The Direct and Indirect Effects of Corporate Compliance

Marco Palmieri

1 A Brief Introduction

Leaving aside the ethical implications of corporate compliance for managers and shareholders, this chapter examines only its material effects. (For a summary of the various motivations for compliance highlighted by the doctrine see, *ex multis*, Parker and Nielsen 2012, pp. 430–35.) Specifically, the main goal of this chapter is to point out that the positive and negative effects of compliance for corporations are not only those normally perceived as the result of the application of the relevant rules and that the consequences of compliance policies for corporations seem to be wider than is normally considered.

In general, corporate compliance within (complex) business organizations is a matter of monitoring whether the employees and directors are following the laws, regulations, standards, and ethical practices that management has adopted for ensuring that certain specific norms are respected. (Similar definitions of compliance are provided by, inter alia, Baer 2009, p. 959; Miller 2014, pp. 1–2; Griffith 2016, p. 2082.) For this reason, corporate compliance helps not only to prevent possible violations, or at least to detect them, but also to mitigate sanctions where these rules are infringed. These benefits have—from a legal and economic perspective—traditionally been attributed to the adoption of compliance policies. However, at least one further form of indirect advantage for corporations could be identified: indeed, compliance requires the adoption of an internal system of organization, and this can be useful not only to ensure that those specific norms are respected but also to control other norms that are not explicitly covered by compliance provisions. Specifically, the defense offered by an internal compliance apparatus could reduce the corporation's liability for violating agreements, or such a reduction could reduce

M. Palmieri (✉)
Università Cà Foscari Venezia, Venice, Italy
e-mail: marco.palmieri@unive.it

S. Manacorda, F. Centonze (eds.), *Corporate Compliance on a Global Scale*,
https://doi.org/10.1007/978-3-030-81655-1_9

the corporation's liability for violating agreements, or for repaying torts eventually committed. From this perspective, corporate compliance constitutes a pillar of risk management, which is a fundamental function of efficient corporate governance.

In any case, however, the direct and collateral benefits tied to compliance also entail costs for corporations. Instituting a specific function inside the governance structure of a corporation is an immediate and identifiable form of expense. Nevertheless, the most significant economic burden seems to be the possible negative effects for the running of the business. Thus by imposing specific internal procedures to ensure the respect of rules, compliance makes organizations more complex and rigid and, therefore, probably less able to make the most of the opportunities that are presented to them.

As is evident from these considerations, balancing the benefits and costs of constituting a compliance function inside a corporation is a hard task for managers. The coronavirus pandemic, indeed, seems to offer proof of such difficulties in connection with the sanitary restrictions today being adopted in many nations.

2 The Direct Benefits

Investigating the multiple benefits of corporate compliance means starting from an examination of the origins of the phenomenon. It is therefore necessary to understand why specific governance models have been developed to ensure companies respect the law.

The birthplace of compliance rules is the United States, because, since the beginning of the twentieth century, the American economy has been—and continues to be—the strongest in virtue of its specific capacity to develop large business activities on a continental scale, normally involving thousands of people, in the form of corporations (Laufer 1999, pp. 1359–63). The roots of the compliance function are traditionally considered to be manifold. As underlined by Miller, a starting point is the powers on the railroads sector of the Interstate Commerce Commission, which was created by the Interstate Commerce Act of 1887 to regulate this fundamental economic sector (Miller 2014, p. 2; Bird and Park 2016, p. 210). Similar agencies were then created by federal statutes during the course of the nineteenth century to prevent corruption in other economic fields. (For a description of the progressive movement headed by US President Theodore Roosevelt, see Laufer 2006, p. 13; Miller 2017a, p. 158.) The first 20 years of the century were characterized by an effort by US lawmakers to moralize and increase the efficiency of the public government (also by legitimating the law in the eyes of the people; see Tyler 2006). This period saw the creation of the Food and Drug Administration (1906),[1] the Federal

[1] The roots of the agency are in the Pure Food and Drug Act of 1906 and in the preexisting Bureau of Chemistry.

Reserve Bank (1913),[2] and the Federal Trade Commission (1914).[3] The economic crisis following Black Friday in 1929 was the origin of the founding of the Securities Exchange Commission in 1934.[4] (For an analysis, see Braithwaite 1982, pp. 1485–88.) After the Second World War, during which political attention and economic efforts were mainly focused on the goals of winning the conflict and reconstructing Western Europe and Japan, and the first part of the Cold War, which was characterized by international tension, new public interest in addressing pollution problems culminated in 1970 with the creation of the Environmental Protection Agency (Miller 2017a, p. 159).

In the same period, in order to establish an effective anti-money laundering program, the Bank Secrecy Act of 1970 for the first time imposed the four main pillars of compliance programs by requiring the development of internal procedures, policies, and controls, the designation of a compliance officer, an ongoing employee training program, and an independent audit function (Miller 2018, p. 249).

A few years later, a decisive step in the development of corporate compliance was taken: the adoption of the Foreign Corrupt Practices Act in 1977. The statute was signed as a response to the bribery of foreign public officials by numerous American companies, and it obliged companies to employ internal resources to monitor the respect of laws and regulations (which were also adopted by federal agencies) (Brown 2001, pp. 36–44; Krawiec 2003, p. 497; Bird and Park 2016, p. 211).

A fundamental moment in the development of a compliance system in the United States—a real "watershed change in compliance regulation" (Bird and Park 2017, p. 212)—was the adoption in 1991 of the Federal Sentencing Guidelines for Organizations, which offered judicial incentives (founded on a score-based reduction of the determining of fines) to establish effective compliance programs to prevent, detect, and self-report illegal conduct (McGreal 2018, p. 655; see particularly §8C2.5(f) Effective Program to Prevent and Detect Violations of Law). The reform, which came into force in November 2004, strengthened the idea of the prevention and detection of criminal conduct, including by promoting "an organizational culture that encourages ethical conduct and a commitment to compliance with the law" (see §8B2.1(a) Effective Compliance and Ethics Program), although the efficacy of these rules still seems controversial, particularly in so far as compliance programs may amount to simple "box checking" (Krawiec 2003, p. 496; see also Arlen 2012, pp. 344–58; Haugh 2017, p. 1228; Armour et al. 2020, 15–16).

The Sarbanes-Oxley Act of 2002, which was a response to the Enron and WorldCom scandals (Krawiec 2003, p. 502; Haugh 2017, pp. 1231–32; Tyler 2018, p. 35; Gadinis and Miazad 2019, pp. 2152–53), gave a strong impulse to adopt such

---

[2] Founded by the Federal Reserve Act, it remains to this day a federation of regional reserve banks, covering 12 districts and coordinated by a central committee, the Federal Reserve board (now the Board of the Governors after the amendment of the Banking Act of 1935, which also introduced the Federal Open Market Committee).

[3] Federal Trade Commission Act, §41.

[4] Securities Exchange Act, Sect. 4.

programs, as did the Dodd-Frank Act in 2010, which was the answer to the world financial crisis provoked by the securitization of subprime mortgages in the United States (Haugh 2017, p. 1233; Gadinis and Miazad 2019, pp. 2153–54).

This very short summary of the history of corporate compliance suggests some elements for understanding the evolution of the approach of US lawmakers to corporations' wrongdoings. Starting from a laissez-faire policy (Laufer 2006, p. 13), more stringent public regulation was firstly ensured by the creation of a specific set of laws and associated surveillance provided by dedicated authorities, albeit that the "administrative model of regulation" has eroded judicial enforcement because "legal norms governing complex organization are defined, adjudicated, and enforced by administrative agencies rather than courts" (Miller 2017b, pp. 132, 146–50; see also Haugh 2017, p. 1220, highlighting how "[t]hese regulations, promulgated by government agencies with investigatory and enforcement power, can be considered quasi-criminal because they often form the basis of concurrent criminal and civil liability").

In a subsequent phase, a further impulse to respect laws was obtained by incentivizing corporations to internally detect the infringements. The abandonment of an exclusively external system of public control (even though such a system remains effective and has indeed been strengthened in some economic sectors; see Haugh 2017, p. 1233) seems to have been related to the level of complexity attained by some business organizations and, moreover, to the international scale of their operations (Braithwaite 2008, p. 20: "The regulatory state creates mega-corporations, but large corporations also enable regulatory states"; see also Miller 2017a, pp. 160–61). The unavoidable delegation of powers within corporations (on the relative costs of which, see Jensen and Meckling 1976; Fama 1980) has required a parallel system of internal controls as a response to the unfair or opportunistic behavior of agents (Kraakman 1984, p. 859) or simply to prevent human irrationality (Kahneman 2011; Langevoort 2016, pp. 35–40).

The benefits tied to this legislative model seem to be the main reasons for its implementation in countries besides the United States in recent years, on the back of a wave of adoption of international treaties in the 1990s,[5] which imposed a direct liability of legal entities for criminal malpractice. For instance, in Italy—where (as is also the case in Latin America; see Jorge, chapter "Receiving "Corporate Compliance" in Latin America", Sect. 2 in this volume) there isn't a policy equivalent to that introduced through Deputy Attorney General Eric Holder's 1999 memorandum to prosecutors detailing the factors they should consider when deciding on whether to indict a corporation for its employees' misconduct (Arlen 2012, pp. 360–61)—legislative decree no. 231 in 2011 overruled the historic principle *societas delinquere non potest* by introducing an administrative liability for

[5] From a European perspective, the referment goes back to the Convention on the Protection of the European Communities' Financial Interests of 26 July 1995, the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union of 26 May 1997, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

corporations and other legal entities for specific offences perpetrated, even abroad, in their own interest or for their own benefit, by their directors, employees, or representatives. According to the same decree (art. 6), the bodies may escape a fine and be exempted from restrictive measures if they are able to prove that they had adopted and effectively implemented an organizational and management model that is capable of reasonably preventing the offences set out in the decree, so that the perpetrator committed the offence by fraudulently circumventing the model; moreover, it is requested that the application of the latter is ensured and constantly updated by a dedicated supervisory committee—not related to the board of directors in major organizations—which is entrusted with autonomous powers of initiative and control.[6]

The preventive effects engendered by the respect of the rules on the part of people related to corporations represent the immediate advantage of the adoption of compliance policies (Armour et al. 2020, pp. 12–13). From this perspective, arranging an internal monitoring organizational model and a function of control to grant corporations freedom from responsibility for their employees and directors' misconducts (see Laufer 2006, p. 7, on the failure of corporate criminal liability as a consequence of the deference of government regulation to the business community) is a relevant inducement to respect the law, more so than the sanctions by themselves. (Consider, too, the negative effects of secondary penalties, such as the revocation of an existing professional license or suspension and debarment from doing business with the government; see Brown 2001, pp. 88–100 for some examples; the approach is identical for the Italian case—see Spolidoro 2017, p. 197; Rondinone 2017, pp. 220–21 and 250–59.)

From the perspective of behavioral economics, the approach adopted by US lawmakers in passing the Federal Sentencing Guidelines for Organizations in 1991, then substantially replied to by other legislatures, seems to be an application of nudging theory before its time (Thaler and Sunstein 2008). Evidence comes from analysis of the application of the (deeply criticized) principle, common to US and Italian law, that the failure to prevent or detect the offenses committed inside a legal entity doesn't necessarily mean that the compliance model is ineffective and that the

[6] US prosecutors often impose Deferred or Non-Prosecution Agreements (DPA, NPA) upon firms in place of the application of penalties: "Prosecutors can impose specific duties on a subset of firms with alleged wrongdoing, and they enforce compliance with these duties through sanctions for a mere failure to comply with the duties, even if no substantive crime occurs" (Arlen and Kahan 2016, p. 327; see also Khanna and Dickinson 2007, pp. 1718–20, and Haugh 2017, p. 1239, who underlines the fact that "most agreements contain provisions aimed at refining corporate policies and procedures, and improving employee training and monitoring"). This *ex post* response seems to undermine the effectiveness of compliance as an *ex ante* remedy by permitting bargaining among prosecutors and managers about the consequences of the violations of criminal law: see Henning 2007; Garrett 2014, pp. 78–80; see chapter "Cognitive Dynamics of Compliance and Models of Self-regulation: In Search of Effectiveness in Strategies of Crime Prevention" and chapter "From a Voluntary to a "Coerced" Dimension: The Remedial Function of Compliance from a Criminal Law Perspective" in this volume; see also chapter "Exploring Voluntary And Mandatory Compliance Programmes In The Field Of Anti-corruption" in this volume for an analysis of British cases about the application of the UK Bribery Act (2010).

corporation must necessarily be punished. (A vast literature denounces the application of "cosmetic" compliance programs; see Laufer 1999; Krawiec 2003, pp. 491–92; Centonze 2014, pp. 48–49.) The possibility of proving that a corporation has adopted and reasonably implemented the model (Miller 2018, pp. 254–55; Langevoort 2018b, p. 731) is a strong incentive for managers, who are moved to consider the assessment of a compliance-driven organization as a bet that has to be made, since it is also in their own interest (see Miller 2018, p. 256: "[A]n effective compliance program is the set of policies and procedures that a rational, profit-maximizing firm would establish if it faced an expected sanction equal to the social cost of violations"; see also Bird and Park 2017, pp. 297–304, for a similar development of an efficient investment-risk model). Even though "there is an absence of solid performance metrics to assess compliance programs in terms of good or bad results, so that quality is inferred from other factors (e.g., budgets) that only indirectly address the likelihood of compliance success" (see Langevoort, chapter "Global Behavioral Compliance", Sect. 1 in this volume; for criticism of compliance metrics see also Chen and Soltes 2018, p. 119), and even if the application of the model is not mandatory according to the compliance laws, the adoption of the model results in managers having a duty to prevent their corporation from suffering damage, including by acting in its best interest.[7] In other words, in case of violation of criminal laws by corporation officers and, consequently, responsibility falling to the legal entity, the lack of a compliance model could be judged as a breach of duty of care (and not of the duty of oversight), as directors have failed to protect the corporation from avoidable risks.[8] From this perspective, corporate compliance is an essential element of risk management and its provision is seen as a standard (which implies the legal obligation must be decided case-by-case by an enforcement authority; see Kaplow 1992, pp. 561–62) in more complex business organizations (Gadinis and Miazad 2019, pp. 2163–64; see also Armour et al. 2020, pp. 26–38, for criticism about a managerial myopia about compliance due to the lack of specific incentives).

[7] See Ponemon Institute 2011, p. 3: "The extrapolated average cost of compliance for 46 organizations in our study is more than \$3.5 million, with a range of \$446,000 to over \$16 million. Adjusting total cost by organizational headcount (size) yields a *per capita* compliance cost of \$222 per employee. The extrapolated average cost of non-compliance for 46 organizations is nearly \$9.4 million, with a range of \$1.4 million to nearly \$28 million. Adjusting total cost by organizational headcount (size) yields a *per capita* non-compliance cost of \$820 per employee."

[8] This is the position assumed by the court in *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 970–971 (Del. Ch. 1996): see Miller 2017a, pp. 63–64. For that reason the business judgment rule shouldn't be considered generally applicable to that form of directors' obligation but only to determine the level of detail of the compliance model. See Brown 2001, pp. 7–32, and Langevoort 2017, p. 941, who denounces the way in which "Caremark's "just do something" message invited a check-the-box mentality." See also Miller 2017a, pp. 66–67; Langevoort 2018b, p. 730; McGreal 2018, pp. 673–77; Gadinis and Miazad 2019, pp. 2157–63, for an analysis of the role of bad faith in *Stone ex rel. AmSouth Bancorporation v. Ritter*, 911 A.2d 362–364 (Del. Ch. 2006). See also Bird and Park 2016, pp. 228–29 for analysis of the specific responsibility of Chief Legal Officers.

3 The Indirect Benefits

Managers' duty to assess a compliance model in order to manage the risks of unfair or opportunistic behavior, or irrationality, on the part of the corporation's officers doesn't seem to be linked only to the benefits described in the previous section. By providing a legal barrier to the negative consequences of violations of specific laws, corporate compliance can also produce positive effects in respect of norms protecting other interests which are connected but not specifically covered. In other words, if the application of a compliance model can prevent corporations from suffering the cost of a public penalty, as a negative consequence of the damage to relevant interests, it is easy to say that it could also preclude the risks of refunding damages that the inhibited illegal conduct could have caused to third parties.[9] An example may be found in art. 25-*undecies* of the Italian legislative decree no. 231/2001, which orders that a corporation be fined in cases where there is a violation of specific criminal environmental rules. The respect of such provisions doesn't only enable the preservation of a public good as specifically identified by lawmakers but could also prevent a corporation from providing restoration to people who could be injured by a hypothetical polluting conduct.

From this perspective, corporate compliance shouldn't be seen mainly as an instrument to prevent criminal offences but also as a de facto obligatory way of organizing businesses (particularly complex ones) in order to contain the risk of generating torts. This aspect is particularly relevant when a single misbehavior can produce serial damages and a corporation can be exposed to the danger of massive restoration (see Langevoort 2016, pp. 48–53 for critical analysis of the negative effects of class actions concerning corporate fraud in the United States). The possibility of filing class actions seems to constitute an inducement for larger American entities—and also in other common law systems which provide similar judicial remedies—to assume governance models which ensure compliance with rules that cannot be broken without risking a mass tort (see Krawiec 2003, pp. 504–5, arguing for the importance of internal compliance structures to demonstrate good faith as a shield from punitive damages),[10] such as is already the case for many criminal

[9] Civil remedies are provided also on the basis of international agreements; for example, the Civil Law Convention on Corruption (1999) obliges the adherent states to provide for the possibility of victims of corruption obtaining a judicial restoration: see Manacorda 2014, p. 14.

[10] See the data collected by Garrett 2014, pp. 137–40: "There is no official information about how many companies face parallel civil litigation while being prosecuted. I collected data on the 255 companies that received deferred prosecution or non-prosecution agreements from 2001 to 2012 and whether they faced civil suits, finding such suits against 36 percent or 93 of the 255 companies. While not all civil settlements may be public, I identified $6.1 billion in civil settlements in those cases, far more than the 4 billion in criminal fines imposed by federal prosecutors. […] Some of the biggest civil suits filed against companies facing prosecution were class action suits. At least 35 of the 255 deferred prosecution agreements studied had parallel class actions."

laws.[11] Observing corporations which operate in financial markets may provide some significative examples. Felonies such as false information in a prospectus, or false business reporting, may cause damage to investors or creditors of the undertaking, which could also affect the firm's economic solidity when it is requested to provide restitution (or, sometimes, can also affect a relevant portion of the market due to a negative cascade effect on other actors; the potentially negative impact of heavy sanctions on the firm and its stakeholders is underlined by Kraakman 1984, p. 857; see also Alexander and Arlen 2018, pp. 98–107 on the impact of different kinds of fraud on interested outsiders' expectations). According to the latter view, corporate compliance programs are a necessary instrument for assuring stability in international markets (Cox 1997, p. 18; see also Centonze, chapter "The Imperfect Science: Structural Limits of Corporate Compliance and Co-regulation", Sect. 2 in this volume), as testified to by many specific provisions regarding corporate governance in specific economic sectors, such as banks, insurance, or other financial institutions. (More generally, compliance programs can indirectly reduce information asymmetry and induce a better evaluation of corporations, preventing investors from buying "lemons"; see Akerlof 1970.)

These considerations seem not necessarily to be affected by the fact that, in practice, most class action suits are subject to settlement agreements, which normally reduce the corporations' exposure in a considerable way.[12] In fact, the risk of economic losses and managerial responsibility (Garrett 2018, p. 54) for not having avoided them could be a strong driver for the mass adoption of compliance models (even if managers' fear of punishment is often moderated by the insurance coverage afforded to them by corporations; see Kraakman 1984, p. 859; Cox 1997, pp. 23–37; Baker and Griffith 2011). It could be a strong driver, too, for corporations established in those countries—particularly the civil law ones—which have recently adopted judicial remedies for restoring mass torts (Miller 2014, p. 11; Haugh 2017, p. 1221). From this perspective, Italian legislation could be an interesting research field for the future. In 2019, the Italian lawmakers significantly reformed the class action law introduced in 2006, and the new norms will come into force in May 2021 (because of a prorogation of them in March 2021, due to the negative effects of COVID-19). The procedure, initially providing only for torts suffered by consumers, will be opened to all injuries regarding "homogeneous individual rights," regardless of whether they result from private or public undertakings (art. 840-*bis*, subsections 1 and 3, Civil Procedure Code). As opposed to "traditional" opt-out class action models adopted in other countries, the new Italian law will permit injured parties to opt in not only during the trial (art. 840-*quinquies*, subsection 1)

[11] An example is the *Caremark* case: see Brown 2001, pp. 102–103; on the connected risks of generating a misleading statement or omission relevant to Rule 10b-5 and of a consequent class action for faulty disclosure, see Gadinis and Miazad 2019, pp. 2180–85.

[12] According to the Stanford Law School Securities Class Action Clearinghouse, of 5,838 filings from 1996 to the present day in the United States, 2,555 were settled, for an amount of more than $104 billion. It is interesting to note that there has been a resurgence in securities class action filings during the last 3 years, with more than 400 a year.

but also after the court has decided the case by pronouncing a final judgment (art. 840-*sexies*, subsection 1, lett. e). Although the new law provides that in the event of a settlement the excluded parties can continue the trial or start a new collective action as plaintiff (art. 840-*bis*, subsection 6), it seems likely that this mechanism will force the defendant to quickly reach an agreement with the plaintiffs, in order to manage the risk of suffering bigger losses. In this scenario, a reinforcement of internal controls and, particularly, the adoption of a compliance program could represent for corporations a pivotal solution to the peril of being exposed to disruptive class actions as a consequence of crimes or wrongdoings committed by their directors or employees (see Nieto Martín, chapter "Stakeholders' Compliance Programmes:From Management of Legality to Legitimacy", Sect. 4 in this volume for the proposal to connect compliance officers to directors elected by external stakeholders to reinforce a corporation's legitimacy). If this hypothesis is confirmed, the Italian case could testify to the apparent tendency of compliance to represent a solution to problems other than corporate crimes, for which it was initially introduced (Giorgino and Pozza 2017, pp. 121–24).

In addition to protecting companies from reimbursement obligations arising from a judicial order in favor of victims of crimes committed by their workers, compliance can also provide legal entities with a monitoring structure to ensure fulfilment of contractual obligations. From this point of view, the application of the internal organizational model to companies not only limits their responsibilities toward stakeholders such as customers or creditors but is also a way to preserve the confidence of the latter as regards the business activity, as well as the actual and future value created for investors.[13] (The boycott of a firm guilty of wrongdoing by unions, NGOs, or trading partners could also be a form of private enforcement when misconduct is discovered; see Davis 2018, p. 155.)

A definitive proof of the direct and indirect benefits of corporate compliance may be obtained by observing the dramatic consequences of the Volkswagen "Dieselgate" case.[14] The negative effects of the lack of an efficient control system to prevent the fraud perpetrated by some of Volkswagen's directors and employees with respect to the pollution cars were actually generating a sort of dramatic *memento* of what a well-organized compliance program could prevent.[15] After the board of the holding was forced to admit the fraud after the results of the US Environmental Protection Agency's investigations in September 2015, the American subsidiary and many

[13] The Ponemon Institute 2011, p. 3, highlights that "Business disruption and productivity losses are the most expensive consequences of non-compliance. The least expensive consequences are fines, penalties and other settlement costs."

[14] The Volkswagen case has become famous also because the company has admitted that one of its in-house counsels gave advice to employees to delete relevant documents; the company was forced to pay $2.8 billion in fines for the failed litigation as a part of the plea bargain: see Gadinis and Miazad 2019, pp. 2142, 2189.

[15] As reported by Tombari 2017, pp. 268–70, in contrast to other European states, German legal doctrine was sensitive to the importance of compliance, as many scandals in recent years had involved large corporations (e.g., Siemens, MAN, Deutsche Telekom, Daimler, Linde Ferrostaal, and HSH Nordbank).

other companies of the group have been heavily fined by national authorities for violations of local antipollution laws. Furthermore, the same companies have been forced to offer to refit clients' vehicles or repay damages incurred, also as a partial response to many collective actions filed in different countries. The direct loss of billions of euros suffered by Volkswagen Group is just a portion of the scandal's cost, probably not the biggest one. The fraud has provoked a loss of confidence of clients and, consequently, of investors that has been immediately reflected in the exchange price of the securities issued by the German holding corporation. (Indeed, it is not necessarily a question about the "moral legitimacy" of the carmaker group but the importance of its "societal acceptance" that cannot be underestimated; see Palazzo and Scherer 2006, p. 78.) In just 1 month, the shares suffered a plunge of more than a third of their pre-scandal value (from more than €167 on 11 September 2015, 10 days before the admission of fraud, to less than €107 on 9 October 2015; the initial value was recovered only after 2 years), and a similar drop was also suffered by the bonds (e.g., an issue due in 2030 had lost more than 20% of its market value in the same period, below a quarter under parity). These price movements seem to testify to the depth of the distrust not only by equity investors concerning the profitability of the business but also by creditors about the solvency of the issuer. From this perspective, reducing business risks means also reducing the cost of financing, by tapering the revenue required by external investors (see Choi and Pritchard 2018, pp. 220–22 for discussion of effects other than stock price reactions caused by corporate wrongdoing; see also van Erp 2011, pp. 327–32 on consumers' and shareholders' reactions to the disclosure of sanctions).

The importance of preserving investors' confidence has been specifically underlined by the European Parliament,[16] which has enacted Directive 2014/95/EU in order to amend Directive 2013/34/EU about the disclosure of non-financial information by large undertakings and groups. Favoring a long-term investment approach, the directive has imposed a requirement on larger corporations to include in their management report "a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters." This statement must include, above all, a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes that have been implemented, and must report the outcome of those policies, also in the form of non-financial key performance indicators. (For analysis both of this and the EU Commission's Guidelines on Non-financial Information (2017/C215/01 and

[16] See the EU Parliament resolutions of 6 February 2013, on Corporate Social Responsibility: Accountable, Transparent and Responsible Business Behaviour and Sustainable Growth and Corporate Social Responsibility: Promoting Society's Interests and a Route to Sustainable and Inclusive Recovery, where the European Parliament acknowledged the importance of business divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust.

2019/C209/01), see Rescigno, chapter "Stakeholders, Interests, and Compliance", Sect. 3 in this volume.)

4 The Costs

Assuming that corporate compliance is a solution to problems arising from the delegation of authority in complex organizations, nevertheless it is quite evident that imposing strict legal controls not only implies determining a way to contain risks, as well as conferring a possible advantage in case of breach of laws or regulations (such as the containment of sanctions, reduction of directors' liability, etc.), but also incurs many relevant costs (which are sustained, obviously, by the shareholders, even if the compliance programs are required by the regulators; see Griffith 2016, pp. 2121–28; Gadinis and Miazad 2019, pp. 2147–48).

The most immediate ones are those linked to the creation of a compliance system (also constituted by internal values) and its implementation in the day-by-day activity of the business (Haugh 2018, p. 13).[17] That normally means—first—investing in a preliminary evaluation of the legal risks, also by external due diligence, to trace policies and draw up specific procedures (Bird and Park 2016, p. 214). The respect of the latter must then be ensured by appointing, and eventually hiring, employees and directors for this specific monitoring function (Krawiec 2003, pp. 495–96; Langevoort 2017, pp. 939–40; Gadinis and Miazad 2019, p. 2138) but also by furnishing them with a dedicated IT infrastructure to effectively check the legality of the workflow (by examining the decisions taken by the senior officers and by preventing the commission of wrongdoings inside the corporation)[18] and to "deliver necessary data to regulators and auditors" (Bird and Park 2017, p. 293). Furthermore, corporations must invest in a continuous training program for their employees and officers (for criticism of the effectiveness of "high-level compliance exhortations," see Langevoort, chapter "Global Behavioral Compliance", Sect. 2 in this volume; see also Spolidoro 2017, pp. 182–83; Centonze, chapter "The Imperfect Science: Structural Limits of Corporate Compliance and Co-regulation", Sect. 2.2 in this volume) in order to maintain a high level of respect for rules and to stimulate the growth of an internal compliance culture. (For this reason "[a] company's code of conduct is usually considered the 'cornerstone' of a compliance program and is widely disseminated to employees," Haugh 2018, p. 13; see also Tyler 2018, pp. 32–33, arguing, however, that there is the risk of a loss of motivation by employees over a long period.) Then the effectiveness of the entire compliance function (see Langevoort, chapter "Global Behavioral Compliance", Sect. 2 in this volume,

[17] The related costs seem indirectly connected to the size of the business, as suggested by the survey conducted on hedge funds by KPMG International (2013). See also the data reported by Miller 2017a, p. 196, on the "compliance industry."

[18] See the data reported in Walsh 2016, p. 540, about the use in the 1970s of automated data processing to monitor firms' activities, as reported by the advisory committee sponsored by the SEC.

on the necessity of adopting a metric for compliance) could be validated by an external tester (Bird and Park 2016, p. 215; benchmarking of the compliance processes is one of the reasons for the homogenization of compliance methods adopted by corporations according to Haugh 2018, pp. 18–19). Lastly, it should be considered that compliance is often not restricted only to an internal organizational plan, since it can also involve specific third parties such as subsidiaries, suppliers, and so on: this can significantly increase costs insofar as it requires the extension of control and continued education to these third parties. (The balancing of costs and benefits, particularly when it comes to the possibility of fines and the probability of the detection of wrongdoings, has been highlighted by Miller 2018, pp. 256–59; on the Italian system, particularly from a European antitrust perspective, see Ghezzi 2017, pp. 321–22, 325.)

Even if a "frequent concern expressed by many business executives is the cost of risk management, compliance processes, and control activities in comparison to the value gained"—as reported in COSO 2017—these material costs, even if huge, aren't necessarily the only ones arising from the application of corporate compliance. Other relevant negative effects could probably be linked to its indirect impact on business, although these are not so easily traceable as those sustained by implementing internal rules and procedures to ensure the respect of law.[19] As previously pointed out, corporate compliance is a sort of mandatory instrument of legal entities where delegation of authority is a strict necessity. Operating as a shield for the principal against the unfair or opportunistic behavior of agents, or simple irrationality, legality monitoring has become one of the pillars of the internal control of corporations, together with the internal audit and the risk management functions. (On shifting to preventive risk management and the difficulties associated with applying it via the use of AI in corporate operations, see Mozzarelli, chapter "Digital Compliance: The Case for Algorithmic Transparency" in this volume.) However, this multiple-level architecture has forced business organizations to be more complex. The explication of this kind of control, particularly when linked to compliance, drives management to be naturally more "cautious." (Managerial risk aversion is underlined as a cost of compliance by Kraakman 1984, p. 887; see also Griffith 2020, p. 8: "unlike other agents of the firm, compliance officers' first responsibility is not to maximize shareholder wealth but rather to maximize compliance.") In some cases, incompatibility with laws or rules could result in an immediate interdiction of the operation, which could cause a loss or reduction in business opportunities. In other cases, compliance could result in a reduction in the reaction speed of management, which could affect the ability of corporations to capitalize on business opportunities (see Langevoort 2017, p. 936, which reports a connection between

[19] This aspect is also underlined in Office of Management & Budget 2015, p. 7: "Some regulations have significant non-quantified or non-monetized benefits (such as protection of privacy, human dignity, and equity) and costs (such as opportunity costs associated with reduction in product choices or product bans) that are relevant under governing statutes and that may serve as a key factor in an agency's decision to promulgate a particular rule."

innovation and the risk of violating rules, so that "[a] healthy-seeming celebration of creativity can also be a compliance danger sign").

One of the best examples of the negative effects that compliance can have on business are the sanctions that can be applied by the US Department of Treasury's Office of Foreign Assets Control (OFAC), such as are in force regarding the Iranian Transactions and Sanctions Regulations (ITSR), implemented after the US government decided to withdraw from the Joint Comprehensive Plan of Action (JCPOA) in 2018. The embargo imposed has repercussions not only for "US persons"—who, in general, are heavily fined if they have commercial transactions with Iranian counterparties—but also for non-US undertakings. In fact, the so-called foreign sanctions evaders are exposed to a deeply negative business retaliation, such as an imposition of restrictions on imports into the United States of goods produced, or on the export of US goods to their countries of origin, or a prohibition on using US dollars as payment. Even if the transnational legal effects of such penalties are highly controversial and also have an international political dimension (e.g., the European Commission—which has not shared the US president's decision—has adopted Regulation no. 2018/1100 to protect European undertakings from the effects of the sanctions), it is evident that respecting the embargo, for US corporations, will be a simple matter of respecting the law; but for companies in the rest of the world, this will be a management decision, which will probably translate into a reduction in business opportunities in the Iranian market.

The impact of these costs does not seem exceptional, as the previous example could lead one to think (see Langevoort, chapter "Global Behavioral Compliance", Sect. 4 in this volume for an analysis of the impact of behavioral compliance from a global perspective, particularly considering the Foreign Corrupt Practices Act 1977). The trend of corporate compliance is to expand legality checks beyond the area of immediate crime prevention. From this perspective, the development of a "compliance culture" is taking on an increasingly central role in the governance of many companies operating in specific sectors (see Torchia 2017, pp. 156–65 for an analysis of the compliance approach adopted by Italian authorities). This results not only in a proliferation of material costs but could also result in a reduction in business opportunities. The Joint Guidelines on the Prudential Assessment of Acquisitions and Increases of Qualifying Holdings in the Financial Sector, adopted by the European Supervisor Authorities in 2016 (the ESAs, i.e., EBA, ESMA, and EIOPA), seem to offer evidence of this impact. In order to assess whether a proposed acquirer of a significant stake of an enterprise operating in the financial sector is fit for the role, the guidelines require his reputation to be checked. The assessment should cover not only his integrity but also his professional competence. The proposed acquirer is required to ensure effective compliance, by choosing and monitoring the directors who must apply and respect the specific laws regulating banks, insurance, and financial institutions. This form of involvement gives shareholders the role of "gatekeeper" of good governance and could make them responsible for the losses which could be caused by their misinterpreting their role. Even if the latter fact needs to be judged on the basis of the size of the holding that the proposed acquirer intends to buy, and also on his involvement in management or the influence that he is planning to exercise on the targeted undertaking, it seems quite evident that this requirement reduces the attractiveness of investments in the financial sector by natural persons. Only investors who have built up significant experience in the field (and an adequate "culture of compliance," also in terms of "identity and environment"; see Langevoort 2016, pp. 41–42; Langevoort 2018a, pp. 271–72) may have the ambition to take control or exercise direction over the management and to stimulate an administration to be compliant to laws and rules. In any case, such quality is not easily transmissible to one's heirs. These factors cause a decrease in the number of investors in the financial sector: in the future, private or public institutions, not referable to specific natural persons, will probably be the main qualifying holders of European financial institutions, because they don't face the problem of guaranteeing the continuity of these qualities (Guccione and Palmieri 2018, pp. 578–82).[20]

5 Some Concluding Evidence in the Coronavirus Era

Balancing costs and benefits in order to adopt and develop a compliance apparatus in a corporation is not a simple decision for its directors. As noted by Miller (2018, pp. 256–59), a variety of factors must be considered, such as the probability of detection of wrongdoings and the severity of fines. As suggested, other indirect factors should also be considered, since assessing compliance is only one aspect of the fundamental function of risk management. The current COVID-19 crisis has offered some evidence of such difficulties. The spread of the disease has driven many countries to adopt emergency laws to contain the outbreak; after the first lockdown, the measures imposed on the reopening of businesses—particularly those operating publicly (Fernandes 2020, pp. 10–12), as well as those that normally require the effective presence of employees involved in the production[21]—constitutes dramatic

[20] A prominent example of an application of the discipline is the recent Del Vecchio-Mediobanca case. The request of 29 May 2020 of Mr. Del Vecchio, the main shareholder of Mediobanca S.p.a., to increase its stake to 20% via its Luxembourger holding company, Delfin S.a.r.l., and so become the most influential investor of the company, has led to quite an unusual authorization by the European Central Bank. The increase in Mr. Del Vecchio's participation in Mediobanca, one of the main Italian business banks, with important investments in other banking and insurance companies, didn't worry the Authority because of Mr. Del Vecchio's financial strength but because of his ability to maintain good governance of the institution as an active shareholder. For this reason the authorization has been given (although not required) not in order to let Mr. Del Vecchio exercise control over Mediobanca, nor de facto, but only as a simple investment.

[21] As pointed out in ECB 2020a, "The collapse in activity is initially the strongest for services, particularly those related to travel and recreational activities. This has already been indicated by some of the available survey evidence. However, the lockdown measures and the ensuing supply bottlenecks reduce production dramatically, also across large segments of the industry. Overall, the containment measures are assumed to cause a relatively larger loss of value added in retail trade, transport, accommodation and food service activities compared to manufacturing, construction and other sectors."

proof of the difficulty in weighing the costs and benefits of being compliant with these new rules. On one hand, respecting the new sanitation standards has permitted businesses to continue trading by granting them substantial immunity from responsibility for any accidental spread of the disease; on the other, the enforced application of the rules has forced many businesses to remain closed, in some cases because their reorganization has made them unprofitable.[22] From this perspective, the unbearable costs seem not only to be those necessary for the safe continuation of activity (such as the adoption of apparel for personnel, physical barriers, distancing measures, etc.) but also the comprehension of the new laws and their strict application to permit a business to remain a going concern.

Paradoxically enough, in such scenarios, the more structured firms seem to have been more reactive than smaller ones operating in the same economic sector. The preliminary data collected in Italy[23]—whose economy is among the worst affected by the pandemic[24]—seem to suggest that compliance and risk management are, probably more than ever, fundamental for the (re)organization of the business. Only firms who had already implemented specific apparatuses have been able to effect the needed transformations in a timely fashion (see the probable importance of investing in stakeholder relations as underlined by the data collected by Cheema-Fox et al. 2020).

In any case, it seems evident that a large number of enterprises, particularly the smaller ones, cannot normally afford the costs of having officers dedicated to such a mission (Braithwaite 1982, p. 1501). At the same time, the existence of "black swans" (see Miller 2017a, pp. 750–51, which underlines the importance of stress testing for measuring the "'fat tail' distribution" of negative events), for example, the coronavirus, supports the idea that less complex firms should maintain, at least, an embryonal form of control over these aspects in order to stimulate a rapid response and a legal re-check on their business activity when necessary. (Wu 2020 suggests, through analysis of the COVID-19 crisis, that regulation has a positive effect.) A possible answer to this need could be a wider diffusion of compliance and risk management services offered by outsourcers (Spolidoro 2017, pp. 186–87; for analysis of the risks of the "departmentalization" of compliance in publicly held corporations in the United States, see DeStefano 2014, pp. 120–64), also considering the positive impact that information technologies are having on the sector and the fact that in enterprises (though not necessarily the smaller ones) a number of staff are already independent workers (Walsh 2017, p. 551). Probably, in the near future, the impact of such innovation—which would also ensure automated

---

[22] See COVID-19 Consumer Law Research Group 2020 for a comparative analysis of legal solutions adopted to grant moratoria and facilitate the resolution of refunds and vouchers.

[23] See ISTAT 2020, p. 3: "Micro-enterprises (3–9 employees) are those most involved in the suspension of activities: 48.7% against 32.7% of small businesses (10–49 employees), 19.2% of medium-sized companies (50–250 employees) and 14.5% of large companies (250 employees and over), for a total share of 69.4%, also considering the smaller companies initially 'suspended' which then reopened" (translated from the original Italian text).

[24] See ECB 2020b.

monitoring by outsiders—would sharply reduce the cost of detecting violations, and this factor could significantly improve the adoption of compliance policies, considering the benefits it could provide to management, shareholders, and other stakeholders.

References

Akerlof, George A. 1970. The Market for 'Lemons': Quality Uncertainty and the Market Mechanism. *The Quarterly Journal of Economics* 84 (3): 488–500.

Alexander, Cindy R., and Jennifer Arlen. 2018. Does Conviction Matter? The Reputational and Collateral Effects of Corporate Crime. In *Research Handbook on Corporate Crime and Financial Misdealing*, ed. J. Arlen, 87–150. Cheltenham: Edward Elgar.

Arlen, Jennifer. 2012. The Failure of the Organizational Sentencing Guidelines. *University of Miami Law Review* 4 (3): 161–165.

Arlen, Jennifer, and Marcel Kahan. 2016. Corporate Governance Regulation through Nonprosecution. *The University of Chicago Law Review* 84: 323–387.

Armour, John, Jeffrey Gordon, and Geeyoung Min. 2020. Taking Compliance Seriously. *Yale Journal on Regulations* 37: 1–66.

Baer, Miriam H. 2009. Governing Corporate Compliance. *Boston College Law Review* 50 (4): 949–1019.

Baker, Tom, and Sean J. Griffith. 2011. *Ensuring Corporate Misconduct*. Chicago: University of Chicago Press.

Bird, Robert C., and Stephen K. Park. 2016. The Domains of Corporate Counsel in an Era of Compliance. *American Business Law Journal* 53 (2): 203–249.

———. 2017. Turning Corporate Compliance into Competitive Advantage. *University of Pennsylvania Journal of Business Law* 19: 285.

Braithwaite, John. 1982. Enforced Self-Regulation: A New Strategy for Corporate Crime Control. *Michigan Law Review* 80 (7): 1466–1507.

———. 2008. *Regulatory Capitalism*. Cheltenham: Edward Elgar.

Brown, H. Lowell. 2001. The Corporate Director's Compliance Oversight Responsibility in the Post Caremark Era. *Delaware Journal of Corporate Law* 26.

Centonze, Francesco. 2014. Public–Private Partnerships and Agency Problems: The Use of Incentives in Strategies to Combat Corruption. In *Preventing Corporate Corruption: The Anti-Bribery Compliance Model*, ed. S. Manacorda, G. Forti, and F. Centonze, 43–67. Cham: Springer.

Cheema-Fox, Alex, Bridget R. LaPerla, George Serafeim, and Hui (Stacie) Wang. 2020. *Corporate Resilience and Response During COVID-19*. Harvard Business School Working Paper No. 20-108.

Chen, Hui, and Eugene Soltes. 2018. Why Compliance Programs Fail and How to Fix Them. *Harvard Business Review* 96 (2): 116–125.

Choi, Stephen C., and A.C. Pritchard. 2018. Securities Law Enforcers. In *Research Handbook of Corporate Crime and Financial Misdealing*, ed. J. Arlen, 219–236. Cheltenham: Edward Elgar.

COSO. 2017. *Executive Summary of 2017 update to the Enterprise Risk Management—Integrated Framework*. https://www.coso.org/Documents/2017-COSO-ERM-Integrating-with-Strategy-and-Performance-Executive-Summary.pdf

COVID-19 Consumer Law Research Group. 2020. Consumer Law and Policy Relating to Change of Circumstances Due to the COVID-19 Pandemic. *Journal of Consumer Policy*. [Epub ahead of print].

Cox, James D. 1997. Private Litigation and the Deterrence of Corporate Misconduct. *Law and Contemporary Problems* 60: 1–38.

DeStefano, M. 2014. Creating a Culture of Compliance: Why Departmentalization May Not Be the Answer. *Hastings Business Law Journal* 10 (1): 71–182.

Davis, Kevin E. 2018. Multijurisdictional Enforcement Games: The Case of Anti-Bribery Law. In *Research Handbook of Corporate Crime and Financial Misdealing*, ed. J. Arlen, 151–174. Cheltenham: Edward Elgar.

ECB. 2020a. *Economic Bulletin*. Issue 3. https://www.ecb.europa.eu/pub/pdf/ecbu/eb202003.en.pdf

———. 2020b. *Economic Bulletin*. Issue 4. https://www.ecb.europa.eu/pub/economic-bulletin/html/eb202004.en.html

Fama, Eugene F. 1980. Agency Problems and the Theory of the Firm. *Journal of Political Economy* 88 (2): 288–307.

Fernandes, Nuno. 2020. *Economic Effects of Coronavirus Outbreak (COVID-19) on the World Economy*. Unpublished working paper.

Gadinis, Stavros, and Amelia Miazad. 2019. The Hidden Power of Compliance. *Minnesota Law Review* 103: 2135–2209.

Garrett, Brandon L. 2014. *Too Big to Jail*. Cambridge, MA: Harvard University Press.

———. 2018. Individual and Corporate Criminals. In *Research Handbook of Corporate Crime and Financial Misdealing*, ed. J. Arlen, 40–58. Cheltenham: Edward Elgar.

Ghezzi, Federico. 2017. Antitrust Compliance Programs. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Giorgino, Marco, and Lorenzo Pozza. 2017. Compliance e rischi aziendali. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Griffith, Sean J. 2016. Corporate Governance in an Era of Compliance. *William & Mary Law Review* 57 (6): 2075–2140.

———. 2020. *Agency, Authority, and Compliance*. ECGI Law Working Paper 516. https://ecgi.global/sites/default/files/working_papers/documents/griffith516-2020final.pdf

Guccione, Valerio A., and Marco Palmieri. 2018. Il socio persona fisica titolare di partecipazioni qualificate di una banca. *Diritto Della Banca e Del Mercato Finanziaro*: 547–582.

Haugh, Todd. 2017. The Criminalization of Compliance. *Notre Dame Law Review* 92: 1215–1270.

———. 2018. The Power Few of Corporate Compliance. *Georgia Law Review* 53 (1): 129–196.

Henning, Peter J. 2007. The Organizational Guidelines: R.I.P.? *Yale Law Journal Pocket Part* 116: 312ff.

ISTAT. 2020. *Situazione e prospettive nell'emergenza sanitaria Covid-19*. https://www.istat.it/it/archivio/244378

Jensen, Michael C., and William H. Meckling. 1976. Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. *Journal of Financial Economics* 3 (4): 305–306.

Kahneman, Daniel. 2011. *Thinking Fast and Slow*. New York: Farrar, Straus and Giroux.

Kaplow, Louis. 1992. Rules Versus Standards: An Economic Analysis. *Duke Law Review* 42: 557–629.

Khanna, Vikramaditya, and Timothy L. Dickinson. 2007. The Corporate Monitor: The New Corporate Czar? *Michigan Law Review* 105 (8): 1713–1755.

KPMG International. 2013. *The Cost of Compliance*. KPMG/AIMA/MFA Global Hedge Fund Survey. https://assets.kpmg/content/dam/kpmg/pdf/2013/10/the-cost-of-compliance-v2.pdf.

Kraakman, Reiner H. 1984. Corporate Liability Strategies and the Costs of Legal Controls. *The Yale Law Journal* 93: 857–898.

Krawiec, Kimberly D. 2003. Cosmetic Compliance and the Failure of Negotiated Governance. *Washington University Law Quarterly* 81: 487–544.

Langevoort, Donald C. 2016. *Selling Hope, Selling Risk*. Oxford: Oxford University Press.

———. 2017. Cultures of Compliance. *American Criminal Law Review* 54: 933–977.

———. 2018a. Behavioral Ethics, Behavioral Compliance. In *Research Handbook of Corporate Crime and Financial Misdealing*, ed. J. Arlen, 263–281. Cheltenham: Edward Elgar.

———. 2018b. Caremark and Compliance: A Twenty-Year Lookback. *Temple Law Review* 90: 727–742.

Laufer, William S. 1999. Corporate Liability, Risk Shifting, and the Paradox of Compliance. *Vanderbilt Law Review* 52: 1343–1420.

———. 2006. *Corporate Bodies and Guilty Minds*. Chicago: University of Chicago Press.

Manacorda, Stefano. 2014. Towards an Anti-Bribery Compliance Model: Methods and Strategies for a "Hybrid Normativity". In *Preventing Corporate Corruption: The Anti-Bribery Compliance Model*, ed. S. Manacorda, G. Forti, and F. Centonze, 3–30. Cham: Springer.

McGreal, Paul E. 2018. Caremark in the Arc of Compliance History. *Temple Law Review* 90 (1): 647–680.

Miller, Geoffrey P. 2014. *The Compliance Function: An Overview*. NYU Law and Economics Research Paper Series No. 14–36.

———. 2017a. *The Law of Governance, Risk Management, and Compliance*. New York: Wolters Kluwer.

———. 2017b. Compliance in the Twenty-first Century: Brave New World? In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

———. 2018. An Economic Analysis of Effective Compliance Programs. In *Research Handbook of Corporate Crime and Financial Misdealing*, ed. J. Arlen, 247–262. Cheltenham: Edward Elgar.

Office of Management & Budget. 2015. *Draft 2015 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*. https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/2015_cb/2015-cost-benefit-report.pdf

Palazzo, Guido, and Andreas G. Scherer. 2006. Corporate Legitimacy as Deliberation: A Communicative Framework. *Journal of Business Ethics* 66: 71–88.

Parker, Christine, and Vibeke L. Nielsen. 2012. Mixed Motives: Economic, Social, and Normative Motivations in Business Compliance. *Law and Policy* 34 (4): 428–462.

Ponemon Institute. 2011. *The True Cost of Compliance*. Ponemon Institute website. http://www.ponemon.org/local/upload/file/True_Cost_of_Compliance_Report_copy.pdf

Rondinone, Nicola. 2017. La *compliance* nei gruppi di società. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Spolidoro, Marco S. 2017. La funzione di compliance nel governo societario. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Thaler, Richard H., and Cass R. Sunstein. 2008. *Nudge: Improving Decisions about Health, Wealth, and Happiness*. New Haven: Yale University Press.

Tombari, Umberto. 2017. Governo societario, compliance e "indagini interne" nella s.p.a. quotata. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Torchia, Luisa. 2017. La Compliance e i rapporti con l'autorità di controllo. In *La Corporate Compliance: Una Nuova Frontiera per il Diritto?* ed. G. Rossi. Milan: Giuffrè.

Tyler, Tom R. 2006. *Why People Obey the Law*. Princeton: Princeton University Press.

———. 2018. Psychology and Deterrence of Corporate Crime. In *Research Handbook on Corporate Crime and Financial Misdealing*, ed. J. Arlen. Cheltenham: Edward Elgar.

van Erp, Judith. 2011. Naming and Shaming in Regulatory Enforcement. In *Explaining Compliance*, ed. C. Parker and V.L. Nielsen, 322–342. Cheltenham: Edward Elgar.

Walsh, John H. 2017. Compliance in the Age of Connectivity. *Rutgers University Law Review* 69 (2): 533–562.

Wu, Xi. 2020. *Regulations as Automatic Stabilizers During COVID-19*. Unpublished working paper.

Part IV
Behavioral and Digital Compliance