice guidance on internal controls, ethics, and compliance</p> <p>[...] This Good Practice Guidance (hereinafter “Guidance”) is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions (hereinafter “foreign bribery”), and to business organisations and professional associations, which play an essential role in assisting companies in these efforts.” (p. 13)</p>
2010	16	Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers (first edition)	UN (Global Compact)	Companies	<p>“For all companies, fighting corruption in the supply chain must be part of a larger anti-corruption programme that addresses corruption risks throughout the firm.” (p. 10)</p>
	17	World Bank Group Integrity Compliance Guidelines	World Bank Group	Companies	<p>“Going forward the establishment (or improvement) and implementation of an integrity compliance program satisfactory to the WBG will be a principal condition to ending a debarment (or conditional non-debarment); or in the case of some existing debarments, early termination of the debarment.” (p. 1)</p> <p>“11. collective action: Where appropriate –</p>

					especially for SMEs and other entities without well-established Programs, and for those larger corporate entities with established Programs, trade associations and similar organizations acting on a voluntary basis – endeavor to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programs aimed at preventing Misconduct.” (p. 4)
2011	18	Business Against Corruption: A Framework for Action	UN (Global Compact), TI, International Business Leaders Forum	Companies	Similar 2015 version , adding “Companies may learn not only from their own actions, but also from the actions of others. Thus, companies can move together as a group, adopting successes and avoiding programmes that did not work for others.” (p. 13)
	19	OECD Guidelines for Multinational Enterprises	OECD	Companies	“VII. Combating Bribery, Bribe Solicitation and Extortion [...] In particular, enterprises should: [...] 2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery , developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation).” (p. 45)
	20	ICC Rules on Combating Corruption (fifth edition of ICC Rules)	ICC	Companies	“Article 10 Elements of a Corporate Compliance Programme Each Enterprise should implement an efficient Corporate Compliance Programme (i) reflecting these Rules, (ii) based on the results of a periodically conducted assessment of the risks faced in the Enterprise’s business environment, (iii) adapted to the Enterprise’s particular circumstances and (iv) with the aim of preventing and detecting Corruption and of promoting a culture of integrity in the Enterprise.” (p. 11)
	21	World Bank Group Sanctioning Guidelines	World Bank Group	Companies	“Mitigating Factors [...] Effective compliance program: Establishment or improvement, and implementation of a corporate compliance program. The timing, scope and quality of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.” (p. 4-5)

2012	22	Assurance Framework for Corporate Anti-bribery Programs	TI	Companies	<p>“Good practice now demands that enterprises develop comprehensive programmes to counter bribery in their business dealings which are monitored and improved on a continual basis. This voluntary Assurance Framework aims to provide a standardized process that will help enterprises to design robust anti-bribery programmes.” (p. 2)</p>
	23	Global Compact for the 10th Principle Reports: Corporate Sustainability with Integrity - Organizational Change to Collective Action	UN (Global Compact)	Collective action	<p>“To combat this problem, the Global Compact promotes the implementation of rigorous anti-corruption measures through organization change at the company level and collective action at the country level. First, companies are asked to integrate anti-corruption and compliance measures into their business strategies and operations. Companies develop their own code of conduct, including the implementation of a zero tolerance policy and a range of rules and regulations concerning gifts, political contributions, charities and travel. To apply these policies, companies implement a range of actions, including the establishment of anonymous hotlines, employee training, supply chain management, risk assessment and disciplinary measures. Second, companies are asked to take part in collective action, multi-stakeholder dialogue, and integrity or compliance pacts with industry peers.” (p. 4)</p> <p>“Certification of the Integrity Programme</p> <p>[...] Third, it helps the company to continuously improve its compliance programme based upon the recommendations given by external experts.” (p. 6)</p>
	24	Corruption Prevention to Foster Small and Medium-Sized Enterprise Development (second version)	UN (UNIDO and UNODC)	Collective action	<p>“Even though internal measures are usually implemented more easily and quickly in SMEs than in large companies, internal codes of conduct and compliance programmes alone are in many cases not helpful for SMEs. SMEs are usually not motivated to adhere to ethical business practices (as they face limited pressure from stakeholders) or they lack the financial resources or the market power to enforce their zero-tolerance policies.” (p. vii)</p>
2013	25	An Anti-Corruption Ethics and Compliance Programme for Business: A Practical	UN (ONODC)	Companies	<p>“It is now generally accepted that businesses have a responsibility to act as good corporate citizens. This tenet is increasingly complemented with evidence and understanding among companies that fighting corruption makes good business sense and that a well-executed anti-</p>

	Guide			corruption ethics and compliance programme yields greater value over time.” (p. 1)
26	Anti-Corruption Ethics and Compliance Handbook for Business	OECD, UN (UNODC), World Bank	Companies	“The idea for this handbook began with G20 governments looking for ways to practically implement the 2010 G20 Anti-Corruption Action Plan. This Plan recognises the integral role the private sector plays in the fight against corruption and calls for greater public-private partnership in this effort. [...] The OECD, UNODC, and World Bank hope this handbook will be a useful resource not only for companies headquartered in G20 countries, but for all companies that recognise the need for developing and implementing robust anti-corruption ethics and compliance programmes.” (p. 3)
27	A Resource Guide on State Measures for Strengthening Corporate Integrity	UN (UNODC)	Governments	“ The implementation of a meaningful and effective anti-corruption programme for business is primarily a private sector function and responsibility. Anti-corruption measures are an investment, and like other business investments, they must compete with other demands for scarce resources based on perceived risks and benefits. States can help to shape these corporate investment decisions through a combination of enforcement sanctions and good practice incentives.” (p. 2)
28	Business Principles for Countering Bribery: A Multi-stakeholder Initiative led by Transparency International	TI	Companies	“The Business Principles The enterprise shall prohibit bribery in any form whether direct or indirect. The enterprise shall commit to implementing a Programme to counter bribery. The Programme shall represent the enterprise’s anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.” (p. 5)
29	Corporate Integrity: Incentives for Corporate Integrity in Accordance with the United Nations Convention	UN (UNODC)	Governments	“The most frequently used sanction is a fine, which is sometimes characterized as criminal, sometimes as non-criminal and sometimes as a hybrid. Other sanctions include exclusion from contracting with the government (for example public procurement, aid procurement and export credit financing), forfeiture, confiscation, restitution, debarment or closing down of legal entities. In addition, states may wish to consider non-monetary sanctions

		Against Corruption – A Report			available in some jurisdictions, such as withdrawal of certain advantages, suspension of certain rights, prohibition of certain activities, publication of the judgement, the appointment of a trustee, the requirement to establish an effective internal compliance programme and the direct regulation of corporate structures.” (p. 30)
2014	30	G20 ACWG Action Plan (2015-2016)	G20 (ACWG)	Governments	“G20 countries recognise that governments cannot fight corruption alone, and the private sector is an essential partner in helping us to achieve our anti-corruption goals. G20 countries commit to continuing to work with the private sector and civil society to combat corruption , including by developing anti-corruption education and training for business, with a particular focus on SMEs, and by examining best practices for encouraging businesses to implement robust compliance programs and self-report breaches of corruption laws. ” (p. 2)
	31	PACI Global Principles for Countering Corruption: Application & General Terms of Partnership <i>Vide supra note 242</i>	PACI	Companies	“Annex I: Guidance on Compliance While a vast majority of firms have sophisticated compliance programmes in place, the following section outlines the minimum requirements that businesses should meet when designing and implementing an effective anti-corruption programme. An effective programme comprises the entirety of an enterprise’s anti-corruption efforts, specifically including its code of ethics, policies and procedures, risk assessment, internal and external communication, training, guidance, internal controls, monitoring and oversight. The programme should cover corruption in all its forms. ” (p. 8)
2015	32	Business Principles for Countering Bribery: Commentary	TI	Companies	“Strictly speaking, there should be only one Principle, prohibition of bribery, as the second Principle is a means to achieve the no-bribery Principle. However, committing to implement an anti-bribery Programme is of such importance that it has been made a Principle. The intent of this Principle is that the Board and senior management recognise that countering bribery requires a strategic approach to ensuring a culture of integrity in the enterprise and, based on continuing risk assessment, the design, implementation and maintenance of a range of policies and procedures to prevent and counter bribery.” (p. 5)
	33	G20 High-Level Principles on	G20	Companies	“The private sector is an essential partner of governments in the fight against corruption, and its commitment to transparency and

		Private Sector Transparency and Integrity			integrity plays an integral role in achieving anticorruption goals. [...] The measures listed in this document are suggested general elements for developing or enhancing effective internal controls and ethics and compliance programs. There is no ‘one size fits all’ approach. Emphasis on specific elements will vary from one business to another depending on, among other factors, the particular risks engendered by the business. A business may wish to consider seeking advice from compliance or other professionals to learn more about what kind of internal controls and ethics and compliance program is most appropriate for its business and the jurisdictions where it operates.” (p. 1)
	34	G20 Principles for Promoting Integrity in Public Procurement	G20	Governments	<p>“8. G20 countries should foster a culture of integrity in public procurement among suppliers by:</p> <p>8.1 Encouraging supplier efforts to develop internal corporate controls, and compliance measures, including competition and anti-corruption programs and looking at ways in which due recognition could be given to suppliers that have effective controls, measures and programs in place.” (p. 3)</p>
	35	G20/OECD Principles of Corporate Governance (third edition)	G20 and OECD	Companies	“ Compliance programmes should also extend to subsidiaries and where possible to third parties, such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners.” (p. 26)
	36	Recommendation of the Council on Public Procurement (second edition)	OECD	Governments	“ III. RECOMMENDS that Adherents preserve the integrity of the public procurement system through general standards and procurement-specific safeguards. To this end, Adherents should: [...] iv) Develop requirements for internal controls, compliance measures and anticorruption programmes for suppliers, including appropriate monitoring.” (p. 6-7)
2016	37	Ministerial Declaration – The Fight Against Foreign Bribery: Towards a New Era of	OECD	Companies and Governments	<p>“Invite the business community to increase its co-operation with governments in the fight against foreign bribery and corruption and encourage wide implementation of the OECD 2010 Good Practice Guidance on Internal Controls, Ethics and Compliance developed by the Working Group.” (p. 5)</p> <p>“Encourage ongoing international efforts to identify and promote good practice in</p>

		Enforcement			prevention of foreign bribery and corruption, which may include promoting the use of anti-corruption compliance measures, codes of conduct, and appropriate safeguards in public procurement processes such as those related to organising major international events.” (p. 6)
	38	Fighting Corruption in The Supply Chain: A Guide for Customers and Suppliers (second edition)	UN (Global Compact)	Companies	Concerning compliance programs, this version is the same as the 2010 one.
2017	39	G20 High-Level Principles on the Liability of Legal Persons for Corruption	G20	Governments	“Principle 14: Concrete incentives should be considered to foster effective compliance by businesses. While government enforcement of anti-corruption laws against legal persons is an essential component of an effective corporate liability regime, the private sector also has a key role in the development and implementation of effective compliance mechanisms within businesses. Countries may therefore take into consideration, as appropriate, the existence of corporate anticorruption ethics and compliance programmes or measures in public procurement decisions or other processes to grant public benefits such as export credits. Moreover, efforts made by businesses to develop and implement effective anti-corruption internal controls, ethics and compliances programmes or measures, as well as voluntary self-reporting and cooperation by businesses with law enforcement may also, where appropriate and consistent with a country’s legal system, be taken into consideration in legal proceedings, for example, as a potential mitigating factor or as a defence.” (p. 7)
2018	40	Stories of Change: Better Business by Preventing Corruption	TI	Companies	“Companies increasingly recognise that integrity is good for business. Yet bribery and corruption persist. Large-scale corporate scandals show that much remains to be done to tackle corruption in the business sector. Based on four case studies, this paper shows how Transparency International is supporting companies worldwide to develop anti-corruption systems, which can help prevent corruption and boost

					business, so that more companies reap the benefits of high integrity and transparency standards.” (p. 2)
	41	The Future of Trust and Integrity	WEF (PACI)	Companies	“Integrating comprehensive compliance programmes into a business’s operational processes can promote compliant and successful operations while mitigating corruption risks.” (p. 16)
2019	42	Best Practices to Prevent and Combat Corruption	OAS (MESICIC)	Governments	Mexico: Register of Business Integrity <i>“En el marco de este Padrón de Integridad, se otorgará un Distintivo de Integridad Empresarial, el cual reconocerá a las empresas con buenas prácticas anticorrupción [...] Además, en colaboración con otras dependencias, organismos internacionales, organizaciones empresariales y la academia, se contará con mecanismos de evaluación empresarial para la supervisión, elaboración de formularios y herramientas, así como el acompañamiento y asesoría para las empresas, especialmente para que las más pequeñas cuenten con protocolos de integridad, a fin de que puedan ser incorporadas al desarrollo de mejores prácticas y de una cultura de integridad.”</i> (p. 1)
	43	G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development	G20	Governments	“Assuring the integrity of bidding companies, for instance by: [...] - Establishing integrity programmes and guidelines for the private sector, where appropriate. [...] Establishing close cooperation with business sector to implement the business integrity development programme.” (p. 9)
2020	44	Agenda for Business Integrity: Collective Action	WEF (Global Future Council on Transparency and Anti-corruption)	Collective action	“Capacity-Building Initiatives: Companies jointly share their know-how, resources and tools from their compliance programmes , and with the help of their compliance practitioners, to offer concrete capacity building and training opportunities for other companies that are part (or not) of their supply and value chains, in particular SMEs, as well as for public officials and organizations, and other practitioners from civil society organizations. The aim of these initiatives is to help create or enhance compliance systems and tools in smaller and/or less resourceful organizations.” (p. 4)

	45	Connecting the Business and Human Rights and the Anti-Corruption Agendas: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises	UN	Companies and Governments	<p>“Companies should include human rights due diligence and implementation of the Guiding Principles as part of a larger programme of compliance, sustainability and responsible business conduct. This may involve integrating anti-corruption with human rights due diligence processes; at a minimum, it should involve alignment and recognition that both are key to responsible and sustainable business conduct. While there is no one size-fits-all solution, the responsibility to respect human rights is the baseline requirement.” (p. 22)</p> <p>“States should: [...] (c) Introduce regulations that require human rights due diligence by business enterprises in line with the Guiding Principles, and provide guidance clarifying the connection between corruption and human rights risks and impacts;” (p. 22)</p>
	46	Ethics and Integrity Beyond Compliance: Compliance Agenda for Business Integrity	WEF (Global Future Council on Transparency and Anti-corruption)	Companies	<p>“Increasing business complexity and regulation has driven the evolution and strengthening of compliance programmes, together with the growth in influence and prominence of the function itself, and today there is a clear consensus about the need for such programmes and their key components.” (p. 4)</p>

	47	Good Intentions, Bad Outcomes? How Organizations Can Make the Leap from Box-Ticking Compliance to Building a Culture of Integrity	WEF (Global Future Council on Transparency and Anti-corruption)	Companies	<p>“Despite the widespread adoption of anti-corruption compliance programmes with all these features, however, corporate corruption and integrity scandals are still common. Therefore, the dominant approach to anti-corruption compliance, whereby effort is focused on identifying and sanctioning individuals with unethical intent, is becoming less credible in the face of evidence that systemic corruption and fraud have taken root in a range of large multinational organizations that had established compliance systems. [...]”</p> <p>Compliance teams have gained visibility and resources. But, in many cases, the compliance team has come to be seen as an internalized law enforcement body that responds to external pressure from government regulators and the public. Case in point, it tends to be staffed by lawyers – particularly, former prosecutors. This perception can have negative, unintended consequences and might even encourage employees to rationalize and justify unethical behaviour.” (p. 3)</p> <p>“This paper shares key concepts that might help to advance beyond tick-box compliance programmes, towards true cultures of integrity in corporations.” (p. 4)</p>
2021	48	G20 ACWG Action Plan (2022-2024)	G20 (ACWG)	Governments	<p>“We will continue to encourage and support efforts by the private sector to strengthen effective internal controls and anti-corruption ethics and compliance programmes, including for small and medium sized enterprises (SMEs) and the non-financial professional services sector.” (p. 6)</p> <p>“In particular, the ACWG will: [...] Promote good practices in business integrity and anti-corruption ethics and compliance programmes, covering issues such as maintenance of books and records, financial statement disclosures, accounting and auditing, and taking appropriate remedial steps to address wrongdoing.” (p. 7)</p>
	49	Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business	OECD	Companies and Governments	<p>“D. Incentives for compliance</p> <p>Member countries should:</p> <p>i. encourage their government agencies to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant</p>

		<p>Transactions (second edition)</p>		<p>public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits;</p> <p>ii. where member countries implement measures to incentivise enterprises to develop such compliance programmes or measures, provide training and guidance to their relevant government agencies, on how internal controls, ethics and compliance programmes or measures are taken into consideration in government agencies' decision-making processes, and ensure such guidance is publicised and easily accessible for companies;</p> <p>iii. encourage law enforcement authorities, in the context of enforcement of the foreign bribery and related offences, to consider implementing measures to incentivise companies to develop effective internal controls, ethics, and compliance programmes or measures, including as a potential mitigating factor. [...]</p> <p>iv. where member countries implement measures to incentivise companies to develop such compliance programmes or measures, ensure that competent authorities consider providing training and guidance on assessing the adequacy and effectiveness of internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, as well as on how such programmes or measures are taken into consideration in the context of foreign bribery enforcement, and ensure such information or guidance is publicised and easily accessible for companies, where appropriate.” (p. 16)</p> <p>“Public Advantages, including Public Procurement</p> <p>XXIV. RECOMMENDS that:</p> <p>[...]</p> <p>iii. where appropriate and to the extent possible, in making such decisions on suspension and debarment, member countries take into account, as mitigating factors, remedial measures developed by companies to address specific foreign bribery risks, as well as any gaps in their existing internal controls, ethics, and compliance programmes or measures;</p>
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2023	50	Best Practices to Prevent and Combat Corruption	OAS (MESICIC)	Governments	<p><i>Paraguay: Sello Integridad</i></p> <p>“El Sello es un programa de incentivos a la integridad, el cual contribuye a fomentar programas de integridad en el sector empresarial paraguayo (los programas de integridad están compuestos de medidas y acciones para prevenir, detectar y remediar actos de corrupción y fraude, así como de acciones para promover una cultura organizacional de integridad), y concientizar a las empresas sobre su rol referente a la prevención de la corrupción y el impacto de ese tipo de hechos en la economía y el clima de negocios; buscándose, además, la difusión de buenas prácticas de integridad.” (p. 1)</p>
	51	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct	OECD	Companies	<p>“VII. Combating Bribery and Other Forms of Corruption</p> <p>[...] In particular, enterprises should: [...] 2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing, detecting, and addressing bribery and other forms of corruption, developed on the basis of a risk-based assessment, taking into account the individual circumstances of an enterprise, in particular the risks factors related to bribery and other forms of corruption (including, <i>inter alia</i> its geographical and industrial sector of operation, other responsible business conduct issues, the regulatory environment, the type of business relationships, transactions with foreign governments, and use of third parties).” (p. 41)</p>
	52	Recommendation of the Council on Principles of Corporate Governance (fourth	OECD	Companies	<p>Concerning compliance programs, this version is the same as the 2015 one.</p>

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* Documents published in the same year are listed in alphabetical order.

NOTE

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