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de Compliance

White Paper on the Compliance function.



White Paper on the Compliance function

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INTRODUCTION

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Coordinator of the White Paper on the Compliance function

The increase in the volume, complexity and variability of the compliance obligations that affect organisations has intensified in recent years such that having structures to facilitate compliance and staff qualified to run them is no longer an exclusive priority of major corporations. Phenomena like the globalisation of the economy and the need to transcend legal obligations to assume the ethical commitments society demands have contributed to the increase in *Compliance requirements*, accelerating the evolution in the maturity curve of a function that is perceived as a key factor of good corporate governance.

Both regulatory bodies and public authorities in an increasing number of countries are becoming aware of this new context and references to *Compliance* models or programmes are increasingly encountered in regulations of varied range and scope. Parallel to and in the face of this reality, over the last few years international standards have been drawn up on *Compliance* management systems that incorporate best practice in terms of directives and specifications, which is very useful for their design and evaluation. Obviously, one of their basic pillars is their governance, based on a *Compliance* function oriented towards the prevention, detection and response to compliance-derived risks. Considering the potential magnitude of activities that can be assumed by the function, constricting them to an individual body is avoided, widening the scope to collegiate structures that foster the combining of diverse but synergistic knowledge, capable of improving their efficacy.

The objective of the White Paper is to identify the basic aspects that define the *Compliance* function and to outline the powers of those responsible for it, setting out the key issues included in internationally recognised *Compliance* standards. This document aims to help those professionals included in this function to determine the scope of their basic tasks and, thereby, the performances that legal, economic and social actors can expect of them. Logically, their provisions must always be interpreted under the corresponding legal context and proportionally to each case, so that they are aligned with both the internal and external circumstances of each organisation.

Under these premises, the White Paper avoids lack of clarification that makes it difficult to achieve a clear understanding of the *Compliance* function and the role of those responsible for it in any context, structuring its content in a simple way to make it easy to understand. I am convinced that this document will help properly outline a function that is called on to perform a key role in the development of business activities in the 21st century.

INTERPRETATIVE ASPECTS

1

The aim of this White Paper is to help organisations determine the basic tasks both of the *Compliance* function and of those responsible for it. Its content draws on the good practice contained in both national and international texts, which are included in Appendix.

2

Notwithstanding the above, the content of this White Paper may be useful for legal, economic and social actors to correctly appraise the scope of the tasks of the *Compliance* function and those responsible for it.

3

Both the tasks of the *Compliance* function and those of those responsible for it are described from a general point of view, applicable both to transversal *Compliance* Programmes or superstructures and to specific Programmes on certain *Compliance* risks, such as those of a criminal nature, for example.

4

This White Paper includes basic aspects related to the *Compliance* function, which must be complemented with those attributions of the *Compliance* function and those responsible for it that may be fixed both in legal standards and in the very policies of the organisation in which it is integrated. In any case, the applicable legal framework will prevail over that established in this document.

5

With the applicable legal framework covered, the content of this document will be interpreted proportionally to the circumstances of each organisation. In those of small size, where the content of this White Paper transcends their actual capacities, it can also be used for the development of their *Compliance* structures in the short, medium and long term.

6

The provisions of the White Paper refer to organisations, a deliberately broad concept that will include private and public entities and also non-profit organisations, groups of them or even part of their business activities. All this where appropriate, in order to guarantee the efficacy of the tasks of the *Compliance* function and the best performances of those responsible for it.

7

An organisation may have one or several *Compliance* Programmes. Thus, organisations without any particular regulatory complexity can reasonably assume the prevention, detection and management of the risk deriving from non-compliance by means of a single *Compliance* Programme. However, in more complex environments, several *Compliance* Programmes may be required, specialised in areas of specific obligations (criminal, environmental, fiscal, defence of competition, labour, etc.) that may be coordinated by means of a transversal *Compliance* Programme or superstructure.

8

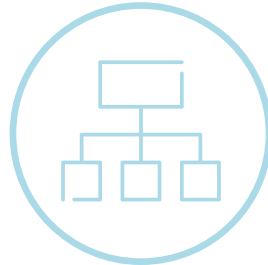
The purpose of this White Paper is not to define the content of the *Compliance* Programmes, which may be determined by applicable regulations or by the reference frameworks adopted by the organisations, such as those contained in the Appendix to this document, for example.



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1

Structures of the Compliance function



1

The *Compliance* function deals with the prevention, detection and management of *Compliance* risks [1.(2)] through the implementation of one or several *Compliance* Programmes [1.(3)], contributing to the promotion and development of a compliance culture throughout the organisation. The function's basic tasks are those set out in section 4 of this document.

Note 1 to section 1.(1).

The *Compliance function* is associated, in each case, with the *Compliance Programme* [1.(3)] assigned to it.

Note 2 to section 1.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see Note 2 in section 1.(3) below.

Note 3 to section 1.(1).

The *compliance* culture concerns the adherence to and commitment to the *Compliance* [4.(3)] objectives that may be included in the *Compliance Policy*[4.(3)], in the form of behaviours aligned to them.

Note 4 to section 1.(1).

The *Compliance* function [1.(1)] contributes to promoting the compliance culture throughout the organisation, notwithstanding the fact that the main responsibility for the achievement of this aim falls to its governing body and senior management.

2

Compliance risks are those related to *Compliance* obligations, i.e. those an organisation must fulfil, and also those it voluntarily chooses to fulfil.

Note 1 to section 1.(2).

The *Compliance* obligations an organisation must fulfil normally come from legislative bodies or the public authorities. The *Compliance* obligations that an organisation voluntarily chooses to fulfil are normally set out in internal or sectoral codes or policies of a private nature that are not imposed by legislative bodies or the public authorities.

Note 2 to section 1.(2).

Fulfilment of the *Compliance* [1.(2)] obligations falls to all the persons in the organisation, who must exercise due diligence in the knowledge and accomplishment of those related to their activities. The existence of the *Compliance* function [1.(1)] does not transfer this obligation but contributes to its exercise.

3

The organisation determines the *Compliance* [1.(2)] obligations whose non-fulfilment risk will be prevented, detected and managed by the *Compliance* function [1.(1)] by means of one or several *Compliance* Programmes [1.(3)].

Note 1 to section 1.(3).

The organisation's management body will determine the *Compliance* obligations [1.(2)] based on which one or several *Compliance* Programmes will be planned in order to prevent, detect and manage the risks associated with their non-fulfilment.

Note 2 to section 1.(3).

The organisation may have one or several *Compliance* programmes aimed at the prevention, detection and management of specific non-fulfilment risks associated with the *Compliance* obligations [1.(2)] on the basis of which they make their respective plans (*criminal, infringement of privacy, environmental, fiscal, regulatory risks, etc.*) They may also have a transversal *Compliance* programme that assumes and coordinates this plurality (*Compliance* superstructure).

Note 3 to section 1.(3).

The *Compliance* Programme or Programmes will be sufficient for their internal and external circumstances, based on the principle of proportionality. Internal circumstances are, for example, the organisation's turnover, the number of employees, the quantity of transactions executed, the parties with whom business relationships are maintained, etc. External circumstances are the regulatory framework of the company and its activities, the actions and interpretations of the public authorities with regard to said framework, the risks associated with the market in which it operates, etc.

Note 4 to section 1.(3).

The organisation will ensure that all its *Compliance* obligations[1.(2)] are subject to one or several *Compliance* Programmes on account of *Compliance* areas, materials or blocks of obligations [1.(2)]. In the latter case it will also ensure that the different *Compliance* areas or Programmes operate in a coordinated manner by means of a transversal *Compliance* Programme or superstructure.

Note 5 to section 1.(3).

The organisation will ensure that both the *Compliance* Programme or Programmes and those responsible for implementing them meet the requirements to which they may be subject under the applicable regulatory framework.

Note 6 to section 1.(3).

The organisation will check the efficacy of the *Compliance* Programme or Programmes by means of reviews executed by internal and/or external audits.

4

The organisation will make sure that the prevention, detection and management of the *Compliance* risks^[1.(2)] are subject to one or more reasonably documented *Compliance* Programmes ^[1.(3)], which clearly set their scope and specify the tasks to be performed by the *Compliance* function^[1.(1)] and those responsible for it.

5

The *Compliance* function^[1.(1)] can be applied both in public and private organisations, both profit and non-profit.

6

The legal system applicable to the *Compliance* function ^[1.(1)] derives from the regulations applicable to each organisation and its operations. The provisions of this document will be interpreted in accordance with those set out in that legal or organisational framework, which will prevail in the event of discrepancies.

7

The *Compliance* function ^[1.(1)] may be executed either by an individual body or a collegiate body. In both cases, it is a function internal to the organisation.

8

Notwithstanding the fact that it is a function internal to the organisation, the *Compliance* function^[1.(1)] can avail itself of external advice or even externalise some of the tasks established by or derived from the execution of the *Compliance* Programme or Programmes^[1.(3)]. Notwithstanding the above, the responsibility for diligently implementing a *Compliance* Programme^[1.(3)] falls to the *Compliance* team that has to implement it. In any case, the ultimate responsibility for the correct execution of the *Compliance* Programme^[1.(3)] falls to the organisation's management body and/or its committees delegated for this purpose.

9

When the *Compliance* function^[1.(1)] is established as a collegiate body, the person who represents it as *Compliance* manager and/or its maximum representative will be identified.

Note 1 to section 1.(9).

When the organisation has a transversal *Compliance* Programme or superstructure, it will identify its maximum representative and those responsible for implementing the specific *Compliance* Programmes ^[1.(3)], using a nomenclature that prevents any confusion of identities.

The maximum representative of the *Compliance* function ^[1.(1)] may be called by various names, such as Chief Ethics & *Compliance* Officer, Chief *Compliance* Officer, President of the *Compliance* Committee, etc. Similarly, those responsible for specific *Compliance* areas or Programmes may also be called by different names, such as Criminal Prevention Official, Data Privacy Officer, etc.

10

The *Compliance* ^[1.(1)] function fits the circumstances of each organisation and must have the structures and resources that are proportionate to them.

Note 1 to section 1.(10).

The characteristics of the *Compliance* function ^[1.(1)] in small and medium sized organisations will be adapted to its circumstances, which are not comparable with those of big organisations. In any case, the common objective in all of them is to promote and maintain an adequate *Compliance* culture ^[1.(1)].

2

Autonomy of the Compliance function



1

The *Compliance* function^[1.(1)] will be provided with sufficient autonomy to execute its basic tasks ^[4] without specifying specific assignments in this respect. For these purposes, the organisation's management body will delegate sufficient powers and competences to execute their basic tasks ^[4] continuously and without requiring authorisation, always with objectivity, impartiality and independence.

2

The organisation's management body will also provide the *Compliance* function^[1.(1)] with sufficient authority and legitimacy, at all times, to collect the information and to access the records and documentation it requires to execute its basic tasks ^[4] within the organisation.

Note 1 to section 2.(2).

The authority and legitimacy of the *Compliance* ^[1.(1)] function requires an adequate hierarchical positioning within the organisation's tree structure, which provides it with the capacity to address other areas or functions of the organisation autonomously and guarantees quick access and fluid communication with the management body and the committees the latter delegates.

Note 2 to section 2.(2).

Correct access to information and documentation implies free access to the organisation's persons, bodies and records directly related to the basic tasks ^[4] of the *Compliance* function ^[1.(1)].

Note 3 to section 2.(2).

The organisation will ensure that all staff support the tasks of the *Compliance* function ^[1.(1)].

3

The organisation's management body will assign the *Compliance* function [1.(1)] sufficient means and human resources with which to execute its basic tasks [4] in an autonomous fashion.

Note 1 to section 2.(3).

The resources will include a budget item that will be directly managed by the *Compliance* function [1.(1)]. Those responsible [1.(9)] for the *Compliance* programmes [1.(3)] or the maximum representative [1.(9)] of the *Compliance* function - if the organisation has a *Compliance superstructure* - will be consulted before specifying the amount of this budget item, which in any case, must be proportionate to the organisation's circumstances. The existence of the budget item does not release the organisation's management body from providing additional funds to cover contingencies.

Note 2 to section 2.(3).

In relation to the organisation's circumstances, see Note 3 to section 1.(3).

Note 3 to section 2.(3).

The *Compliance* function [1.(1)], those responsible for it [1.(9)] and, in particular, the maximum [1.(9)] *Compliance* representative, must be in a position to report on the appropriate allocation of the resources assigned, especially with regard to the economic allocations received.

4

The *Compliance* function [1.(1)] will be autonomous in the context of aspects connected with its basic tasks [4].

3

Independence of the Compliance function



1

The *Compliance* function [1.(1)] will be given maximum independence, so that its judgement and its way of proceeding are not conditioned by matters that prevent or hinder the free execution of its basic tasks [4] for the achievement of the *Compliance* objectives [4.(3)], or by fear of reprisals.

Note 1 to section 3.(1).

In particular, the *Compliance* function [1.(1)] must not be affected by the commercial, economic or any other objectives that may infringe its independence of judgement in suggesting or promoting actions aligned with the *Compliance* objectives [4.(3)] or the adequate execution of the *Compliance* Programme [1.(3)].

Note 2 to section 3.(1).

The persons integrated in the *Compliance* function [1.(1)] must not participate in the provision of services and activities they control, thus avoiding being subordinated or conditioned by the undue influence that may be exercised by persons from other areas of the company's business activity.

Note 3 to section 3.(1).

Any person integrated in the *Compliance* function [1.(1)] who perceives a threat to their independence must bring this to the knowledge of the governing body of the organisation or the delegated committee competent in ethics and independence questions, or use the internal reporting channels provided for these purposes.

2

The appointment, performance evaluation and dismissal of the maximum representative [1.(9)] of the *Compliance* function[1.(1)] will fall to the organisation's management body or to its delegated committee to which such competences are assigned.

Note 1 to section 3.(2).

The appointment, performance evaluation and dismissal of the maximum representative [1.(9)] of the *Compliance* function [1.(1)] may correspond directly to the organisation's management body, or to one of its delegated committees, which may be compulsory or voluntary (audit committee, corporate social responsibility committee, appointments committee or compensation committee, for example). One positive independence factor is having independent board members form part of said management body or its delegated committees. When this is the case, the organisation will ensure that one of these committees undertakes the said tasks.

3

In any case, both the resignation and the dismissal of the maximum representative [1.(9)] of the *Compliance* function[1.(1)] will require to be set out in writing, expressing the reasons for this in a specific and reasoned manner.

Note 1 to section 3.(3).

The organisation may complete the resignation or dismissal process of the maximum representative [1.(9)] of the *Compliance* function [1.(1)] by guaranteeing their appearance before the governing body or corresponding delegated committee in order that they may freely declare before them.

Note 2 to section 3.(3).

The actual reasons for the resignation or dismissal of the maximum representative [1.(9)] of the *Compliance* function [1.(1)] cannot be related to the reasonable performance of their basic tasks[4].

4

The appraisal of the performance of the persons integrated in the *Compliance* function [1.(1)] must not be conditioned by the opinion of functions or areas of the organisation that may be affected by their actions.

Note 1 to section 3.(4).

The organisation's management body and its delegated committees are excluded from this circumstance.

5

The pay of the persons who make up the *Compliance* function [1.(1)] cannot depend on the organisation's sale targets or economic results and will be aligned with the magnitude of its tasks.

Note 1 to section 4.(5).

In particular, the appraisal and pay of the persons who make up the *Compliance* function [1.(1)] must not be affected by the performance or result of the business areas or activities they check.

Note 2 to section 4.(5).

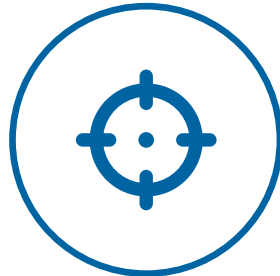
The pay both of those responsible for and of the [1.(9)] maximum representative [1.(9)] of the *Compliance* [1.(1)] function will mainly consist of a fixed quantity. However, a fraction of it may depend on their performance in the *Compliance* Programme or Programmes [1.(3)] assigned to them, and on the achievements related to their basic tasks [4]. Neither the fixed nor the variable part of the pay must be connected with the organisation's sales targets or economic results.



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4

Basic tasks of the Compliance function



1

The *Compliance* function [1.(1)] is responsible for autonomously implementing the *Compliance* Programme [1.(3)] it has assigned, protecting its independence and ensuring the confidential treatment the information or documents it has access to requires. Its basic tasks are those governed by this section.

2

The basic tasks of the *Compliance* function [1.(1)] are related to the purpose of the *Compliance* Programme [1.(3)], i.e. to prevent, detect and manage *Compliance* risks [1.(2)] to comply with the *Compliance* objectives [4.(3)] determined by the organisation.

Note 1 to section 4.(2).

Given that fulfilment of the *Compliance* obligations [1.(2)] affects everybody in the organisation, they are all required to involve themselves in the prevention and detection of the *Compliance* risks [1.(2)], especially when they lead teams or perform checks or supervision tasks. Nevertheless, they will report on and channel their management through the *Compliance* function [1.(1)].

3

The *Compliance* function [1.(1)] will assure, where this does not exist, the creation and dissemination of a *Compliance* Policy containing the *Compliance* objectives agreed by the organisation, the involvement of all staff in their achievement and the *Compliance* structures set up to help with this task. The organisation's management body will make sure to approve and provide for the maximum dissemination of this document.

Note 1 to section 4.(3).

The *Compliance* Policy may be either general, in the case of *Compliance* superstructures, or refer to specific *Compliance* areas, in the case of *Compliance* Programmes [1.(3)] planned for specific *Compliance* [1.(2)] areas, materials or obligations.

The *Compliance* function [1.(1)] will ensure that both the organisation's staff and the third parties it is related to – if they apply to them – have access to the *Compliance* Policy.

Note 2 to section 4.(3).

The *Compliance* objectives figure in the organisation's *Compliance* policy, which will back up the authority of the *Compliance* function [1.(1)] and those responsible for it [1.(9)] and/or its maximum representative [1.(9)], and will include a commitment to know and adhere to the *Compliance* obligations [1.(2)], and not to tolerate behaviours that put these basic objectives at risk.

Note 3 to section 4.(3).

In organisations of a small size, the *Compliance* Policy or Policies may be integrated in documents of general scope, which deal with other aspects relevant to the organisation relating to the *Compliance* objectives.

Note 4 to section 4.(3).

The organisation will provide one or several channels through which the addressees of the *Compliance* Policy or Policies can ask questions, state their concerns or report any violation of its content in good faith. The maximum representative [1.(9)] of the *Compliance* function [1.(1)] and/or the person responsible [1.(9)] for the *Compliance* Programme [1.(3)] appropriate to the matter in question, must know the communications that are managed through said channels and make sure they are managed as set out in the *Compliance* Programme or Programmes [1.(3)]. In relation to the reporting channels also see section 4.5 of this White Paper.

4

The *Compliance* Function [1.(1)] will ensure that the organisation is linked to persons in tune with its *Compliance* objectives[4.(3)] and *Compliance* Policy[4.(3)], whether they be employees or third parties with whom they maintain relationships of any kind. In this respect it will issue appropriate suggestions to the organisation's management body, its delegated committees, senior management or positions with decision-making powers concerning the initiation, maintaining or cancellation of these ties with them.

4.1

The Compliance function and Compliance obligations

1

The essential tasks [4] of the *Compliance* function [1.(1)] relating to the execution of the *Compliance* Programme [1.(3)] they have to implement, are set out in the following sections.

4.1.1. Identification of Compliance obligations

1

The management body will provide for the identification of the *Compliance* obligations [1.(2)] that affect the organisation and assign the prevention, detection and management of the risks deriving from non-fulfilment of it to one or several *Compliance* Programmes [1.(3)].

Note 1 to section 4.1.1.(1).

An organisation may have one or several *Compliance* Programmes [1.(3)]. Each *Compliance* Programme [1.(3)] will be assigned [1.(9)] a person responsible for its implementation.

Note 2 to section 4.4.1.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see also Note 2 in section 1.(3) below.

Note 3 to section 4.1.1.(1).

The responsibility for implementing each *Compliance* Programme [1.(3)] falls to the person [1.(9)] whom the organisation makes responsible for it. In the case of a transversal *Compliance* Programme or superstructure that coordinates this diversity, responsibility for implementing and reporting on the appropriate implementation of the specific Programmes falls to their respective responsible persons [1.(9)], notwithstanding any responsibility for general supervision and coordination that may fall to the maximum representative [1.(9)] of the *Compliance* function [1.(1)].

2

The *Compliance* function [1.(1)] will implement the *Compliance* Programme [1.(3)] assigned to it, which will cover the *Compliance* risks [1.(2)] identified by the organisation that are the subject of said *Compliance programme* [1.(3)].

4.1.2. Updating of Compliance obligations

1

The *Compliance* function [1.(1)] will ensure that the organisation has up-to-date knowledge of the *Compliance* obligations [1.(3)] whose non-fulfilment risks it prevents, detects and manages by implementing the *Compliance* Programme [1.(2)] it has assigned to it.

Note 1 to section 4.1.2.(1).

Given that the volume and nature of the *Compliance* obligations [1.(2)] based on which one or several *Compliance* Programmes [1.(3)] are planned may be wide-ranging, especially in *Compliance* superstructures, the follow-up and updating tasks for the same may fall to other specialised functions or areas of the organisation. In such cases, the *Compliance* function [1.(1)] ensures that such responsibilities are assigned to the corresponding functions or areas and that they perform these tasks in a reasonable manner.

4.1.3. Dissemination of Compliance obligations

1

The *Compliance* function [1.(1)] will ensure that the standards or documents from which the *Compliance* obligations derive [1.(2)] are accessible to the groups who require to consult their content.

Note 1 to section 4.1.3.(1).

The *Compliance* function [1.(1)] will ensure that the function or area of the organisation to which the responsibility for following up the *Compliance* obligations is assigned, when this is not the *Compliance* function [1.(1)] itself, facilitates access to its content to those who need it.

2

The *Compliance* function [1.(1)] will ensure that the *Compliance* obligations [1.(2)] deriving from previous standards or documents are sufficiently understood by the collectives they affect, launching the appropriate training and awareness [4.3] actions.

4.1.4. Assignment of responsibilities regarding Compliance obligations

1

The *Compliance* function [1.(1)] will ensure that all the organisation's staff know their duties and requirements in respect of the *Compliance* obligations [1.(2)] that affect them.

Note 1 to section 4.1.4.(1).

The *Compliance* function [1.(1)] may document and disseminate these requirements in a general manner in the *Compliance* Policy [4.(3)], or individually by means of a detailed description of the specific *Compliance* obligations [1.(2)] that affect each of the organisation's roles or positions in the organisation in organisational documents of a functional nature.

Note 2 to section 4.1.4.(1).

The *Compliance* function [1.(1)] will launch training and awareness actions [4.3] so that the organisation's staff knows what is required of them in terms of the fulfilment of the *Compliance* obligations [1.(2)] that affect them.

Note 3 to section 4.1.4.(1).

The *Compliance* function [1.(1)] will set up mechanisms via which the organisation's staff can declare that they know the *Compliance* obligations [1.(2)] that affect them, in the form of periodic confirmations.

2

The *Compliance* function [1.(1)] will ensure that the level of diligence in the knowledge and fulfilment of the *Compliance* obligations [1.(2)] both of the organisation's staff and of any third parties linked to it, condition the treatment that the organisation gives to them.

Note 1 to section 4.1.4.(2).

In relation to the organisation's staff, the *Compliance* function [1.(1)] will endeavour to make their level of alignment with the *Compliance* objectives [4.(3)] a factor that counts towards the appraisal of their professional performance, promotion and pay conditions, within the legally applicable framework.

Note 2 to section 4.1.4.(2).

In relation to third parties with which the organisation is linked, the *Compliance* function [1.(1)] will endeavour to make their level of alignment with the *Compliance* objectives [4.(3)] a factor in determining the initiation, continuation, suspension or cancellation of the legal relationship with them, within the legally applicable framework.

Note 3 to section 4.1.4.(2).

The *Compliance* function [1.(1)] can establish elements (key indicators) to measure the level of diligence or alignment with the *Compliance* objectives [4.(3)]. In the case of employees, for example, it can measure the attendance and the benefit gained from the *Compliance* course, adherence to the *Compliance* policies and procedures, the provision in time and form of the documentation or information required, etc. In the case of third parties, it can check the level of fulfilment of their own *Compliance* obligations, according to public information on the matter, the provision in time and form of complete and truthful information related to it, etc.

4.1.5. Integration of Compliance obligations in the business process

1

The *Compliance* function [1.(1)] will integrate the *Compliance* obligations [1.(2)] in the organisation's business processes, so that adherence to them is another part of them and see that they are not represented as parallel or additional formalities or requirements.

2

The *Compliance* function [1.(1)] will see that the policies, procedures and checks that already exist in the organisation include sufficient content to adhere to the *Compliance* obligations [1.(2)] of the *Compliance Programme* [1.(3)] it must implement, or will introduce additional policies, procedures and checks that include them, if previous ones did not exist.

Note 1 to section 4.1.5.(2).

The *Compliance* function [1.(1)] will fulfil this objective directly or ensure that another function or area has the same competences assigned to it or exercises them in a reasonable manner.

4.2 The Compliance function and Compliance risks

1

The *Compliance* function [1.(1)] will ensure that the *Compliance* risks [1.(2)] of the *Compliance* Programme [1.(3)] it must implement are identified, analysed and appraised.

Note 1 to section 4.2.(1).

The organisation will ensure that the *Compliance* [1.(3)] Programme or Programmes implemented by the *Compliance* function [1.(1)] adopt an approximation based on the risk, in order to assign resources for their prevention, detection and management in an effective manner. Therefore, the identification, analysis and appraisal of *Compliance* risks [1.(2)] is a key activity that must be documented.

Note 2 to section 4.2.(1).

The identification of the *Compliance* risks [1.(2)] can be done by the *Compliance* function [1.(1)] and by other functions or areas of the organisation related to supervision and/or control. In the latter case, the organisation will make sure the *Compliance* function [1.(1)] is authorised to promote this identification and that it receives the corresponding information.

Note 3 to section 4.2.(1).

The identification and evaluation of the corresponding *Compliance* risks [1.(2)] will be done periodically, in a programmed manner, in the event of changes in the organisation's circumstances or incidents related to non-fulfilment of the *Compliance* obligations [1.(2)].

Note 4 to section 4.2.(1).

In relation to the organisation's circumstances, see Note 3 to section 1.(3).

2

In the identification, analysis and appraisal of the *Compliance* risks [1.(2)] a method adapted to the organisation's circumstances will be used.

Note 1 to section 4.2.(2).

In relation to the organisation's circumstances, see Note 3 to section 1.(3).

4.2.1. Identification of Compliance risks

1

The identification of the *Compliance* risks [1.(2)] involves knowing those associated with the non-fulfilment of the *Compliance* obligations [1.(2)] and that are subject to one or several *Compliance* Programmes [1.(3)].

Note 1 to section 4.2.1.(1).

The risks associated with non-fulfilment of the *Compliance* obligations [1.(2)] may be of an economic nature (penalties, financial losses, etc.) or a reputational nature.

Note 2 to section 4.2.1.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

2

Consequently, the identification of *Compliance* risks [1.(2)] will be planned on the *Compliance* obligations [1.(2)] the organisation has decided to include within the scope of one or several *Compliance* Programmes [1.(3)] to prevent, detect and manage them.

Note 1 to section 4.2.1.(2).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

4.2.2. Analysis of Compliance risks

1

Once the *Compliance* risks [1.(2)] have been identified, they will be analysed considering the threats to which they expose the organisation, their circumstances and with a reasonable exercise of foresight.

2

The analysis of the *Compliance* risks [1.(2)] will take into account the probability of their occurrence and their consequences if they occur.

4.2.3. Appraisal of Compliance risks

1

Once the *Compliance* risks have been identified and analysed [1.(2)], they will be categorised according to their relevance and prioritised to help the organisation and the *Compliance* function [1.(1)] to administrate the resources for their prevention, detection and management in a reasonable manner by means of the *Compliance* Programme [1.(3)] it must implement.

2

In order to categorise the *Compliance risks* [1.(2)] the level of threat they represent will be taken into account, in accordance with the analysis carried out.

Note 1 to section 4.2.3. (2).

The probability and the consequences of their occurrence are determinant factors in the prioritisation of the *Compliance* risks [1.(2)] and, therefore, of the assignment of reasonable resources for their prevention, detection and management.

4.2.4. Identification of Compliance checks

1

Having prioritised the *Compliance* risks [1.(2)], the *Compliance* function [1.(1)] will identify the policies, procedures and controls the organisation must have to prevent, detect and manage those that form part of the scope of the *Compliance* Programme [1.(3)] they must implement.

2

The *Compliance* function [1.(1)] will propose the incorporation of new policies, procedures or controls, or the modification of those existing, to improve the tasks of prevention, detection and management of the *Compliance* risks [1.(2)] proper to the *Compliance* Programme [1.(3)] they must implement.

3

The *Compliance* function [1.(1)] will actively participate in the design and checking of the observance of policies, procedures and controls related to the *Compliance* Programme [1.(3)] it must implement.

4.2.5. Appraisal of Compliance checks

1

The *Compliance* function^[1.(1)] will appraise the appropriateness of the *Compliance* policies, procedures and controls for achieving the prevention, detection and management of the *Compliance* risks^[1.(2)] the *Compliance* Programme ^[1.(3)] is based on. This appraisal implies considering both the design and the efficacy of said elements.

2

In order to procure the efficacy of the *Compliance* policies, procedures and checks, the *Compliance* function ^[1.(1)] will ensure that they are applied uniformly and consistently throughout the organisation, so that they reasonably fulfil their function of prevention, detection and response to the *Compliance* risks ^[1.(2)] the *Compliance* Programme ^[1.(3)] is based on, in view of the probability and consequences of their occurrence.

4.3

Training and awareness

1

The *Compliance* function [1.(1)] ensures that the organisation's staff receive ongoing training to improve their knowledge of the *Compliance* obligations [1.(2)] that affect their ordinary work, the non-fulfilment risks deriving from them, and the policies, procedures and controls related to the *Compliance* Programme [1.(3)] for which they are responsible. For these purposes, it will administrate the resources provided by the organisation to launch the appropriate training courses.

Note 1 to section 4.3.(1).

The training in *Compliance* can be planned within the corporate year or may also be occasional due to variations in the organisation's circumstances or due to additions to or variations in staff responsibilities.

Note 2 to section 4.3.(1).

In relation to the organisation's internal and external circumstances, see Note 3 to section 1.(3).

Note 3 to section 4.3.(1).

If there are *several Compliance* areas or Programmes [1.(3)] in the same organisation, each of its responsible persons [1.(9)] will be obliged to launch the corresponding training courses and awareness actions. When these *Compliance* areas or Programmes [1.(3)] are subject to or coordinated by a transversal Programme (*Compliance superstructure*), it will fall to the maximum representative [1.(9)] of the *Compliance* function [1.(1)] to ensure the training courses and awareness actions are launched and coordinated in a reasonable manner.

Note 4 to section 4.3.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

Note 5 to section 4.3.(1).

The fact that the *Compliance* function [1.(1)] launches training courses does not substitute the obligation to know the *Compliance* obligations [1.(2)] which falls to each and every person in the organisation in accordance with their specific job and which they must undertake personally.

2

For the above purposes, the *Compliance* function [1.(1)] may identify, within the organisation, groups of employees subject to different *Compliance* requirements to adapt the training content and its frequency to the specific needs.

Note 1 to section 4.3.(2).

The *Compliance* function [1.(1)] will set up training sessions with both general and specific content aimed at those persons it considers are most exposed to *Compliance* risks [1.(2)].

3

Independently of the above, the *Compliance* function [1.(1)] will be responsible for launching awareness campaigns in order to raise the organisation's staff's awareness of the *Compliance* risks [1.(2)] and the policies provided for their prevention, detection and management by means of the *Compliance* Programme [1.(3)] it must implement.

4

Given that the Code of Ethics, Code of Conduct or equivalent standard that covers the organisation's values is a fundamental text for the purposes of promoting the compliance culture [1.(1)], the *Compliance* function [1.(1)] will make sure it is readily accessible to the organisation's staff and to the third parties related to it, including its content in the training sessions or awareness campaigns it launches.

4.4

Advice and reporting

1

The *Compliance* function [1.(1)] will provide ordinary advice to the organisation's staff to solve doubts about its *Compliance* obligations [1.(2)] relating to the *Compliance* Programme [1.(3)] it must implement. In addition, it will advise the organisation's management body or their delegated committees and senior management on the fulfilment of the *Compliance* obligations [1.(2)], the *Compliance* risks [1.(2)] and the impact changes in the law or in its interpretation may have.

2

It will also report in a smooth and periodic manner aspects relating to the execution of the *Compliance* Programme or Programmes [1.(3)] by means of operating reports, annual reports or any urgent communications.

Note 1 to section 4.4.(2).

The *Compliance* reporting chain may transcend the organisation. The applicable legal framework may require that some *Compliance* reports be provided to supervisory bodies or public authorities. In this case, the person responsible for the [1.(9)] *Compliance* Programme [1.(3)] affected by this obligation will alert [1.(9)] the *Compliance* function [1.(1)], where applicable. In any case, this circumstance must be communicated to the organisation's governing body or its delegated committees. The *Compliance* function [1.(1)] will proceed in accordance with the applicable legal framework.

4.4.1. Advising the organisation

1

The advice the *Compliance* function [1.(1)] provides aims to appraise the appropriateness of the items subject to consultation for achieving the *Compliance* objectives [4.(3)] declared by the organisation in the *Compliance* Policy [4.(3)] and, in particular, their consistency with the *Compliance* Programmes [1.(3)] it must implement. Also to keep the organisation abreast of changes or modifications (current or foreseeable) in the law or its interpretation that could significantly affect it.

Note 1 to section 4.1.1.(1).

The *Compliance* objectives [4.(3)] will figure in the *Compliance* Policy [4.(3)].

Note 2 to section 4.4.1.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

2

The advisory tasks of the *Compliance* function [1.(1)] do not imply that it assumes decision-making powers or the transfer to it of the responsibilities deriving from the actions or omissions of the management body, senior management or positions in the organisation with legal powers in this respect.

4.4.2. Operating reports

1

The *Compliance* function [1.(1)] through its maximum representative [1.(9)] will report regularly to the organisation's management body, its corresponding delegated committee and senior management the information relevant to the execution of the *Compliance* Programme or Programmes [1.(3)] it must implement, so that it or they are punctually informed of its performance and can adopt appropriate decisions in time to ensure the achievement of the organisation's *Compliance* objectives [4.(3)] and the efficacy of the *Compliance* Programmes [1.(3)] established to achieve them. In these reports it will set out the incidences or irregularities related to the execution of the *Compliance* Programme or Programmes [1.(3)] it must implement, especially when they imply non-fulfilment of the *Compliance* obligations [1.(2)]. When the organisation has fixed a *Compliance* superstructure to coordinate different *Compliance* areas or Programmes [1.(3)], it will fall to the maximum representative [1.(9)] of the *Compliance* function [1.(1)] to execute the consolidated report.

Note 1 to section 4.4.2.(1).

In the case of a consolidated report on different *Compliance* areas or Programmes [1.(3)], the maximum representative [1.(9)] of the *Compliance* function [1.(1)] must detail in it those matters or areas that, being subject to coordination by means of a *Compliance* superstructure, are not included in it, indicating the reasons.

Note 2 to section 4.4.2.(1).

The *Compliance* objectives [4.(3)] will figure in the corresponding *Compliance* Policy [4.(3)].

Note 3 to section 4.4.2.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

2

The *Compliance* operating reports will not only inform about aspects related to the performance of the *Compliance* Programme or Programmes [1.(3)] and any modifications and improvements to them, but may also escalate the taking of the necessary decisions to the organisation's management body, its delegated committees, senior management or other positions assigned such powers.

Note 1 to section 4.4.2.(2).

The *Compliance* function [1.(1)] will keep in the operating reports the information on incidences or irregularities related to the execution of the *Compliance* function [1.(3)] it must implement until they are completely corrected.

Note 2 to section 4.4.2.(2).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

4.4.3. Annual reports

1

The *Compliance* function [1.(1)], through the persons responsible for it [1.(9)], will summarise the tasks executed during the corporate year on implementing the *Compliance* Programme [1.(3)] assigned in an annual *Compliance* report addressed to the organisation's management body or the corresponding delegated committee. When the organisation has fixed a *Compliance* superstructure to coordinate different *Compliance* areas or Programmes [1.(3)], it will fall to the maximum representative [1.(9)] of the *Compliance* function [1.(1)] to draw up and present a consolidated annual report.

Note 1 to section 4.4.3.(1).

In the case of a consolidated report on different *Compliance* areas or Programmes [1.(3)], the maximum representative [1.(9)] of the *Compliance* function [1.(1)] must detail in it those matters or areas that, being subject to coordination by means of a *Compliance* superstructure, are not included in it, indicating the reasons.

Note 2 to section 4.4.3.(1).

The annual reports may refer to the actions launched or executed by the *Compliance* function [1.(1)] relating to its basic tasks [4].

Note 3 to section 4.4.3.(1).

Among other aspects, the Annual reports may also refer to:

- Identification of the risk areas in the *Compliance* Programme [1.(3)] that the *Compliance* function must implement [1.(1)].
- Description of the application and efficacy of the established policies, procedures and controls, with a summary of the supervision and monitoring tasks executed, both from remote and by means of on-site inspections.
- Details of the main types of irregularities or incidences related to the *Compliance* Programme [1.(3)] the *Compliance* function must implement [1.(1)], especially those related to the non-fulfilment of the *Compliance* obligations [1.(2)].
- Description of the action plans suggested to correct the incidences, deficiencies or non-fulfilments detected.
- Substantial changes, current or foreseeable, in the law that may have a significant impact in terms of the *Compliance* obligations [1.(2)] subject to the *Compliance* Programme [1.(3)], and suggestion of measures to adopt to ensure the organisation can adapt smoothly to them.

- Relevant relations or communication maintained with the regulator, the supervisor or administrative or legal bodies, including those related to penalties.

- Other relevant aspects.

Note 4 to section 4.4.3.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see also Note 2 in section 1.(3) below.

4.4.4. Urgent communications

1

Independently of drawing up and expediting the operating reports and annual reports, the *Compliance* function [1.(1)], through those responsible for it [1.(9)], will undertake to immediately inform the organisation's management body or its delegated committees of those incidences or irregularities that, due to their severity, may cause significant economic or reputational damage to the organisation, especially when they derive from the non-fulfilment of *Compliance* obligations [1.(2)]. This task will fall to the maximum representative [1.(9)] of the *Compliance* function [1.(1)] when the organisation has set up a *Compliance* superstructure in order to coordinate different *Compliance* areas or Programmes [1.(3)] on specific *Compliance* areas or obligations [1.(2)].

Note 1 to section 4.4.4.(1).

In the face of serious incidences or irregularities associated with non-fulfilment of *Compliance* obligations [1.(2)] the person responsible [1.(9)] for the *Compliance* area or Programme [1.(3)] affected will take into account the compulsory communications to the competent authorities imposed by the legal framework applicable to the organisation (report to the supervisory body, for example), providing all the details about the situation.

4.5

Internal complaint channels

1

The organisation will set up one or several channels through which employees and any third parties can make confidential communications related to the Code of Ethics, Code of Conduct or equivalent high-level standard.

2

The *Compliance* function [1.(1)] will supervise and process claims or complaints by means of the internal channels the organisation has set up. Those responsible for [1.(9)] and, where applicable, the maximum representative [1.(9)] of the *Compliance* function [1.(1)] will be directly involved in these tasks.

3

The *Compliance* function [1.(1)] will ensure that the internal complaint channels are easily accessible, known, confidential and guarantee the rights held by the persons whose details are processed, ensuring that no retaliatory measures will be taken for communications made in good faith.

4.6 Document maintenance

1

The *Compliance* function [1.(1)] will see that both the documentation of the *Compliance* Programme or Programmes [1.(3)] it must implement, and that deriving from its execution, are duly filed at the organisation.

Note 1 to section 4.5.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

2

Similarly, the *Compliance* function [1.(1)] will ensure that only authorised persons have access to the said documentation. In this case it will guarantee that it is immediately accessible.

Note 1 to section 4.5.(2).

Authorisation of persons to access the documentation related to the basic tasks [4] of the *Compliance* function [1.(1)] may be determined by the applicable standards, protected by order of the public authorities, or established in the documents or policies of the organisation itself.

5

Monitoring of the Compliance Programme



1

The *Compliance* function [1.(1)] will monitor the *Compliance* programme [1.(3)] it must implement, so that it continues to guarantee the prevention, detection and management of the risk of non-fulfilment of the *Compliance* obligations [1.(2)] it is designed to cover.

Note 1 to section 5.(1).

In order to supervise the *Compliance* Programme appropriately [1.(1)], those responsible for it [1.(9)] and, where applicable, the maximum representative [1.(9)] of the *Compliance* function [1.(1)], will fix and execute periodic supervisions, and in-situ plans with which to verify that it is being applied correctly in the business locations, functions and units that are within the scope of the *Compliance* Programme or Programmes [1.(3)].

Note 2 to section 5.(1).

The matters subject to review to guarantee the proper application of the *Compliance* Programme or Programmes [1.(3)] will include:

- Proper understanding of the *Compliance* obligations [1.(2)] by the persons they affect.
- Proper fulfilment of the policies, procedures and controls established by the organisation to facilitate fulfilment of the *Compliance* [1.(2)] obligations, especially those established within the applicable legal framework.

Note 3 to section 5.(1).

Within its monitoring tasks, the *Compliance* function [1.(1)] will, in particular, ensure that reasonable organisational measures exist for the fulfilment of the *Compliance* obligations [1.(2)] relating to:

- The processes for the selection, contracting and maintaining of the contractual relationship with employees and third parties.
- The processes related to that provided in the conduct standards and regulations.
- The processes related to the management of conflicts of interest.
- The processes related to the restrictions on transactions with customers, suppliers or business associates in general.
- The processes related to restrictions or protections in transactions with third parties and related transactions, including those with shareholders, directors and senior management with the company or concerning its assets and securities.

- The processes related to the creation and dissemination of new services and products or the re-evaluation of those existing, and those related to the information or advertising concerning them.
- The processes related to communications to the authorities, including governing bodies, supervisors and other administrative or legal authorities.

2

The *Compliance* function [1.(1)] will coordinate the supervision and monitoring actions it carries out within the *Compliance* Programme [1.(3)] that it must implement, with the supervising and monitoring activities being carried out by other *Compliance* areas or Programmes [1.(3)] or even by other of the organisation's control or supervision areas not included in the *Compliance* function [1.(1)].

Note 1 to section 5.(2).

When the organisation has a *Compliance* superstructure coordinating different *Compliance* areas or Programmes [1.(3)], it falls to the maximum representative [1.(9)] to coordinate the supervision and monitoring activities.

Note 2 to section 5.(2).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see Note 2 in section 1.(3) below.

3

The *Compliance* function [1.(1)] will include the actions executed and the results obtained from the monitoring activities in the operating reports, annual reports or urgent reports, as appropriate.

6

Profile and responsibilities of the Compliance Officer



1

The organisation will see that the *Compliance* function [1.(1)] has sufficient capacity, authority and legitimacy to execute its basic tasks [4].

2

The *Compliance* function [1.(1)] may be formed by partially or fully dedicated staff, depending on the organisation's effective needs, and therefore the content of its *Compliance Programme* [1.(3)].

Note 1 to section 6.(2).

The *Compliance* requirements of each organisation are conditioned by its internal and external circumstances.

Note 2 to section 6.(2).

In relation to the organisation's internal and external circumstances, see Note 3 to section 1.(3).

Note 3 to section 6.(2).

In small and medium-sized organisations the *Compliance* function [1.(1)] may be covered by the management body itself, where this is acknowledged by the applicable regulations.

3

In any case, the organisation will guarantee that the persons who carry out tasks within the *Compliance* function [1.(1)] have sufficient time to execute the tasks determined by the *Compliance Programme or Programmes* [1.(3)] that it must implement.

Note 1 to section 6.(3).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

4

The organisation will ensure that the persons integrated in the *Compliance* function [1.(1)] are sufficient to carry out the basic tasks [4] and have adequate training and experience to be able to execute the tasks determined by the *Compliance Programme* [1.(3)] they must implement.

6.1

Level of Training

1

The organisation will ensure that the persons who make up the *Compliance* function [1.(1)] have training or professional certification consistent with their basic tasks [4], and others that may be determined by the *Compliance Programme* [1.(3)] that they must implement.

2

Those responsible [1.(9)] for specific *Compliance* areas or Programmes [1.(3)] will have an adequate level of training to know, understand and disseminate the *Compliance* obligations [1.(2)] relating to the *Compliance* Programme [1.(3)] that they must implement. Their level of training will enable them to appraise the suitability of the organisation's policies, procedures and controls for the prevention, detection and management of the *Compliance* risks [1.(2)] of the *Compliance* Programme [1.(3)] they must implement, make improvements to them or create them if they do not exist.

3

The maximum representative [1.(9)] of the *Compliance* function [1.(1)], will have an adequate level of training to implement a transversal *Compliance* Programme [1.(3)] and, where appropriate, to coordinate the different persons responsible [1.(9)] for specific *Compliance* areas or Programmes [1.(3)].

Note 1 to section 6.1.(3).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

4

The organisation will ensure that the persons who take charge of relevant tasks in the *Compliance* function [1.(1)] receive ongoing quality training, which enables them to perform their basic tasks [4] and, in particular, successfully implement the *Compliance programme* [1.(3)] that is assigned to them.

6.2 Professional experience

1

The organisation will ensure that the persons who make up the *Compliance* function [1.(1)] have experience appropriate to the level of responsibility they assume in the implementation of the *Compliance* Programme [1.(3)] they have assigned to them.

2

The existence of comparable experience in *Compliance* in specific *Compliance* areas or matters is a compulsory requirement for the persons responsible for [1.(9)] specific areas or Programmes [1.(3)] of *Compliance*, and for the maximum representative [1.(9)] of the *Compliance* function [1.(1)], where applicable.

Note 1 to section 6.2.(2).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

3

The organisation will ensure that the persons who are going to execute tasks within the *Compliance* function [1.(1)] have a professional background aligned with *Compliance* objectives [4.(3)] and with the *Compliance* Policy [4.(3)]. It will therefore avoid incorporating in said function persons that it is aware or should be aware have behaviours that are inconsistent with the organisation's *Compliance* objectives [4.(3)] and with the provisions of its *Compliance* Policy [4.(3)].

6.3 Professional responsibility

1

It is expected that the *Compliance* function [1.(1)] will reasonably execute its basic tasks [4] as set out in this document and any additional ones established by the applicable legal framework and/or detailed in the *Compliance* Programme or Programmes [1.(3)] that they must implement.

Note 1 to section 6.3.(1).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

2

Neither the *Compliance* function [1.(1)], nor those responsible [1.(9)] for specific *Compliance* areas or Programmes [1.(3)] or its maximum representative [1.(9)], absolutely guarantee that no non-fulfilments of *Compliance* obligations have occurred [1.(2)] or will occur in the organisation.

Note 1 to section 6.3.(2).

In any case, the duty to comply with the *Compliance* obligations [1.(2)] falls to each and every one of the organisation's persons. See also Note 2 to section 1.(2).

3

The maximum representative [1.(9)] of the organisation's *Compliance* [1.(1)] function assumes the responsibility for informing the management bodies, their delegated committees and senior management of relevant facts in their knowledge, relating to the basic tasks [4] and to the provisions of the *Compliance* Programme or Programmes [1.(3)] they coordinate. For this purpose, they can use the operating reports, annual reports and urgent communications referred to in this White Paper.

4

Notwithstanding the above, each person responsible for the [1.(9)] specific *Compliance* areas or Programmes [1.(3)], if these exist in the organisation, undertake the obligation to inform the maximum representative [1.(9)] of the *Compliance* function [1.(1)] of the relevant facts related to their basic tasks [4] and to the provisions of the specific *Compliance* Programmes [1.(3)] they have to implement.

5

Also notwithstanding the general coordinating responsibility that may be assumed by the maximum representative [1.(9)] of the *Compliance* function [1.(1)], the various persons responsible for the [1.(9)] specific *Compliance* areas or Programmes [1.(3)] will acquire the responsibility for diligently implementing their respective *Compliance* Programmes [1.(3)] or, if these have not been formalised, for executing reasonable supervision of the *Compliance* obligations [1.(2)] that fall to them.

Note 1 to section 6.3.(5).

The diligence or reasonableness of the actions of both the maximum *Compliance* representative [1.(9)] and of those responsible [1.(9)] for specific *Compliance* areas or Programmes [1.(3)] will be measured considering their level of implementation of the basic tasks [4], and of the additional ones determined in the *Compliance* Programme [1.(3)] it falls to them to implement. Account will also be taken of the support and resources they have received from the organisation's management body, its delegated committees, senior management and other positions of responsibility in order to implement the *Compliance* Programme or Programmes [1.(3)] that they must implement.

Note 2 to section 6.3.(5).

With regard to the concurrence of several *Compliance* Programmes [1.(3)], see in particular Note 2 in section 1.(3) below.

6

The organisation will ensure that both the maximum *Compliance* representative [1.(9)] and those responsible [1.(9)] for specific *Compliance* areas or Programmes [1.(3)] have access to quality legal advice if they need to represent the legal person in court or appear before any public authority, including the judicial authority, during the exercise of their basic tasks.

6.4 Dialogue with stakeholders

1

It is expected that the *Compliance* function [1.(1)] dialogue with the stakeholders of the organisation from which *Compliance* obligations[1.(2)], or requirements related to them derive or may derive. The organisation will involve the *Compliance* function [1.(1)] and, in particular, its maximum representative [1.(9)], in the maintaining of a transparent and continuous dialogue with said interest groups.

Note 1 to section 6.4.(1).

The stakeholders concerned may be either external (public authorities - including the regulator and the judicial authority -, sector or professional associations, etc.) or internal (workers' representatives, functions of the organisation with tasks related or synergistic with *Compliance*, etc.).

Note 2 to section 6.4.(1).

In particular, the organisation will ensure that the maximum representative [1.(9)] of the *Compliance* function [1.(1)] communicate with the public authorities, including the judicial authority, in everything relating to regulatory non-fulfilments or incidents with a criminal legal dimension, respectively.

2

When the matters subject to communication with the stakeholders correspond to aspects proper to one or several of the *Compliance* areas, which may be subject to specific *Compliance* programmes [1.(3)], the persons responsible for them [1.(9)] as well as the maximum representative [1.(9)] of the *Compliance* function[1.(1)] will be involved.

APPENDIX

Reference Compliance frameworks

List of reference frameworks and guideline documents taken into consideration in drawing up the contents of this White Paper.

International standardisation

- **INTERNATIONAL ORGANIZATION FOR STANDARDIZATION - ISO 19600: 2014**
Compliance Management Systems – Guidelines.
- **INTERNATIONAL ORGANIZATION FOR STANDARDIZATION - ISO 37001: 2016**
Anti-Bribery Management Systems – Requirements with guidance for use.

National standardisation

- **Asociación Española de Normalización, UNE** **UNE-ISO 19600: 2015** *Compliance Management Systems. Guidelines.*
- **Asociación Española de Normalización, UNE** **PNE 19601:**
Criminal Compliance management systems Requirements with guidance for use.
- **Asociación Española de Normalización, UNE** **PNE 37001:**
Anti-bribery management systems. Requirements with guidance for use.
- **BRITISH STANDARDS INSTITUTION (BSI) (Great Britain) - BS 10500:2011**
Specification for an anti-bribery management system (ABMS). Great Britain, November 2011.
- **STANDARDS AUSTRALIA (Australia) - AS 3806-2006** *Compliance Programs. Australia, 9 March 2006.*

Documents and guidelines issued by national authorities

- **Spanish Criminal Code. Article 31a** resulting in the drafting of the Organic Law 1/2015, of 30 March, amending Organic Law 10/1995 of 23 November, of the Criminal Code. Madrid, 30 March 2015
- **STATE ATTORNEY GENERAL (Spain) - Circular 1/2016** on the criminal liability of legal persons under the reform of the Criminal Code made by Organic Law 1/2015. Madrid, 22 January 2016
- **COMISIÓN NACIONAL DEL MERCADO DE VALORES - Circular 1/2014** on internal organisational requirements and control functions of the entities that provide investment services.
- **MINISTRY OF JUSTICE (Great Britain) - The Bribery Act 2010 – Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (Section 9 of the Bribery Act 2010).** March 2011.
- **MINISTRY OF JUSTICE – The Bribery Act 2010 – Quick start guide.**

- **CRIMINAL DIVISION OF THE U.S. DEPARTMENT OF JUSTICE AND THE ENFORCEMENT DIVISION OF THE U.S. SECURITIES AND EXCHANGE COMMISSION** – *FCPA A Resource Guide to the U.S. Foreign Corrupt Practices Act*. United States, 14 November 2012.
- **U.S. SENTENCING COMMISSION** – *GUIDELINES MANUAL – Chapter Eight – Sentencing of Organizations*. United States, November 2015.

Documents and guidelines issued by supranational authorities

- **EUROPEAN SECURITIES AND MARKETS AUTHORITY - ESMA** - Guidelines on certain aspects of the requirements of the compliance body of the MiFID. ESMA/2012/388. ESMA, 25 June 2012.



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