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The Corporation as Victim of White Collar Crime: Results from a Study of German Public and Private Companies

Dr. Hendrik Schneider

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**THE CORPORATION AS VICTIM OF WHITE COLLAR CRIME:
RESULTS FROM A STUDY OF GERMAN PUBLIC AND PRIVATE
COMPANIES**

Dr. Hendrik Schneider¹

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I. INTRODUCTION

White-collar crime² and victimology are well-known fields within criminology since the last half of the 20th century. One area

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that deserves more attention is a combination of the following: 1) Why does a corporation become a victim? 2) What weakens a corporation and makes it vulnerable for the white-collar offender and against corporate or occupational crime? To this end, a study was undertaken in Germany of private and public sector companies with the goal of gaining in-depth knowledge on a specific type of victimization: the corporation as a victim of white-collar crime. Another important goal was to determine how different compliance measures affect the victim status and health of the company.

The results of this comprehensive study were originally published in Germany.³ What follows here is an overview. While the findings only concern German companies, it is relevant for an international audience because similar trends occur elsewhere. The first part of this article addresses background information regarding white-collar crime and victimology. Such concepts are necessary to understand before presenting the results of the study.

II. THE EMERGENCE OF CORPORATE CRIME AND VICTIMOLOGY AS FIELDS OF STUDY

Criminology long focused on “conventional” crimes such as street crime, crime of poverty, and hate crime (i.e. homicide, robbery, rape, etc.) and thus ignored white-collar crime altogether. But if one were to anoint a “father of the criminology of white collar crime,” then it would be Edwin Sutherland because he was the first to coin this phrase in his 1939 speech before the American Sociological Society.⁴ In his further work, Sutherland developed a definition of

² White-collar crime can also be referred to as economic crime or corporate crime.

³ This article references the results from a study originally published in Germany in 2013. For the original German version, see Hendrik Schneider & Dieter John, *Das Unternehmen als Opfer von Wirtschaftskriminalität: eine viktimologische Untersuchung: Public und Private Sector im Vergleich* (2013), available at http://www.uni-leipzig.de/~prozess/resources/Publicationen/RP_StudieWikri_130215-ansicht-gesichert.pdf.

⁴ For the text of his speech see Edwin Sutherland, *White-Collar Criminality*, 5 AM. SOC. REV. 1 (1940). For scholars claiming Sutherland was the first to address white-collar crime, see DAVID O. FRIEDRICH, *TRUSTED CRIMINALS: WHITE COLLAR CRIME IN CONTEMPORARY SOCIETY* 2 (4th ed. 2010); HAZEL CROALL, *UNDERSTANDING*

white-collar crime as “crime committed by a person of respectability and high social status in the course of his occupation.”⁵ Despite Sutherland’s early attempt at defining white-collar crime, the definition has been contested. Perhaps the most humorous critique comes from David Nelken, who wrote “if Sutherland merited a Nobel Prize, as Mannheim thought, for pioneering this field of study, he certainly did not deserve it for the clarity or serviceableness of his definition.”⁶

A better definition of white-collar crime is one that was proposed by a group of criminologists whose task was to establish a definition. Accordingly, the following definition was widely agreed upon: “White-collar crimes are illegal or unethical acts that violate fiduciary responsibility of public trust committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain.”⁷

In order to accept this definition or any other concept of white-collar crime, there are some theoretical underpinnings that should be understood. A very important issue is how a corporation can actually commit an offense or be held liable. After all, a corporation is not a human being that can physically commit a crime or be jailed; instead, it is a legal entity and its bylaws do not provide for the commission of illegal acts.⁸ Nevertheless, many legal systems have recognized the “person” aspect of a corporation and have accordingly bestowed this status upon them.⁹ A common way to

WHITE COLLAR CRIME 2 (Mike Maguire ed., 2001); MICHAEL L. BENSON & SALLY S. SIMPSON, WHITE-COLLAR CRIME 5 (Chester Britt et al eds., 2009).

⁵ EDWIN H. SUTHERLAND, WHITE COLLAR CRIME 9 (1949).

⁶ David Nelken, *White-Collar and Corporate Crime*, in *The Oxford Handbook of Criminology* 628 (Mike Maguire et al eds., 5th ed. 2012).

⁷ FRIEDRICH, *supra* note 4, at 6.

⁸ Kathleen F. Brickey, *Perspectives on Corporate Criminal Liability*, in *Encyclopedia of Criminology & Criminal Justice* 10-12 (Washington University in St. Louis Legal Studies Research Paper No. 12-01-02), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1980346; James Gobert, *The Evolving Legal Test of Corporate Criminal Liability*, in *Corporate and White-collar Crime* 61 (John Minkes & Leonard Minkes eds., 2008).

⁹ Gobert, *supra* note 8, at 63; Amitai Etzioni & Derek Mitchell, *Corporate Crime*, in *International Handbook of White-Collar and Corporate Crime* 187 (Henry N. Pontell & Gilbert Geis eds., 2007).

attribute liability to a corporation is through vicarious liability, which extends the mindset and criminal actions from the employees to the corporation itself because the employees are agents of the corporation.¹⁰

The next logical question is what actions constitute white-collar crime. Tombs proposed a typology that illustrates the wide scope, including financial crimes (i.e., tax evasion, bribery, illegal accounting, etc.), crimes against consumers (i.e., the sale of unfit goods, false labeling of products, price fixing, etc.), crimes arising from the employment relationship (ex. violation of anti-discrimination laws, health and safety regulations, or wage laws, etc.), and crimes against the environment (i.e., pollution of air, dumping of hazardous waste, etc.).¹¹

A final point regarding white-collar crime is that despite its emergence as a field, it has not been as widely analyzed as others. A thorough examination of literature and university courses confirmed that white-collar crime is generally ignored.¹² What is puzzling about this trend is that white-collar crime encompasses a wide range of

¹⁰ US courts have long recognized corporate liability for civil actions and such liability was extended to criminal actions in the landmark *Hudson* case from 1909. See *New York Central & Hudson River R.R. Co. v. U.S.*, 212 U.S. 481 (1909); see also Matthew O'Brien & Matthew Beck, *Corporate Criminal Liability*, 37 AM. CRIM. L. REV. 261, 262 (2000); Brickey, *supra* note 8, at 5; Gobert, *supra* note 8, at 63. Under the *Hudson* test, vicarious liability exists if: (1) the individual was acting within the scope and nature of his or her employment; (2) the individual was acting, at least in part, to benefit the corporation; and (3) the act and intent was imputed to the corporation. See Matthew O'Brien & Matthew Beck, *Corporate Criminal Liability*, 37 AM. CRIM. L. REV. 265 (2000). It is not just US courts that recognize vicarious liability. From the UK, see *DPP v. Kent and Sussex Contractors Ltd*; *R v. ICR Haulage Ltd*; *Moore v. Bresler Ltd*; and *Tesco Supermarkets Ltd v. Natrass*. In contrast to the American courts that have taken a very expansive approach in attributing the employee's mindset and actions to the corporation, the UK approach is slightly less broad, as exemplified by the depiction of the "brains" and "hands" of the corporation: "Some of the people in the company are mere servants and agents who are nothing more than hands to do the work... Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of those managers is the state of mind of the company." See Gobert, *supra* note 8, at 66.

¹¹ LORRAINE WOLHUTER ET AL., *VICTIMOLOGY: VICTIMISATION AND VICTIMS' RIGHTS* 41 (2009)(summarizing the work of Tombs).

¹² Danielle McGurrian et al, *White Collar Crime Representation in the Criminological Literature Revisited, 2001-2010*, 14 W. CRIMINOLOGY REV. 3 (2013).

actions and affects many victims. Therefore, it would seem reasonable to devote more resources to studying white-collar crime.

The focus now shifts to victimology, where a parallel can be drawn to white-collar crime because both fields developed in the mid-20th century and have received less attention than more conventional research areas. Initially, criminal research examined the offender (who commits crimes and why) and responses (how the criminal justice system handles offenders, whether incarceration or rehabilitation is proper).¹³ To this end, it was apparent that half of the pair involved in a criminal action was ignored because little attention was paid to the victim.¹⁴

Hans von Hentig produced what is seen as the first treatment of victims in *The Criminal and His Victim* (1948).¹⁵ He suggested that more weight be attributed to the victim, rather than solely focusing on the offender.¹⁶ After von Hentig, other scholars began studying victimology, as reports were produced analyzing victims of specific offenses such as rape, homicide, robbery, aggravated assault, fraud, blackmail, and others.¹⁷ Despite this early work, it was not until the victim movement of the 1970s that victimology appeared in the limelight, as there was an increased push by activists to address this issue.¹⁸ While traditional notions of victimization emphasized the individual as victim, some scholars further pushed for broader definitions to include groups in victimization studies.¹⁹ This is important to keep in mind regarding the victims of white-collar crime because it affects more than just individuals.

It is now logical to combine white-collar crime to determine who the victims of white-collar crime are and how they are victimized. Unfortunately, these questions have not received much attention, as the study of victims of white-collar crime have only been taken up by a minority of scholars, with focus remaining largely on

¹³ ANDREW KARMEN, *CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY* 14-15 (7th ed. 2010).

¹⁴ *Id.*

¹⁵ Ezzat A. Fattah, *Victimology: Past, Present and Future*, 33 *CRIMINOLOGIE* 17, 22 (2000).

¹⁶ *Id.* at 22; KARMEN, *supra* note 13, at 14-15.

¹⁷ Fattah, *supra* note 15, at 23.

¹⁸ KARMEN, *supra* note 13, at 32.

¹⁹ David O. Friedrichs, *Victimology: A Consideration of the Radical Critique*, 29 *CRIME DELINQUENCY* 283, 288-289 (1983).

victims of conventional crimes.²⁰ Nevertheless, the costs of white-collar crime exceed those of conventional crime.²¹ Some studies have shown that victims incur more economic loss than all conventional crimes combined and that white-collar crime causes more deaths, illness, and injuries.²² Due to this enormous effect that white-collar crime has on its victims, it is reasonable to pay more attention to learning about these victims.

When white-collar victimization has been addressed, information tends to highlight individual victims rather than how corporations or other groups can be victimized. The FBI has collected data that indicates that in the majority of white-collar offenses (except for bribery), the victims are groups other than individual persons.²³ To ignore victims other than individuals would not present an accurate description of white-collar victimization.

Some conclusions can be drawn about white-collar crime victimization based on existing research and it is unsurprising that the scope of victimhood is broad, in light of the fact that there are numerous offenses falling under white-collar crime. Hazel Croall provides a useful categorization of white-collar victims: the government (when victimized by tax evasion, fraud by public servants, and fraud on public services); organizations (when victimized through embezzlement, employee theft and other employee frauds); investors and savers (when victimized by financial frauds and other offenses that involve pensions, mortgages, and other financial services); consumers (when victimized by frauds such as false bargain offers, misleading descriptions, injuries from unsafe products); workers (when endangered by the employer's neglect of health and safety regulations); and the public (crimes against the environment that affect the local communities).²⁴

²⁰ Steve Tombs & Brian Williams, *Corporate Crime and its Victims*, in *Applied Criminology* 172 (Brian Stout et al eds., 2008); Wolhuter, *supra* note 11, at 40; CROALL, *supra* note 4, at 76; Fattah, *supra* note 15, at 25; Friedrichs, *supra* note 19, at 290.

²¹ WOLHUTER ET AL., *supra* note 11, at 42.

²² Danielle McGurrin & David O. Friedrichs, *Victims of Economic Crime on a Grand Scale*, 8 *JOURNAL INTERNATIONAL DE VICTIMOLOGIE* 147, 149 (2010).

²³ Cynthia Barnett, *The Measurement of White-Collar Crime Using Uniform Crime Reporting (UCR) Data*, US Dep't of Justice 5 (2000), available at http://www.fbi.gov/stats-services/about-us/cjis/ucr/nibrs/nibrs_wcc.pdf.

²⁴ CROALL, *supra* note 4, at 84-88.

The purpose of this study is to focus on a specific type of white-collar crime victim: the corporation. In this sense, the corporation may act as a “victim-perpetrator” because it is the victim *and* the offender at the same time.²⁵ It might seem odd at first glance that the corporation can be both, but the *Enron* case provides an excellent example. There, the Chief Financial Officer, Andrew Fastow, was charged with conspiracy, wire fraud, securities fraud, and other crimes.²⁶ Enron was the perpetrator because it was vicariously liable for its employee’s actions, but it was also the victim because the employee defrauded Enron itself.²⁷ The corporation’s role as a victim is an interesting phenomenon that this current study seeks to address more in-depth.

III. THE CURRENT STUDY: THE CORPORATION AS VICTIM OF WHITE-COLLAR CRIME

A. Design of the Study

This study was developed by the University of Leipzig and RölfsPartner and it involved surveying 338 private and public sector companies of different sizes and from a variety of industries, including financial, healthcare, IT/telecommunications/media, construction, automotive, and others. Qualitative and quantitative methods of research were implemented. The qualitative portion involved in-depth conversations with representatives from six public sector companies. Because the strength of the company depends on the presence of certain prevention instruments, it was necessary to first determine the occurrence of prevention instruments in the public sector in comparison to the private sector. To this end, a broad-based quantitative study was carried out through the use of a standardized data entry form.²⁸ Furthermore, the victimization rate was recorded

²⁵ Alan C. Michaels, *Fastow and Arthur Andersen: Some Reflections on Corporate Criminality, Victim Status, and Retribution*, 1 OHIO ST. J. CRIM. L. 551, 552 (2004).

²⁶ *Id.* at 556.

²⁷ *Id.*

²⁸ The sample for the quantitative portion of the study was derived from the Hoppenstedt Managerdatenbank, which is a database that offers information on over 900,000 leaders of German public and private sector companies. See HOPPENSTEDT MANAGERDATENBANK, <http://manager-datenbank.de/> (last visited April 22, 2015).

so that it was possible to examine the impact of the presence of certain compliance tools on the crime rate within the company.

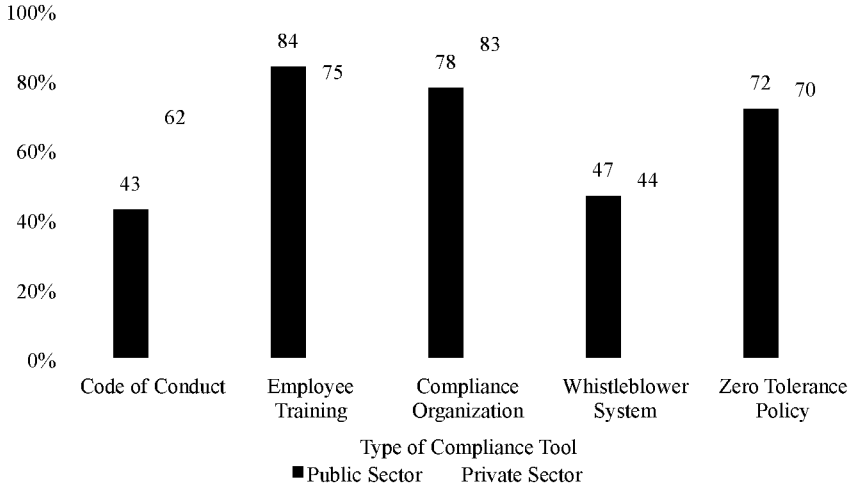
B. Analysis of the Quantitative Results

For the quantitative part of the study, five hypotheses were derived from the past state of research and from basic assumptions of victimology. Also central to the development of these hypotheses is the fact that German public sector companies are required to implement certain compliance tools whereas private sector companies are not.²⁹ According to the first hypothesis, if a corporation belongs to the public sector, there are more compliance tools available than in the private sector. However, the data showed that the public sector is generally not better equipped than the private sector in regards to compliance. This is demonstrated by the following diagram:

We developed a list of certain criteria that was most important for our study, including the desire to engage with leaders that had a legal or compliance background. This led to telephone calls and emails with 1,776 managers that represented a variety of different companies. The contacts were given a description of the research project, including a link to an anonymous platform where they could fill out our survey. This took place between May 1, 2011 and October 1, 2011. In the end, 338 public and private sector companies fully participated in the study, which allowed valuable insights to be drawn.

²⁹ STEFFEN SALVENMOSER, ET AL, KRIMINALITÄT IM ÖFFENTLICHEN SEKTOR 2010: AUF DER SPUR VON KORRUPTION UND CO. 42 (2010).

D.1 Equipment with Prevention Tools



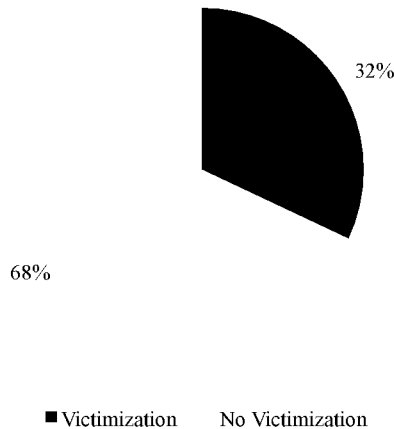
Although certain compliance measures are implemented more frequently in the public sector, the difference of two to five percentage points is negligible at best. However, a significant difference was found in regards to the creation of a code of conduct. Here, the public sector lags behind the private sector by 20%. The only area within the realm of a code of conduct where the public sector has a distinct advantage over the private sector is in regards to employee training. If a code of conduct exists, 84% of the companies in the public sector hold training on its content. By contrast, “only” 75% do so in the private sector.

The second hypothesis claims that if crime is discovered, then the response from the public sector company is to file a criminal complaint. German public law requires such companies to report an offense in so far as it is an offense of some gravity and a suspect is named.³⁰ This hypothesis is verified if these guidelines are implemented in practice.

³⁰ For examples of German laws regulating the public sector, see *Korruptionsbekämpfungsrictlinie Bayern*, available at <http://www.gesetze-bayern.de/jportal/portal/page/bsbayprod.psm1?showdoccase=1&doc.id=VVBY-VVBY000019675&doc.part=X&doc.origin=bs&st=vv>; see also *Verwaltungsvorschrift Korruptionsvorbeugung Sachsen*, available at

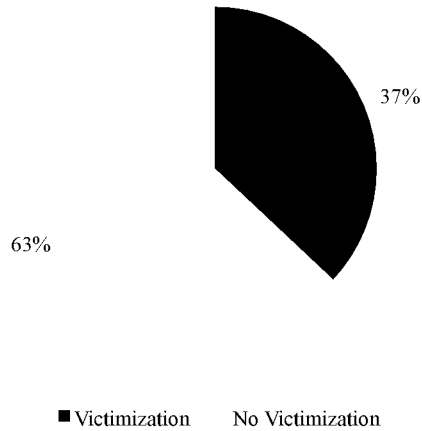
The first step in testing this hypothesis involved determining the general crime rates, while taking care to distinguish between cases of occupational and corporate crime.³¹ Because the term occupational crime refers to crimes of employees done to the detriment of the employer, a victimization of the company still exists in this respect. The victimization in the public and private sectors is distributed as follows:

D.2.1 Victimization Rate: Public Sector



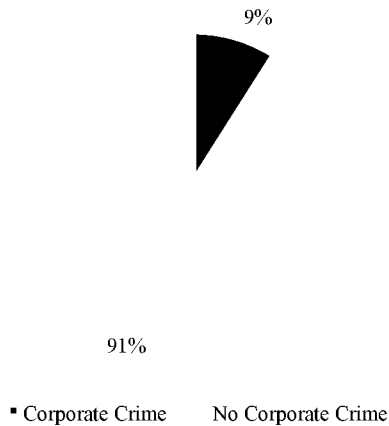
http://www.sicherheit.sachsen.de/download/SMI/VwV_Korruptionsvorbeugung.pdf; see also *Korruptionsbekämpfungsgesetz Nordrhein-Westfalen*, available at https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&gld_nr=2&ugl_nr=20020&bes_id=6824&menu=1&sg=0&aufgehoben=N.

³¹ Clinard and Quinney defined occupational crime as a “violation of the legal codes in the course of activity in a legitimate occupation.” See MARSHALL CLINARD & RICHARD QUINNEY, *CRIMINAL BEHAVIOR SYSTEMS: A TYPOLOGY* 131 (2d ed. 1973).

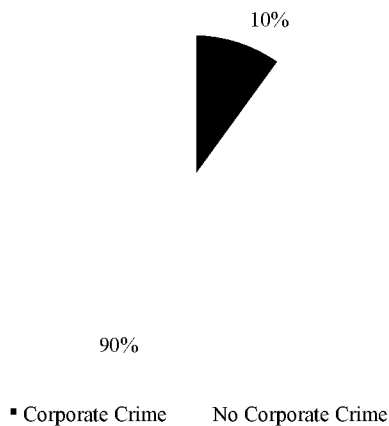
D.2.2 Victimization Rate: Private Sector

The conclusion to be drawn is that the victimization rate is lower in the public sector than the private sector. However, there is only a slight difference of five percentage points. It is likely the difference is due to the control paradox and indirectly confirms the hypothesis that the control mechanisms in the public sector have a smaller effect. Therefore, occupational crime in the public sector does not occur less frequently than in the private sector; it is just rarely detected and thus remains in the dark. Relating to corporate crime (offense to the detriment of a third party), the following picture emerges:

D.3.1 Corporate Crime in the Public Sector



D.3.2 Corporate Crime in the Private Sector



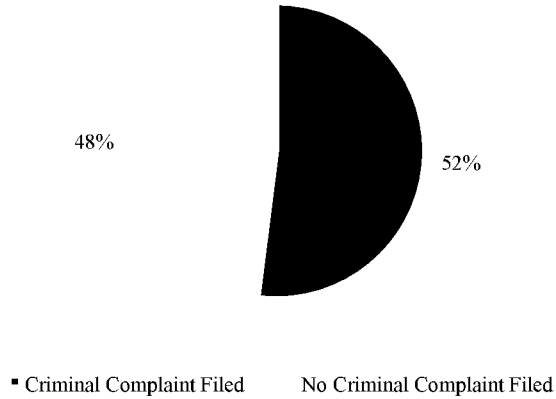
According to these diagrams, it is clear that corporate crime is equally distributed in the public and private sectors. The validity of the responses is questionable though because the number of reported crimes at the expense of a third party is very low. In addition, we

determined during the course of the interviews that the willingness of the people surveyed to report victimization seemed greater than the willingness to confess to offenses committed to the detriment of third parties. Despite our assurances of maximum anonymity, many contacts expressed fear during the telephone interviews that their responses could allow somebody to detect the company's identity.

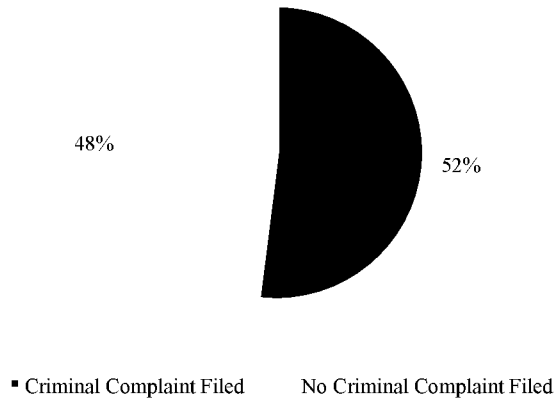
To further test the hypothesis, only those companies that reported victimization have been considered (in other words, in accordance with the diagram on victimization rate). Of interest is the response to the noticed victimization. It was expected that there would be a greater willingness to report in the public sector due to the existing obligations under German law.³² In reality, there was no difference between the groups, as private and public sector companies filed criminal charges in 52% of the cases of discovered victimization.

³² See German regulations, *supra* note 30.

**D.4.1 Reaction to Victimization:
Public Sector**



**D.4.2 Reaction to Victimization:
Private Sector**



This highlights that the public sector does not respond to victimization more frequently than the private sector. Therefore, the second hypothesis cannot be confirmed. Whether and to what extent

the application of labor law measures makes a difference is tested in the context of the fourth hypothesis, which will be dealt with later.

The third hypothesis assumes that the victimization risk is lower if compliance tools, a compliance organization, and reporting requirements are implemented. The following table summarizes the effect of compliance tools:

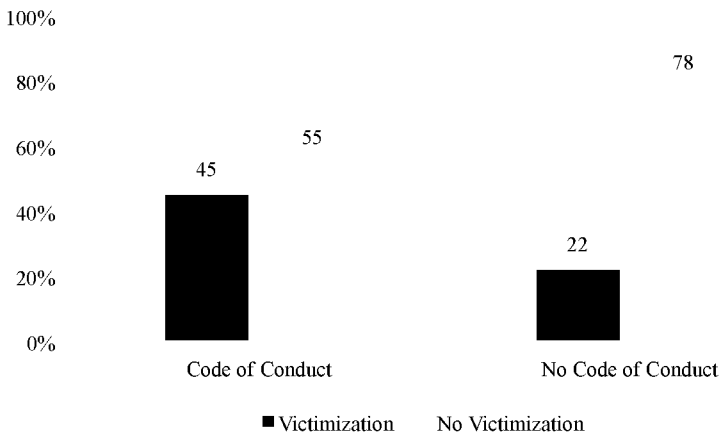
Prevention Level	Type of action	Compliance Tools
Primary	<ul style="list-style-type: none"> • Prevention of crime through lack of knowledge of the boundaries between permitted and prohibited behavior • Effect on the value orientation of the employees • Sharpening awareness of the issues of compliance and crime prevention 	<ul style="list-style-type: none"> • Code of Conduct • Employee training on compliance products and criminal law related issues • Anti-corruption training program
Secondary	<ul style="list-style-type: none"> • Improving oversight of threatened legal interests • Increase of the risk of detection 	<ul style="list-style-type: none"> • Existence of a compliance organization • Existence of a whistleblower system
Tertiary	<ul style="list-style-type: none"> • Consistent sanctioning of discovered violations 	<ul style="list-style-type: none"> • Zero tolerance strategy • Introduction of

		criminal and labor law measures
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According to the assumptions in the table above, these compliance tools improve the standard knowledge of employees, affect their value orientation, provide for a higher standard of awareness, and create a more complete oversight of the threatened legal interests. This should reduce the risk of victimization in the long term, which should be verified by the third hypothesis.

To verify this hypothesis, the effects of individual compliance tools on the victimization rate were analyzed. These tools include codes of conduct, employee training, whistleblower and zero tolerance policies, compliance organizations, and reporting obligations. The following diagram confirms that public sector companies that do not have a code of conduct report victimization less frequently. The diagram highlights a 22% victimization rate in public sector companies that do not have a code of conduct versus a 45% victimization rate in public sector companies that do have a code of conduct:

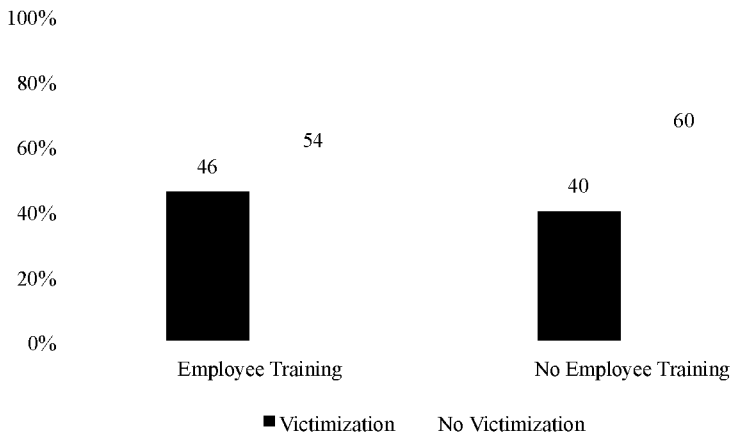
D.5 Victimization Probability Depending on the Presence of a Code of Conduct: Public Sector



A comparable picture emerges in the private sector. There, victimization was reported in 28% of the companies where no code of conduct was present and in 42% of the cases where there was a code of conduct.

In regards to employee training, the same trend is noticeable in the public sector: if no training is performed, the victimization rate is lower. The diagram below illustrates this point by showing that victimization occurred in 40% of the cases where no employee training was held while a higher victimization rate of 46% happened in public sector companies that did implement some sort of employee training.

D.6 Victimization Probability Depending on Implementation of Employee Training: Public Sector

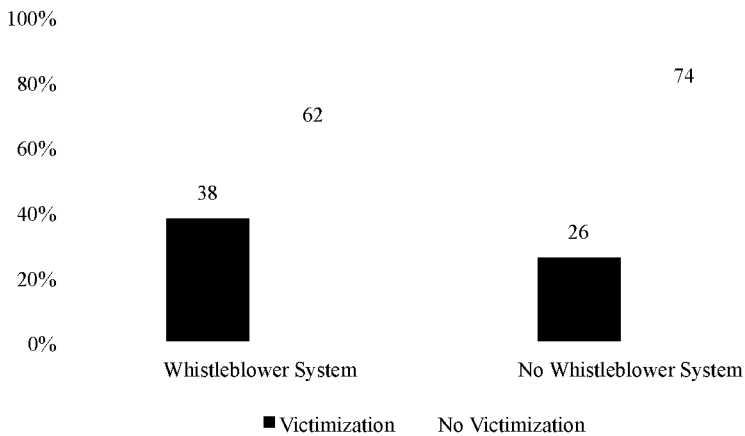


By contrast to the public sector highlighted above, the distribution is the opposite in the private sector: there was victimization in 41% of the cases where training courses were regularly held, but victimization was observed in 46% of the cases where no training took place.

A similar trend emerges concerning whistleblower systems. In the public sector, victimization is detected more frequently if there is a whistleblower system. The diagram below reflects these results by showing that victimization is revealed in 38% of the public sector

companies that employ a whistleblower system in comparison to a lower rate of 26% in public sector companies that lack this mechanism.

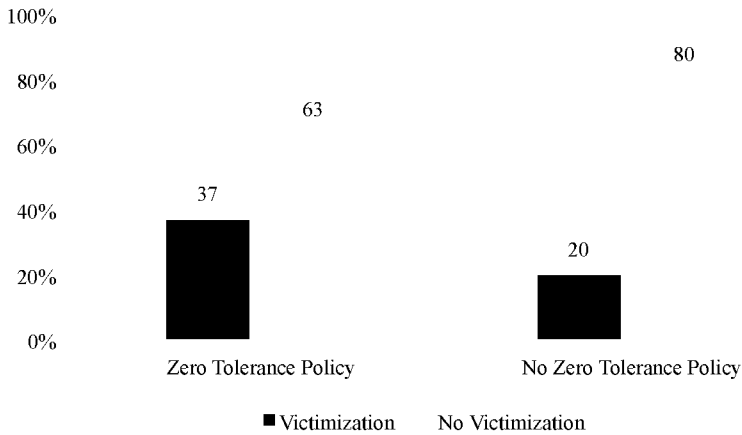
D.7 Victimization Probability Depending on the Presence of a Whistleblower System: Public Sector



The distribution is similar in the private sector. Victimization was observed in 42% of the cases where there was a whistleblowing system compared to 34% in companies that had no such system.

If the public sector company has a zero tolerance policy, victimization is more frequently observed by a difference of 17 percentage points. The diagram below confirms this by demonstrating that victimization is noted in 37% of public sector companies that utilize a zero tolerance policy in relation to 20% of public sector companies that do not employ this policy.

D.8 Victimization Probability Depending on the Company's Zero Tolerance Policy: Public Sector



However, this difference is not as strong in the private sector. If a zero tolerance policy is implemented, 39% of the private sector companies reported victimization. If no zero tolerance policy is implemented, victimization was detected in 33% of the cases, thereby producing a difference of only six percentage points.

With regard to the presence of a compliance organization in public sector companies, the victimization rate is not much different regardless of whether there is an organization or not (32% versus 31%, as shown in the diagram below).

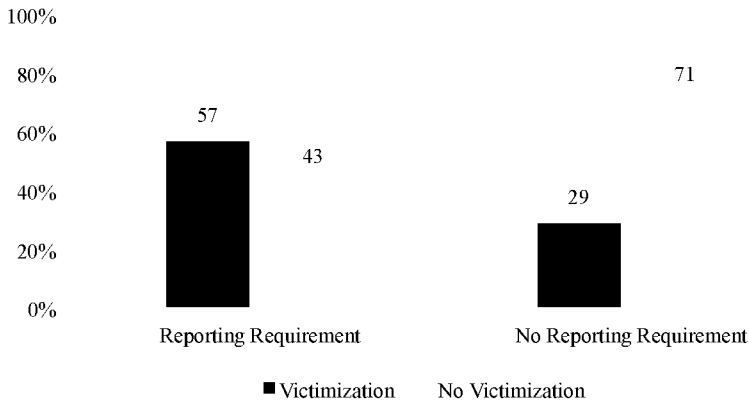
D.9 Victimization Probability Depending on the Presence of a Compliance Organization: Public Sector



On the other hand, the difference between the presence of a compliance organization and the lack thereof is stronger in the private sector. If there is a compliance organization, 39% reported victimization. If there is none, victimization was found in 28% of cases. This produces a difference of eleven percentage points.

Concerning the obligation to report violations to the supervisory board, if a director of compliance exists in the company, he/she has a reporting obligation to the executive board in approximately 95% of the cases, but only 16% of the cases require reporting to the supervisory board. If a public sector company requires a report to the supervisory board, victimization occurs in 57% of the cases. In the absence of such a reporting requirement, only 29% of public sector companies are victimized.

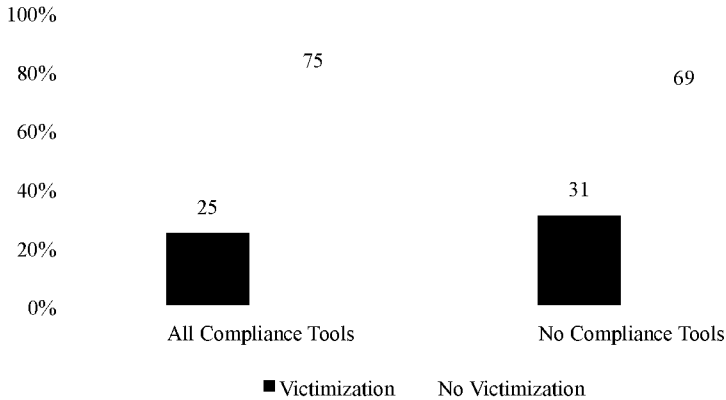
D.10 Victimization Probability Depending on the Existence of Reporting Requirements of the Compliance Officer to the Board: Public Sector



The results differ in the private sector. If there is a reporting obligation, victimization occurs in 43% of the cases. This contrasts to 40% in cases where there is no reporting requirement, thereby producing a fairly small difference of only three percentage points.

With regard to the individual compliance elements, the third hypothesis does not hold because the victimization rate is always higher when the elements are implemented in the company. Thus, individual instruments only improve the detection risk of crime and do not act as primary prevention tools that can prevent victimization. However, a different picture arises when all compliance instruments are viewed as a whole, rather than as an individual instrument.

D.11 Victimization Probability Depending on the Presence of all the Above-Mentioned Compliance Tools: Public and Private Sectors

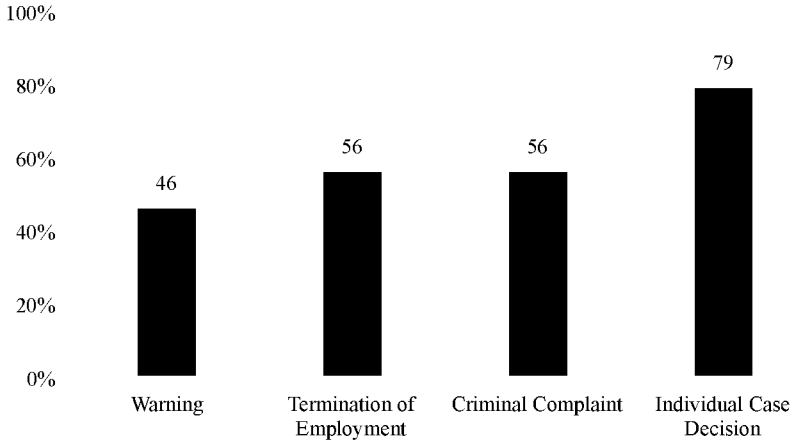


This diagram concludes that the sum of the compliance tools leads to effective prevention in both the public and private sectors. By considering all compliance tools together, the victimization risk is significantly lower than companies that have not implemented compliance tools. Companies that have comprehensive victimization protection not only recognize the offenses committed against them, but they also appear to reduce the risk of victimization altogether.

Hypothesis four asserts that if a company commits to a zero tolerance policy and handles all forms of corporate crime with criminal charges and/or labor law measures, then this strategy is implemented consistently. A two-step approach was applied to test this hypothesis. In the first step, we questioned which type of zero tolerance policy is used (i.e. how does your company respond to a compliance violation?). Here, multiple answers were possible, including issuing a warning, terminating employment, filing criminal charges, or taking an individual decision. This was followed by questioning whether an investigation was launched against the perpetrator and/or whether labor law measures were taken. This information allows a comparison and consideration of whether the zero tolerance policy is actually implemented. The following diagram

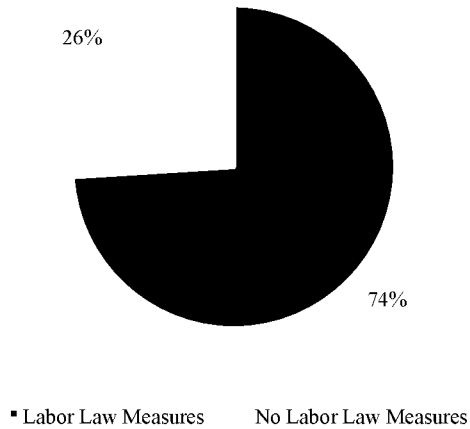
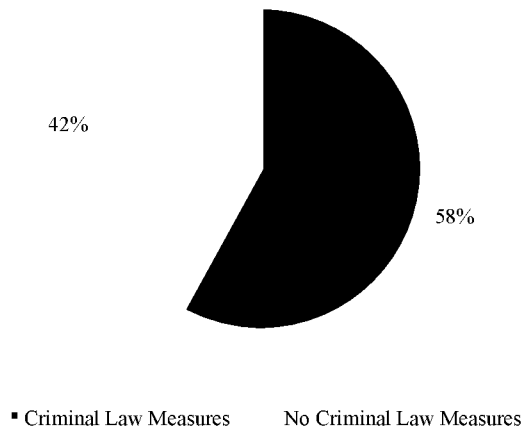
indicates how public sector companies implement their zero tolerance policy:

D.12 Implementation of the Zero Tolerance Policy: Public Sector



Unsurprisingly, individual case decisions are the most frequent response in the public sector. A labor or criminal law action occurs in only half the cases. The situation is similar when comparing the results to the private sector, but here it seems to be less severe. An individual decision was reported by 82% of the private sector companies surveyed, a warning was reported in 37% of the cases, a complaint was filed in 39% of the cases, and 48% of the companies surveyed indicated that they considered terminating employment in response to compliance violations.

The second step in our methodology relates to the actual response to compliance violations. These diagrams demonstrate that labor law measures occur in the majority of cases involving public sector companies.

D.13.1 Response by Labor Law Measures: Public Sector**D.13.2 Response by Criminal Law Measures: Public Sector**

However, the following picture emerges if one considers a combination of both a criminal and labor law measure:

D.14 Combined Reaction to Victimization: Public Sector



The public sector company responds to compliance violations in 84% of the cases. The distribution is similar in the private sector, with labor measures in 85% of the cases and criminal charges in 53% of the cases. Looking at the total number of reactions, there is a response in 92% of the cases through labor or criminal law measures. Contrary to expectations, the private sector responds more consistently against victimization than the public sector.

The final hypothesis postulates that if compliance is perceived as inefficient, then no prevention tools are implemented, despite the company experiencing victimization. This can also be termed “learned helplessness,” which means that compliance measures are omitted despite victimization because managers perceive victimization as inevitable and consider any defense hopeless.³³ The first step in analyzing this hypothesis is to consider whether victimization prevention tools are lacking. The second step then contemplates the perceived effectiveness.

³³ For an overview of “learned helplessness” see MARTIN SELIGMAN, *ERLERNTE HILFSLOSIGKEIT* (4th ed. 2011).

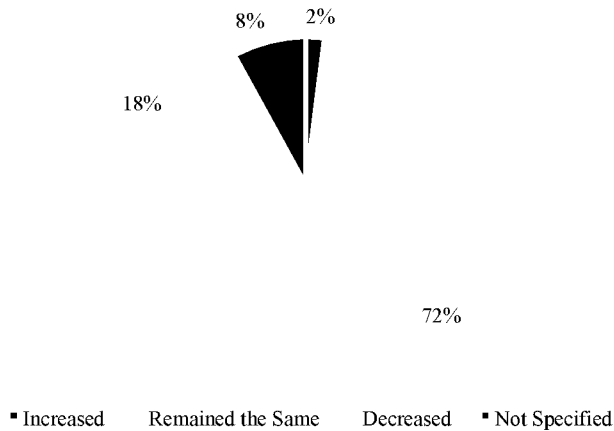
D.15 Number of implemented prevention tools depending on the experienced victimization in the Public Sector

Number of implemented prevention tools	Number of public sector companies experiencing victimization	Percent
0	1	4.3
1	2	8.7
2	4	17.4
3	4	17.4
4	3	13
5	8	34.8
6	1	4.3
Total	23*	100

*The total of public sector companies surveyed was 72 and 23 of these reported experiencing victimization

In the public sector, there is only one company that experienced victimization without implementing any compliance tools, which amounts to 4.3% of the public sector companies that experienced victimization. In the private sector, the rate at which companies experienced victimization without implementing compliance tools is slightly higher at 7.1%. Considering the perceived effect of the compliance elements, the following picture emerges of the public sector:

D.16 Assessment of the Crime Rate Since the Introduction of Compliance Measures: Public Sector



The conclusion is that compliance efficiency is estimated to be low. A majority of the surveyed companies in the public sector assume that the introduction of prevention tools does not alter the frequency of incidents in the long term. Few believe that the incidence of compliance violations increased and a greater proportion (18%) think that there was a decline. In total, 74% consider the efficiency of prevention tools to be low. When compared with the private sector, 12% are of the opinion that the number of compliance violations has increased, 58% believe it has stayed the same, and 19% think it has decreased. The private sector also considers the efficiency of compliance to be low.

The subjective beliefs of the respondents concerning the effect of compliance tools differ materially from the findings collected in this study. There is thus a need for clarification regarding the effect of compliance tools. An increase in the victimization rate is a positive effect of compliance tools because the company can actively react to its experienced victimization, rather than having its victimization remain hidden. Coordinated compliance tools create prevention effects that help companies refrain from committing occupational crimes. This effect is obviously underestimated by those companies affected and fosters the “learned helplessness” motif rather than

contributing to an expansion and improvement of the compliance system.

C. Analysis of the Qualitative Results

In addition to the quantitative portion of this study, a qualitative survey was also undertaken, which led to concrete knowledge about circumstances surrounding victimization.³⁴ This involved holding conversations with current and former high-level representatives of six German public sector companies that had experienced victimization. We assured the anonymity of the conversation partners in an effort to encourage a free-flowing discourse.³⁵ What follows here is a summary of what the conversation partners revealed during the course of our dialogue. We will see that control instruments were formally available to the public sector companies, but that there were shortcomings in their design that led to significantly reduced resistance at the time of victimization. This reduced strength enabled not only a singular victimization, but also allowed the perpetrators to harm the company in the long-term through multiple committed acts of fraud. According to our partners, a variety of characteristics contributed to their company's victimization:

1. *Control by a Second Manager*

Insofar as the company had a second manager, a difference in power existed between the first manager (who acted as a perpetrator) and the second manager, so long as it was not the case where the perpetrator and second manager were acting in collusion (as was

³⁴ The methodology of the qualitative portion of this study followed the research principles developed by Roland Girtler. Here, we utilized the "ero-epic dialogue" method of conversing with our partners, which emphasizes the equality of the interviewer and interviewee. In other words, both parties are on the same footing and actively participate in the dialogue through the posing of questions. This hopefully produces a more agreeable atmosphere that allows the conversation partner to open up. For a more detailed overview of this method of research, see ROLAND GIRTNER, *METHODEN DER FELDFORSCHUNG* (4th ed. 2001).

³⁵ The conversation partners were chosen by the leaders of this study through their own personal contacts. Their willingness to engage in the qualitative study is greatly appreciated.

reported in one case). Thus, controls such as the “Four Eyes Principle”³⁶ did not occur on equal footing between the two managers. The non-criminally acting manager was responsible for a less significant business area, so he obtained no insight into the business politics and occupationally relevant areas controlled by the perpetrator. In other words, he/she was effectively iced out. Therefore, the second manager was marginalized and had to submit to the perpetrator because the perpetrator radiated power and had an aura of sanctity about him/her.

Our conversation partners also reported that the perpetrator established a good network into local politics, business, and the community. Accusations or complaints of wrongdoing were perceived as risky for one’s own progress because nobody could oppose the social capital of the perpetrator. By contrast, the loyalty of other employees was obviously rewarded. This resulted in work-related subcultures, where members created the impression to the outside world that all was right. Even where the company’s bylaws required a “Four Eyes Principle” as a limitation on managers during certain business activities, this was disregarded or did not take place on equal footing, so that a substantive review by the second manager did not occur.

Similar results occurred where the wrongful acts were committed by an executive. The department, which was led by the perpetrator, was hermetically isolated against any controls or limitations. Inquiries that were too critical of the executive’s actions were avoided because the company depended on this executive. Furthermore, the executive was granted many freedoms because he/she had led the department with good commercial success.

2. *Control by a Supervisory Board*

Public sector companies possess another control mechanism in the form of a supervisory board. While experts sent to the

³⁶ The Four Eyes Principle refers to the idea that two different people should approve important management decisions (hence, four eyes). See Jan Theodor Schickora, *Bringing the Four-Eyes-Principle to the Lab*, MUNICH DISCUSSION PAPER NO. 2011-3, available at http://epub.ub.uni-muenchen.de/12160/1/The4EP_Schickora.pdf.

supervisory board should have appropriate skills and experience, our conversation partners noted that in practice, a large number of supervisory board positions were occupied by members who came from a variety of professions that were not necessarily related to the required insights associated with the management of a public company.

They also revealed that supervisory board members rarely questioned the actions of the manager. This was especially true when the numbers added up and the company was economically successful. The supervisory board members put the manager in a position of comfort and did not question the information at all or did not question the information sufficiently. In some instances, a good personal relationship existed between the manager and certain supervisory board members as a result of belonging to the same political party, which further precluded critical inquiries.

3. *Control by a Works Council*

Insofar as the company mandated a works council or similar employee organization, no economic committee was formed despite this being required under German law.³⁷ Therefore, the works council received no information about the economic and financial situation of the company and was not in a position to critically question certain business transactions.³⁸ The manager effectively eliminated any advances in this direction so that a bottom-up control vacuum was clear. In essence, the works council was not terribly effective.

4. *Control by an Auditor*

According to our conversation partners, routine audits were carried out within the company in accordance with German law.³⁹ The representatives of the majority shareholder, who issued the order for the audit, preferred smaller regional accounting firms that had no special expertise in the investigation of corporate crime. Insofar as

³⁷ § 106 BetrVG requires the formation of an economic committee in all companies with more than one-hundred permanently employed workers.

³⁸ § 106 (3)(1) BetrVG specifically mentions the economic and financial situation of the company as being the type of information that should be presented to the economic committee.

³⁹ § 53 (1)(1) HGrG provides that an audit of a company may be requested.

suspicious allegations were mentioned in the report, these were not investigated or the investigation amounted to nothing because the auditors did not further question the explanations given by the manager.

5. *Control by Changed Problem Awareness or Emergence of a Charismatic Guard*

A turning point in the company's victimization was identified in every situation mentioned by our conversation partners, which was attributable to changed awareness by a single manager or the emergence of a charismatic guard. In complex situations, changing awareness of the problem tipped the balance in favor of more intensive controls. This was conveyed in one instance, where anti-corruption training imparted the required knowledge to the manager that allowed him to correctly classify a legal situation and to connect the existing suspicions to further investigations.

Certain common characteristics were gathered in the instances where charismatic guards emerged. They were experts in economic affairs, personally and economically independent, and were committed to traditional values. They were in some way involved with the victim company, such as holding a position in the supervisory board or representing the majority shareholder. This person was suspicious of the perpetrator and had a lower tolerance for inconsistencies in annual reports, information, or responses from the perpetrator in regards to certain transactions or unanswered questions in the auditors' reports. This person was ready to get to the bottom of the incident in question. Insofar as resistance was encountered, this person's iron will did not allow any room for stonewalling or other tactics.

In his or her work, the charismatic guard accessed business documents and tried to gain clarity through information from employees and the questioning of suspects. Before taking further steps, the charismatic guard informed the competent bodies of the suspicions, which triggered compulsory action by the representatives of the majority shareholder and other members of the supervisory board. In the surveyed cases brought to light by our conversation partners, the final consequence involved both labor law measures being implemented, as well as criminal charges being filed.

D. Typology of Companies According to Victimization Risk

The results of this study allow for the creation of a victim typology of companies:

Victim Typology	Compliance Instruments	Fraud	Discovery	Company's Risk	Victimization Degree
Step 1: Unprotected	No compliance instruments implemented	Fundamentally in the dark	By chance, no systematic discovery	Information is uncontrolled and often anonymously given to the corporate bodies or directly to the press / very high reputational risk	High on all three levels, often undiscovered
Step 2: Semi-protected	Few compliance instruments, in particular without a structured whistle blowing system	Partially in the light, partially in the dark	By chance, still based on insufficient systematic instruments	Information is more likely given to corporate bodies directly than to the press / still high reputational risk	High on primary and secondary levels, the introduced instruments on the third level controversial
Step 3: Protected	All relevant compliance instruments and inclusively structured whistle blowing system – recently implemented	Extensively in the light, through the overall efficacy but filled with a rise of cases	Systematic instruments operate, the rest by chance	Increased detection rate through more cases, but risk tends to be controlled	High on the primary level, low on the secondary level, significant risk at the tertiary level of miscalculation of the findings as a perceived increase
Step 4: Professionally protected	All relevant compliance instruments and	Extensively in the light	Systematic instruments function	Consistently high discovery and detection rate,	Reduced on all three levels

	inclusively structured whistle blowing system – effectively implemented for awhile			reduced risk and well controlled	
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E. Leaving the Victim Role Behind

In accordance with the table above, a company should determine which typology level they are at, regardless of whether the company has knowingly been victimized. Based on this diagnosis, there is a need for action to determine how the ideal level of Step 4 can be reached. The following table lists possible destabilizing factors while recommending a course of action:

Personnel and organizational destabilizing factors	Recommendations for action
Competence deficits manifest themselves in outdated and deficient bylaws, guidelines, and operating procedures and protocols of meetings of shareholders and board members.	Development or revision of legal and procedural aspects
Control vacuum of management and overriding of control principles by: <ul style="list-style-type: none"> • Insufficient documentation of management decisions. • Single knowledge about decision-relevant reasons. • Fraud, or fraud risks are 	<ul style="list-style-type: none"> • Full and transparent documentation of management decisions and management meetings, as well as ensuring the filing and archiving. • Regular review of the adequacy of management and business processes by independent internal or

<p>not recognized due to the lack of a separate, independent review body.</p> <ul style="list-style-type: none"> • Ineffective Four Eyes Principle as a control function for the joint representation by management and proxies. • The casting of supervisory committee positions takes place according to political criteria and less according to qualitative criteria. • “Weak” works council. 	<p>external auditors who are experienced in fraud investigations.</p> <ul style="list-style-type: none"> • Achieving a balance of personalities, dissolution of cliques and spoils systems, for example, by the appointment of additional full-time or part-time management or proxies, qualification training opportunities for works councils. • Casting of supervisory positions with independent and competent persons.
<p>Lack of compliance tools or deficits in compliance management system:</p> <ul style="list-style-type: none"> • Lack of reporting channel for whistleblowers • Missing or incomplete regulations for employees and suppliers • Lack of monitoring of the prevention effect • Workplace- related and supplier-related subcultures 	<ul style="list-style-type: none"> • Establishment of a whistleblower reporting system, for example, a whistleblower hotline or ombudsperson • Creation/supplementation of a code of conduct for employees and suppliers and others with auditing rights in cases of suspected non-compliance • Regular compliance and fraud reporting to the supervisory board • Regular compliance audits, monitoring of the

	effectiveness and development of compliance products for sustainability assurance
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III. CONCLUSION

White-collar crime and victimization are two areas within criminology that have produced some research, but could still use more. The purpose of this study was to address certain gaps pertaining to corporate crime and victimization and to assess the role of compliance measures. In particular, this study focused on the role of the company as a victim of corporate crime. Through the presentation of the results, a clearer picture has emerged. In particular, the implementation of certain compliance tools is a vital step in discovering victimization of the company. Moreover, an effective and sustainable compliance program is needed for the long-term health of the company in an effort to ensure that the company does not end up in a victim career. It is therefore not surprising that it is in the best interests of both private and public sector companies to assess their prevention levels and determine which compliance tools will help them best achieve maximum protection.