



## Criminal Compliance and Anticorruption

*Stakeholders*

García – Munté Energía S.L.



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01

*Introduction*





Culture

Compliance is a strategic component of GME's corporate culture.

In this regard, GME's leadership position and reputation are the result of many years of effort and dedication. As such, the inappropriate behavior of even a single employee or collaborator could potentially damage our image and reputation in a very short period of time.



Internal  
Compliance

All professionals at GME must carry out their activities in accordance with applicable laws and regulations, the Code of Ethics, and all other internal compliance-related policies.



Professional ethics

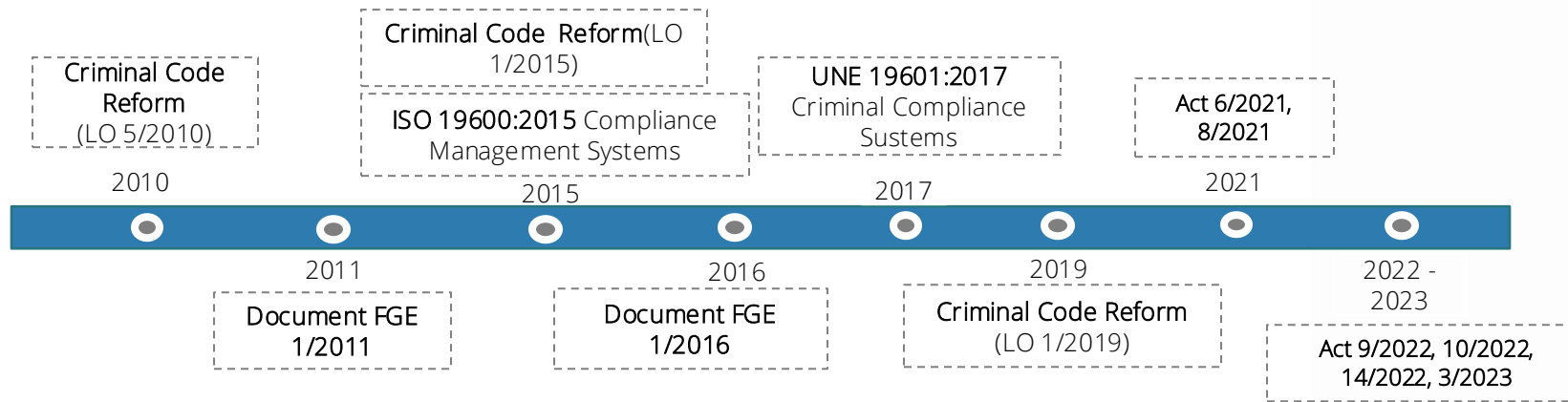
In this way, professional ethics is a fundamental value in the development of GME's work, acting as a driver of trust both for our clients and for society at large. Ethical behavior is grounded in the Group's principles and values. Therefore, beyond strict compliance with laws and internal regulations, all board members, executives, and employees are required to act with the utmost honesty and transparency.

02

*Regulatory context*



## 02 Regulatory context



### When it appears in Spain?

The Criminal Code Reform of 2010 (LO 5/2010) introduced for the first time the criminal responsibility of legal persons, which arises if certain offenses are committed.



*A specific list of offenses exist for which such responsibility can exist (articles 31 bis and 129).*

### What does it mean for companies?

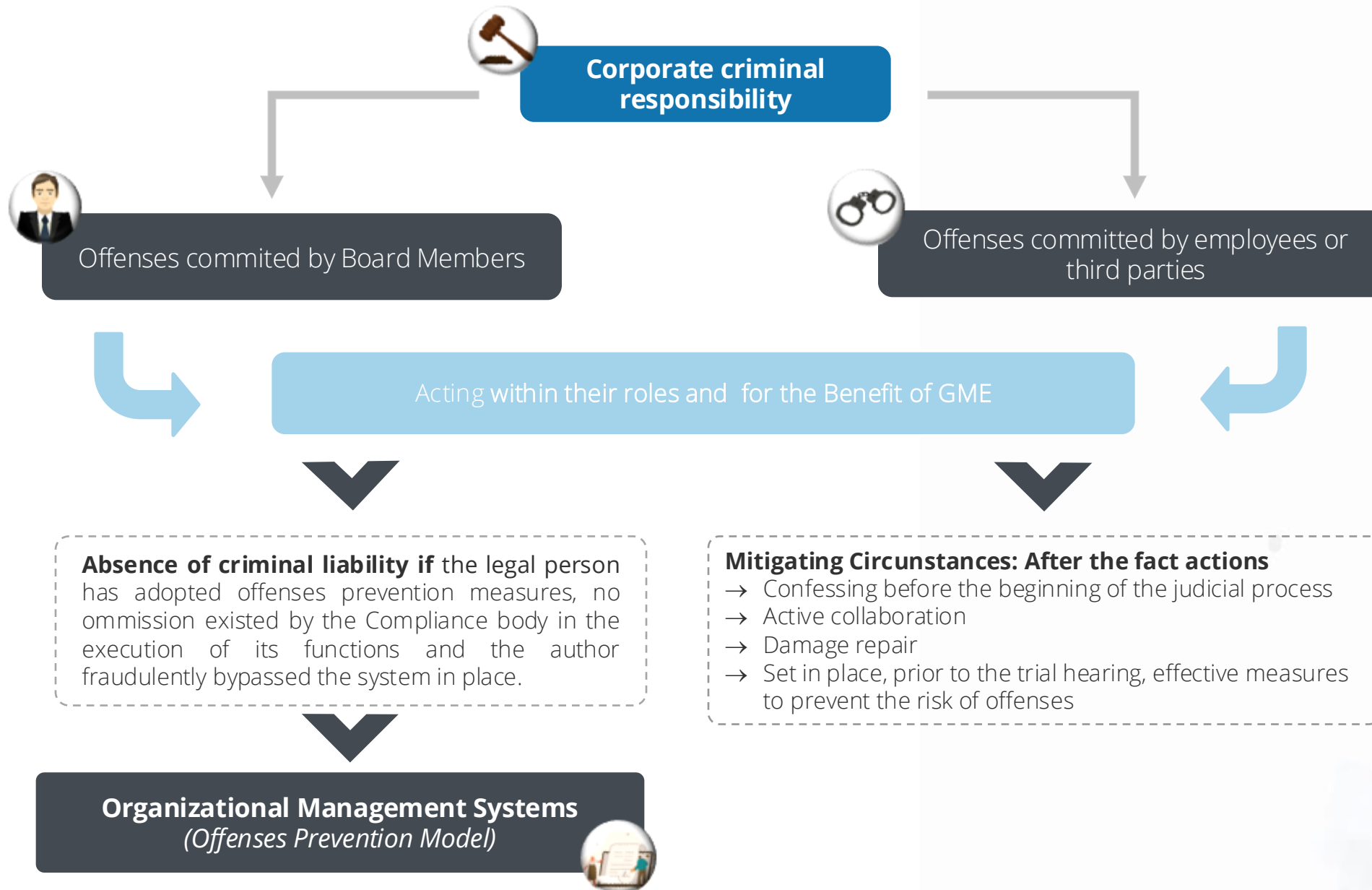
The main reform of the Criminal Code happened in 2015 (LO 1/2015).



Article 31 bis introduced the **Criminal Risk Prevention Model** as a mechanism that can lead to the exoneration of a legal person criminal responsibility.

## 02 Regulatory context

Requirements for giving rise to a legal person's criminal responsibility



### Requirements

- The offense must be one included in the closed list (*numerus clausulus*).
- The author must be a member of the board, an executive or a member of the personnel
- That the criminal offense was carried out in the name of or for the account of the legal person
- That the offense resulted in a **benefit** (whether direct or indirect) for the legal entity. Benefit shall be understood as including cost savings, strategic advantages, intangible or reputational gains, etc. It is not necessary for the benefit to have been actually obtained; it is sufficient that obtaining such a benefit was the intended objective

## 02 Regulatory context

### *Criminal liability: legal vs natural persons*

La tipología de penas que establece el Código Penal son las siguientes, en función de si se trata de una persona jurídica o una persona física:



#### Legal person criminal liability

- Fine
- Extinction
- Activity suspension
- Business location closure
- Prohibition to do a certain business activity in the future
- Disqualification for public benefits and contracts
- Judicial intervention

The criminal liability of the legal entity is **INDEPENDENT** from the criminal liability of the individual who committed the offense. This means that both can **COEXIST** and that **ONE DOES NOT EXCLUDE THE OTHER**. The legal entity is held accountable for its own conduct — specifically, for failing to implement effective controls to prevent criminal offenses or significantly reduce the risk of their commission.

- Fine based on instalments or proportional to the benefit obtained
- Prison sentences, which may extend up to 6 years
- Special disqualification from bidding for public contracts
- Special disqualification from holding public office or employment
- Special disqualification from engaging in industrial or commercial activities

#### Natural person criminal liability



#### Other consequences

Reputational damage

Damage claims

Corporate inefficiencies

Legal uncertainty

Market distortion

Harder roll-out internationally

## 02 Regulatory context

### *Grounds for exemption and mitigation of criminal liability*

Important

#### EXEMPTION

If the offense was committed by **directors, legal representatives, or individuals** with authority to organize and control within the company

1. The governing body **has effectively adopted and implemented, prior to the commission of the offense, organizational and management models** — namely, a Criminal Risk Prevention System.
2. Oversight of the functioning and enforcement of the implemented prevention system has been entrusted to a body within the legal entity with autonomous powers of initiative and control — such as the Ethics Committee.
3. The individual offenders committed the offense by fraudulently circumventing the organizational and prevention models.
4. There was no omission or insufficient performance of the supervisory, monitoring, and control duties by the body referred to in the second condition — i.e., the Ethics Committee and the Compliance Officers.

If the offense was committed by **employees** or collaborators who are under the authority of the aforementioned individuals

The legal entity shall be **exempt** from criminal liability if, **prior** to the commission of the offense, **it has effectively adopted and implemented an organizational and management model** that is suitable for preventing offenses of the nature of the one committed or for significantly reducing the risk of its commission — namely, a Criminal Risk Prevention System.

#### MITIGATION

##### After the fact mitigating actions

- Voluntarily confessing the offense before becoming aware that criminal proceedings have been initiated against the legal entity
- Collaborating in the investigation by providing evidence to clarify the facts
- Repairing or reducing the damage caused prior to the trial hearing
- Implementing effective measures for the prevention of criminal offenses before the oral trial

03

*The GME Group's Criminal Risk  
Prevention and Anticorruption  
System*

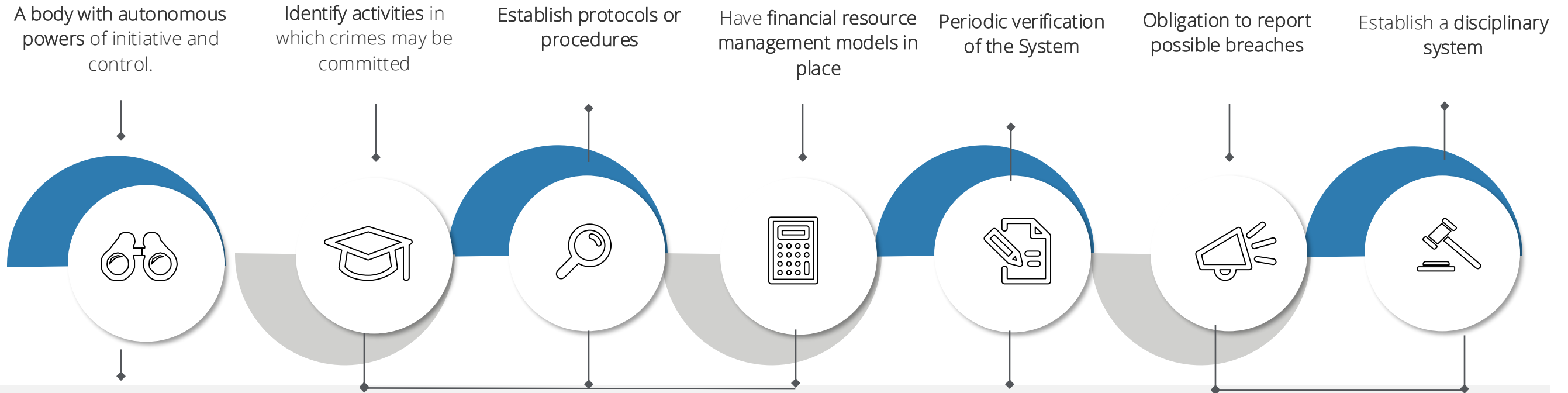


# 03 The GME Group's Criminal Risk Prevention and Anticorruption System



## Main elements of the System

The **Group's Criminal Compliance and Anticorruption System** provides GME with a control system whose purpose is to prevent the commission of crimes and promote a culture of ethics and compliance throughout the Group. The System is made up of the following **elements**:



### Compliance Function:

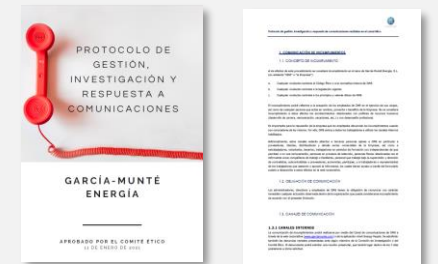
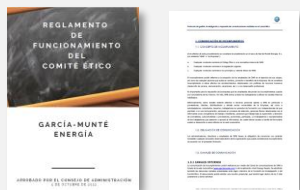
- o Corporate Ethics Committee
- o Local Compliance Delegates


- **Culture of compliance** (Group Training and Communication Plan).
- **Map of risks and controls** (corporate and local).
- **Internal Compliance Regulations of the Group** (Code of Ethics, Criminal Compliance Policy, Anti-Corruption Policy).

- **Monitoring, follow-up and continuous improvement** of the System.
- **Internal /external** verification of the System.

- **Corporate Ethics Channel**
- **Communications Management, Investigation, and Response Protocol**

Regulations of operation of the Ethics Committee





*“Any effective compliance program depends on the unequivocal commitment and support of senior management in order to instill a culture of compliance throughout the organization. If it is the top executives themselves who breach the organizational and prevention model, or who directly or indirectly reward or incentivize employees who violate it, it is difficult to accept that an effective program truly exists.”*

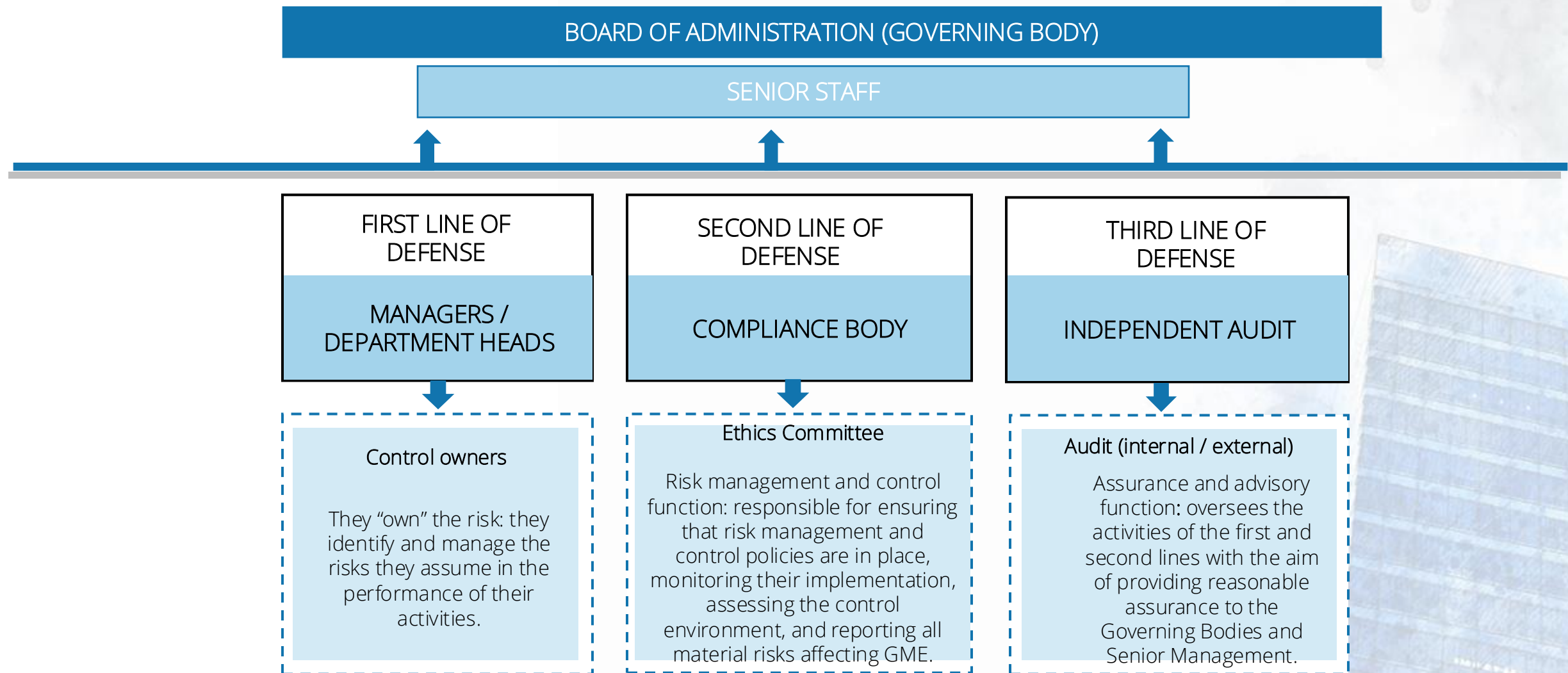
*Circular 1/2016 of the Spanish Public Prosecutor’s Office*

# 03 The GME Group's Criminal Risk Prevention and Anticorruption System



## System structure

GME's Criminal Risk Prevention System is based on the **Three Lines of Defense model**, which assigns specific compliance-related roles and responsibilities to the various bodies and individuals involved in the development of their respective functions within the System.



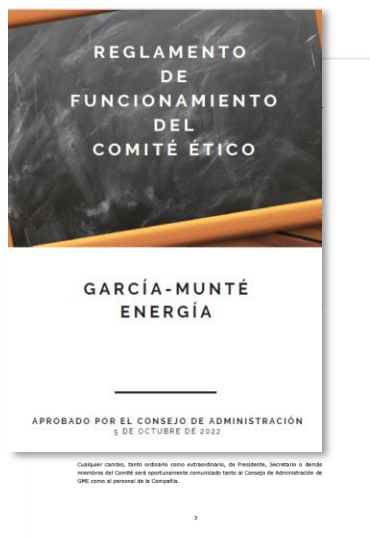
### 03 The GME Group's Criminal Risk Prevention and Anticorruption System

Corporate Compliance Function – Ethics Committee

The Corporate **Ethics Committee** is the body responsible for supervising the operation and compliance with the Criminal Compliance and Anticorruption System at Group level.

It is an autonomous and independent body, which is available to all the Group's professionals in order to provide them with advice on matters related to the System and its elements.

#### Functions of the Committee



	Promote a culture of ethics and compliance		Ensure with the Human Resources area the adoption of disciplinary measures
	Ensure compliance with the Code of Ethics, Compliance Policy, Anti-Corruption Policy and other internal regulations.		Report periodically and, at least annually, to the Board of Directors.
	Ensure the continuous improvement of the System (Compliance Action Plan)		Ensure that the System is subject to review and verification at planned intervals
	Supervise and keep updated the Criminal Risk and Control Matrix		Management of the Ethics Channel and processing of investigation files.
	Promote the daily operation of the System (accompany and advise staff in Compliance.)		Receive reports from the Compliance Delegates of subsidiaries and supervise the development of their functions related to the System.
	Training, communication and awareness		



*Remember...* the Ethics Committee has the permanent support of the local Compliance Delegates, who must collaborate in the implementation and compliance of the System in the subsidiary.

# 03 The GME Group's Criminal Risk Prevention and Anticorruption System

System pilars



## CODE OF ETHICS



It sets out the standards of conduct, values, and principles that must be observed by all GME personnel and business partners.

Prevention, detection, and eradication of irregular conduct, regardless of its nature.



### Behaviour standards



Regulatory compliance



Management of conflict of interests



Antitrust compliance



Fair treatment of employees



Social and environmental responsibility



Money laundering and Terrorism financing prevention



Available on the intranet and the website

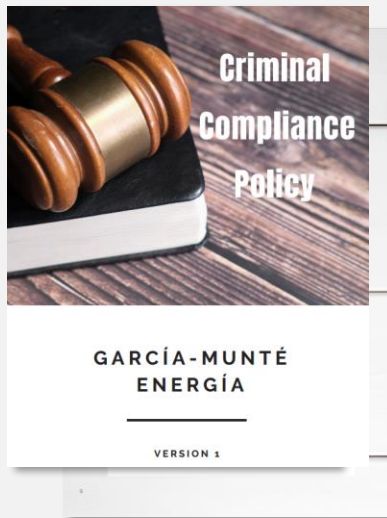
# 03 The GME Group's Criminal Risk Prevention and Anticorruption System

System pilars

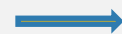


*At GME Group, the principle of zero tolerance applies to the commission of any unlawful act, especially those of a criminal nature.*

## Criminal Compliance Policy



Ethics Committee



Responsible for supervising and monitoring the System, as well as for resolving any compliance-related queries from staff.



Internal regulation



Code of Ethics and other internal compliance regulations that we are all required to know and comply with.



Training



All personnel must participate in the **mandatory** Compliance training sessions that are organized, as well as review communications related to this area.



Ethics channel



All personnel must use the **Whistleblowing Channel** to report any detected breaches.



Disciplinary measures



Breaches of the System will be **sanctioned** in accordance with the disciplinary system and applicable labor regulations.



Available on the intranet and the website

# 03 The GME Group's Criminal Risk Prevention and Anticorruption System

System pilars



GME Group upholds a zero-tolerance policy on anti-corruption matters.

## Anticorruption Policy



Do not offer or accept **gifts, money, or other items of value** to or from public officials or individuals from other companies (except in cases permitted by this policy).



Disclose any **conflict-of-interest** situations and refrain from participating in decision-making processes.



All donations or sponsorships to Public Sector Personnel **are strictly prohibited**, and any appearance of undue influence must be avoided.



Do not contribute, directly or indirectly, to **money laundering** or the financing of terrorism.



Follow internal procedures for personnel **recruitment** and third-party contracting.



Available on the intranet and the website

## 03 The GME Group's Criminal Risk Prevention and Anticorruption System

Other internal policies



### Manual for the prevention of Money Laundering and Terrorism Financing



→ It establishes criteria and procedures aimed at preventing money laundering or terrorist financing in business relationships with clients, suppliers, and other business partners, which could result in administrative and criminal sanctions for GME.



→ It establishes criteria and procedures to prevent and detect, at an early stage, acts and/or behaviors that **may restrict competition** in business relationships with competitors, clients, suppliers, and other business partners, which could result in administrative and criminal sanctions.

### Antitrust manual

### Fiscal Policy



→ It describes GME's Tax Compliance and Responsibility System, setting out both the values that **influence** and guide all decisions with tax implications, as well as the criteria and decisions applied in relation to the various taxes and levies that GME interacts with in the course of its business activities.

# 03 The GME Group's Criminal Risk Prevention and Anticorruption System

Corporate Ethics Channel



## Ethical Channel

### What can I communicate through the Channel?

- Any conduct contrary to the Code of Ethics or GME's internal regulations.
- Any conduct contrary to current legislation.

### What principles and guarantees does the Channel have?

- |   |   |
|---|---|
|  Confidentiality |  Security and independence       |
|  Anonymity      |  Protection and non-retaliation |
|  Accessibility |  Data protection               |

### Who receives and manages complaints?

The Ethics Committee is responsible for GME's Ethics Channel at Group level in charge of **processing and investigating reports** received through the Channel. It must always act with full **independence, impartiality and objectivity**.

To this end, the Committee has the support and assistance of the Compliance Delegates appointed at the local level.



### What communication channels are available to me?



Ethical Channel available on the corporate website ([www.garciamunte.com](http://www.garciamunte.com)).



Verbal reports made to a member of the Ethics Committee or to the Compliance Delegate.



Face-to-face meeting between the Ethics Committee/Compliance Delegate and the reporting person, which will take place within 7 days of such request.



E-mail address ([compliance@gme.energy](mailto:compliance@gme.energy)) available for the submission of inquiries.



The Group's Communications Management, Investigation and Response Protocol regulates the procedure for receiving and investigating communications received on the Channel.

The Protocol also regulates the **principles and guarantees** applicable in the processing of communications and investigation of the facts, as well as the **measures of protection against reprisals** directed at the informant.

04

*Functions, roles & responsibilities*



## 04 Functions, roles & responsibilities

### Special consideration to the Board



### What responsibilities does the Board of Directors face?

The liability of Board Members has a dual dimension:

Liability of directors for their own acts	Articles 31 y 31 bis CP <i>Liability for its own acts</i>	<ul style="list-style-type: none"><li>• <i>“Anyone acting as a de facto or de jure director of a legal entity, or on behalf of or as a legal or voluntary representative of another, shall be personally liable — even if they do not meet the conditions, qualities, or relationships required for the offense — when such circumstances exist within the entity or person on whose behalf or representation they act.”(Article 31 of the Spanish Criminal Code)</i></li><li>• Adopt and <b>effectively implement organizational and management models</b>, and</li><li>• Adopt appropriate <b>monitoring and control measures</b> aimed at preventing criminal offenses within the company.</li></ul>
Liability of directors by omission	Article 11 CP <i>Omission liability</i>	<ul style="list-style-type: none"><li>• Liability of directors for the actions of others, arising from the duty of guarantor — a legal duty incumbent on those who hold a position of authority and oversight over others (legal duty to act / obligation to supervise and control).</li><li>• Liability for the control of all risks arising from the company's business activities.</li><li>• Liability for failure to comply with their duty of diligence and care, which stems from the level of oversight required under the specific circumstances of each case.</li></ul>
Article 529 ter LSC <i>Control and Risk Management System being in place</i>		<ul style="list-style-type: none"><li>• <i>To fulfill the duties imposed by law and the company's bylaws with the diligence of a prudent businessperson, taking into account the nature of the position and the responsibilities assigned to each member.</i></li><li>• <i>The responsibilities of the Board of Directors regarding corporate compliance models are not limited to the provisions of the Spanish Criminal Code: the full range of actions to be carried out by its members is also rooted in the general duties established by the Spanish Companies Act (Ley de Sociedades de Capital – LSC).</i></li></ul>



In a hypothetical case involving the commission of a tax offense, where the taxpayer would be the company, but the person responsible for filing the tax return is the director, the director would be held criminally liable as the perpetrator if they failed to comply with the tax obligation — **even if they are not the taxpayer themselves.**

## 04 Functions, roles & responsibilities

*Special consideration to the Board*



### What functions does the Board of Directors have?

Both the Spanish Criminal Code and other applicable regulations and best practices identify the Board of Directors as the ultimate body responsible for compliance models within organizations.

*Tone from the top*

#### THE SUPPORT OF THE BOARD OF DIRECTORS: A PRIORITY WITHIN CORPORATE COMPLIANCE SYSTEMS (“TONE FROM THE TOP”)

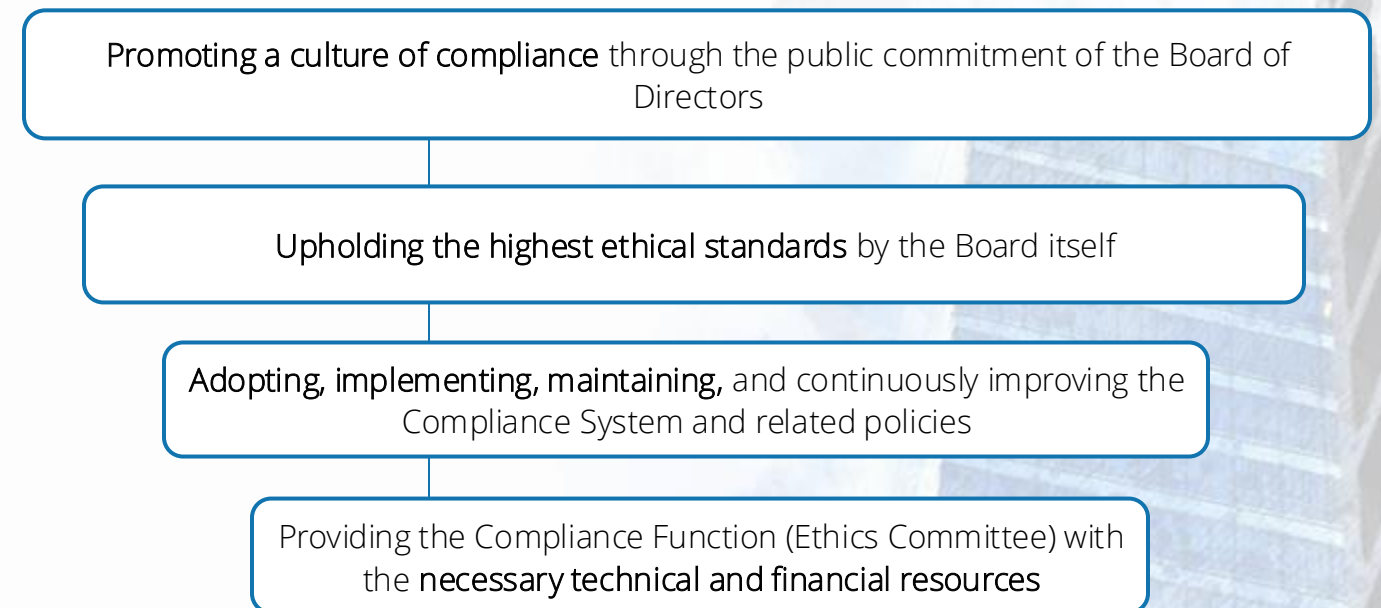
The culture of an organization is heavily influenced by the level of commitment shown by its Board of Directors. In this regard, a **true compliance culture** cannot exist unless it is actively promoted by top management.



The Board of Directors is entrusted with the responsibility of creating an appropriate compliance environment. In essence, cultural deficits are what enable employees to engage in improper conduct — **even unintentionally**.



Corporate governance and compliance systems are inspired and sustained by a **strong commitment to ethical principles**, transparency, and leadership in the application of best practices.



## 04 Functions, roles & responsibilities

*Special consideration to the Board*



### Adoption, Implementation, and Oversight of the Criminal Compliance System

The role of the director is intrinsically linked to their special duty of care and guarantor position within the company.

In general, the Board of Directors acts as the guarantor of the company's lawful conduct, and any unilateral attempt to detach from this duty — without respecting the principles of objective attribution (permitted risk and principle of trust) — leads to liability.

#### COMPANY REPRESENTATIVE

- Management of the company
- General administrative functions
- Legal representation of the company

#### DRIVER OF COMPLIANCE

- Ultimate authority over the Criminal Compliance System
- Defines the company's ethical and compliance framework

#### 1 APPROVAL OF KEY ELEMENTS OF THE CRIMINAL COMPLIANCE SYSTEM

The Board of Directors, as the party ultimately responsible for the System, must formally approve it. A compliance system is ineffective if it is not driven from the highest levels of the organization.

#### 2 IMPLEMENTATION OF THE CRIMINAL COMPLIANCE SYSTEM

The Board must promote and implement the System by adopting decisions that, in light of the relevant circumstances, fall within its exclusive authority.

#### 3 VERIFICATION OF THE CRIMINAL COMPLIANCE SYSTEM

The Board of Directors must periodically review the System. To that end, the Ethics Committee submits an Annual Criminal Compliance Report to the Board, outlining the activities carried out in the areas of ethics and criminal compliance.



*The governing body of each subsidiary is responsible for **adhering to the corporate Compliance System** and for promoting its implementation and enforcement at the subsidiary level. Where applicable, the subsidiary shall also designate a Local Compliance Officer.*

05

*Main criminal risks  
applicable to GME*



## 05 Main criminal risks applicable to GME

Identifying criminal risks



The Criminal Risk Prevention System must be fully tailored to the organization and its specific risks, which in turn derive from the list of criminal offenses that can be committed by a legal entity, as set out in the Criminal Code.

At GME, this work has been carried out through the **Criminal Risk Matrix**, in which the following risks have been analyzed:

8	Corruption	15	IT damages and service access
1	Against the environment	7	Against the Tax Authority and Social Security
4	Influence Peddling	6	Against labour rights
5	Bribery	18	Punishable insolvencies
34	Workplace harassment	20	Illegal financing of political parties
35	Sexual harassment	19	Obstructing an execution of goods/rights
9	Privacy and constitutional domicile	23	Against the rights of foreign citizens
17	Money laundering	22	Contraband
11	Obstructing an investigation by a public author	10	Intellectual and industrial property
28	Criminal groups and organizations		
16	Fraud		
2	Against the market and consumers		
21	Terrorism		

What are GME's top 3 criminal risks?

Business Corruption

Public corruption

Against the environment

## 05 Main criminal risks applicable to GME

### Public corruption



#### What is it?

- **Bribery:** Offering or giving a gift or financial reward to public officials, authorities, agencies, or administrators with the intent to obtain a benefit for the Company, whether lawful or unlawful.
- **Influence Peddling:** Exerting influence over a public official or authority, taking advantage of a personal relationship, to obtain a resolution that may, directly or indirectly, generate an economic benefit for the Company.
- **Corruption in International Business Transactions:** Offering or granting an undue benefit or advantage to foreign public officials to gain favorable treatment in the conduct of international economic activities.

#### What risk scenarios could arise within the organization?

- A GME executive offers a gift or payment to a judge presiding over a judicial proceeding in which GME is under investigation, in order to obtain a favorable ruling (bribery).
- A GME executive uses a personal friendship with a public official to influence the issuance of a resolution in a public tender that benefits GME (influence peddling).
- In the course of GME's international commercial activity, a professional attempts to bribe a foreign public official to gain a competitive advantage over other companies in that jurisdiction, thus securing a better position in the local market (corruption in international transactions).

#### Principles of Conduct

- Perform their duties in accordance with the corporate zero-tolerance principle toward any form of public corruption.
- Act with loyalty and in the best interest of GME — without justifying any improper or corrupt act, even if it is intended to benefit the organization.
- Comply with the provisions of the GME Anti-Corruption Policy, and seek guidance from the Ethics Committee or Compliance Officer when needed.
- Refrain from giving, offering, or promising to give anything of value to a public official in order to unlawfully influence their acts or official decisions.
- Political donations, including those to political parties and affiliated foundations, are strictly prohibited.
- Ensure that all interactions with public officials and authorities are governed by the principles of professionalism, impartiality, and transparency.
- Avoid situations of conflict of interest in dealings with third parties, and where such situations arise, manage them in accordance with GME's Anti-Corruption Policy.

## 05 Main criminal risks applicable to GME

### *Business corruption*



#### *What is it?*

A director, officer, employee, or collaborator of a company who receives, requests, or accepts an unjustified benefit or advantage of any kind, for themselves or a third party, as consideration for improperly favoring another party in the purchase or sale of goods, the procurement of services, or in business relations.

Conversely, any person who promises, offers, or gives an unjustified benefit or advantage to directors, officers, employees, or collaborators of a company, for themselves or for third parties, as consideration for being improperly favored over others in the purchase or sale of goods, service procurement, or business dealings.

#### *What risk scenarios may arise within the organization?*

- A GME professional selects a specific supplier, ignoring objectively better alternatives, due to having received or been promised an unjustified benefit or advantage.
- A GME executive makes a payment to a third party in exchange for commercial information that gives GME a competitive edge over its rivals.
- As a gesture of appreciation for GME's services, a client gives a luxury trip to a GME professional and their partner.
- A GME professional hires the child of a business partner as a new employee without them having passed the required recruitment process.
- A GME professional offers a client unjustifiably advantageous conditions in exchange for an illicit commission from that client.
- A GME professional offers or grants an unjustified benefit or advantage to a third party in order to influence their decision to collaborate with GME instead of with a competitor.

#### *Principles of Conduct*

- All GME professionals must carry out their duties in accordance with the company's zero-tolerance principle toward any form of private corruption.
- Act loyally and in GME's best interest, without using that as justification for engaging in improper or corrupt conduct, even if intended to benefit the organization.
- Avoid any type of interference or influence from suppliers or third parties that may compromise the objective and impartial performance of their duties.
- Refrain from giving or accepting gifts or invitations whose monetary value exceeds what is considered reasonable and moderate in line with market customs, and in all cases, comply with the GME Anti-Corruption Policy.
- Comply with the provisions of the GME Anti-Corruption Policy and seek guidance from the Ethics Committee or Compliance Officer when necessary.
- The acceptance or offering of any form of illicit commission from or to clients, suppliers, or other business partners is strictly prohibited.
- Avoid situations of conflict of interest in dealings with third parties and, where such situations arise, manage them in accordance with GME's Anti-Corruption Policy.

## 05 Main criminal risks applicable to GME

*Against natural resources and the environment*



*What is it?*

- Emitting, discharging, releasing radiation, extracting, excavating, backfilling, generating noise or vibrations, injecting or depositing substances into the atmosphere, soil, subsoil, or water bodies in a way that may cause substantial harm to the quality of the air, soil, or water, or to animals or plants.
- Managing waste in violation of applicable laws or other regulations, in a manner that causes or may cause substantial harm to the quality of the air, soil, or water; harm to animals or plants; death or serious injury to persons; or serious disruption to the balance of natural ecosystems.

What risk scenarios may arise within the organization?

- GME carries out its activities in a way that leads to emissions, discharges, or other negative impacts on the sea, soil, or air.
- GME stores or handles materials/substances that may cause environmental harm in the course of the Group's operations.
- GME conducts exploitation activities in violation of applicable waste management regulations.

Principles of Conduct

- All GME employees and collaborators must be committed to service quality, safety in all actions, and environmental protection.
- Use natural resources efficiently and in compliance with the environmental regulations applicable to their activities.
- The use of polluting products and/or materials in GME operations must be carried out in accordance with current legislation (e.g., required authorizations, safety measures, etc.).
- Employees must be aware of and comply with the protocols currently in place at GME to prevent any environmental damage.
- Falsifying or omitting environmental information is strictly prohibited.
- Waste generated as part of GME's operations must be managed in compliance with the applicable local requirements.

06

*Case law*



## 06 Case law

### *Case law on business corruption*

#### CASE MEDIA-MARKT (*German law*). GERMANY'S FEDERAL SUPREME COURT CONFIRMED THE SENTENCING TO THREE MEDIA MARKT EMPLOYEES OF THE OFFENSE OF BUSINESS CORRUPTION

##### 1) Factual Background

In the so-called Media-Markt scandal, the commission payments aimed to improve the competitive position of an ADSL company.

To this end, an agency—responsible for centralized external sales of certain ADSL contracts—proposed the following arrangement to a senior executive (head of the sales and human resources department at Media-Markt) and an employee (responsible for advising and managing contracts within the company). The agreement was accepted and implemented by all parties from 2005 to 2010: for each awarded ADSL contract and its continued maintenance executed through Media-Markt's retail locations, the agency would pay €5 to the Media-Markt executive.

In compliance with the agreed scheme, over the five-year period, the total amount paid as illicit commissions amounted to approximately four million euros. The payment of these unlawful gratuities enabled the agency to improve its market positioning by increasing the sales of ADSL contracts through the Media-Markt store network, to the detriment of its competitors.

The misconduct was uncovered through Media-Markt's Whistleblowing Channel, following an anonymous report. Media-Markt also conducted an internal investigation and fully cooperated with the public prosecutor's office throughout the investigation.

##### 2) Court Ruling

The Federal Supreme Court of Germany upheld the conviction of the three defendants for the offense of private-sector bribery: 5 years and 3 months of imprisonment for the Media-Markt executive, convicted of 60 acts of commercial bribery; 4 years and 9 months of imprisonment for the Media-Markt employee, convicted of 180 acts of commercial bribery; 4 years and 3 months of imprisonment for the head of the marketing agency.

Central Investigating Court, Ruling of 3 February 2020, Case No. 53/2016.

#### 1) Factual Background

Following complaints filed by various associations and individual members of the Spanish General Society of Authors and Publishers (SGAE), authorities became aware of a group of SGAE members who, for approximately ten years, had been engaging in irregular practices related to the registration of new works and/or modifications of existing works.

Specifically, original works were fraudulently modified and registered as if they were entirely new creations. These registrations were filed either under the names of the accused or of individuals close to them, or under the names of companies created for the purpose of receiving assigned copyright.

The perpetrators would contact students of classical music and offer them opportunities to appear on television performing selected pieces. Subsequently, the defendants would register the televised work as if it were their own—changing the title or introducing minor alterations—and then collect the royalties generated from such broadcasts, even though the works in question were essentially unaltered originals and the rights did not belong to them.

Moreover, the accused allegedly acted with the cooperation of television production company employees, who received illicit payments in exchange for broadcasting the accused's works during night hours, prioritizing them over other content. In order to avoid detection and to obscure the recurrence of the same beneficiaries, the accused transferred their copyrights to relatives, spouses, or children, or created intermediary companies or production firms.

It is particularly relevant to note that this criminal activity could not have been carried out without the coordinated involvement of the various television networks that aired the accused's works. These networks are also under investigation, as they failed to activate or apply any protocols aimed at preventing criminal conduct, nor did they implement effective monitoring or response mechanisms capable of detecting the fraudulent actions carried out within their organizations. As a result, musical repertoires were broadcast not based on quality, audience engagement, or other legitimate objectives of these broadcasters, but rather with the fraudulent intent of benefiting certain individuals.

#### 2) Court Ruling

Still under investigation.

## 06 Case law

### *Case law on public corruption*

National Court, Criminal Division, Section 4, Judgment 1/2023 of 9 January 2023, Case No. 21/2019. SENIOR MANAGEMENT OF FITONOVO, S.L. CONVICTED AS CRIMINALLY RESPONSIBLE FOR THE OFFENSE OF BRIBERY COMMITTED BY A PRIVATE INDIVIDUAL

#### 1) Factual Background

- The company Fitonovo, S.L. developed both an operational and accounting infrastructure aimed at providing gifts and rewards to public officials. This was executed through the company's commercial structure and supported by a parallel accounting system funded by false invoicing, with the purpose, among others, of financing payments to public officials.
- The company's executives orchestrated a corporate scheme that, alongside Fitonovo's legitimate commercial activity, illicitly secured public contracts, thereby seriously damaging the public interest by corrupting numerous procurement procedures. This not only harmed public funds but also the socioeconomic order by disadvantaging legally operating companies seeking to participate in public procurement who were unable to win contracts due to the corrupt practices of the scheme.
- Fitonovo maintained an undeclared "B cashbox" (slush fund), funded primarily through fake invoices issued by a large number of suppliers. These operations were recorded in the official accounts as if they reflected legitimate purchases of goods or services. In addition, invoices for services rendered to private individuals were sometimes directly funneled into the slush fund in full. The company even resorted to individuals who charged a commission to procure fake invoices on its behalf. The primary methods used by Fitonovo, S.L. to achieve its objectives included:
  - Payment of commissions, in the form of cash or gifts, to public officials or authorities in exchange for the award of public contracts.
  - Fictitious competition in restricted procedures, where the contracting authority pre-selects companies to submit offers and is legally required to consult at least three firms. In these cases, three seemingly different companies submitted bids, although they were actually under unified direction with Fitonovo, S.L., and the winning bid was always awarded to the latter.
- The criminal network was composed of Fitonovo, S.L.'s senior management, employees, and advisors who, as part of the company's commercial or operational network, acted as intermediaries before the public administration. Also involved were public officials and authorities who, in exchange for illicit benefits, supported the network from within the public sector, and various companies that either issued false invoices to help finance Fitonovo's illegal activities or agreed to fraudulently participate in public tenders.

#### 2) Court Ruling

- The members of the company's senior management were convicted as criminally liable perpetrators of the offense of bribery committed by a private individual, pursuant to Article 424 of the Spanish Criminal Code.

#### National Court, Criminal Division, Judgment 18/2023 of 16 October DEFEX ACQUITTED OF INTERNATIONAL CORRUPTION; COMMERCIAL DIRECTOR CONVICTED

##### 1) Supuestos de hecho

DEFEX was a semi-public company responsible for promoting and exporting goods and services on behalf of Spanish enterprises, although it traditionally operated as an intermediary in the export of arms, always in collaboration with private companies.

In 2023, the Spanish National Court convicted the company's commercial director in relation to the execution of naval sector contracts, due to the payment of various expenses or gifts to Cameroonian officials and individuals close to them, with the aim of securing their goodwill and assistance in obtaining and maintaining such contracts. These contracts involved the supply of vessels for maritime surveillance, spare parts and accessories, and a training course held in both Spain and Cameroon. The bribes included expenses such as travel, hotel accommodations, and even cosmetic surgery for the wife of a high-ranking official in the Government of Cameroon. These costs were covered by DEFEX, acting as the main contractor.

##### 2) Corporate Criminal Liability

The Court acquitted DEFEX (which has since been liquidated) of the offense of international corruption, considering that the conduct under prosecution occurred between 2005 and 2013, during which DEFEX, as a state-owned company, carried out commercial operations with the Government of the Republic of Cameroon to supply goods intended for national defense and security.

According to the panel of judges, "although the prosecution argued that the execution of one of the commercial operations was extended over time, the events under review—strictly speaking—ended in September 2014, that is, prior to the entry into force of the legislative reform that extended criminal liability to state-owned commercial companies."

##### 3) Court Ruling

Although DEFEX was **acquitted** of the offense of international corruption (Article 286 ter of the Spanish Criminal Code), its commercial director was found guilty of the same offense, with the mitigating circumstance of undue delays, owing to the prolonged duration of the proceedings.

## 06 Case Law

### Case Law on Corporate Criminal Liability (Spain)



#### First Supreme Court Judgment Convicting a Legal Entity

Supreme Court Ruling, Feb 29th, 2016

- **Contested** jurisprudence: majority opinion (8) vs. dissenting opinion (7).
- Explanation of the regime of **corporate criminal liability**: Article 31 bis of the Spanish Criminal Code.
- **Compliance programs**: ethical culture and corporate compliance.

#### Compliance Models

Supreme Court Ruling 316/2018, 28th June

#### Threefold Function of Compliance Programs

1. Grounds for exemption from criminal liability for legal entities.
2. Prevention of criminal risk, including risks that do not necessarily result in corporate criminal liability (e.g., breach of fiduciary duty or embezzlement).
3. Obstruction of criminal conduct by corporate officers or directors.

#### Liability of Directors

SCR 445/2017, 21st of June

- **Conviction of directors** based on commission by omission (comisión por omisión): specifically, in the offense of subsidy fraud.
- To be considered a perpetrator of a criminal offense, it is not sufficient to merely hold the position of director or legal representative of the company involved in the offense.
- There must be an act or omission directly attributable to the individual concerned.

In Cases of **Omission**, Article 11 of the Spanish Criminal Code Applies  
A criminal offense is deemed committed when the failure to prevent it **is equivalent to having caused it**.

Omission shall be treated as equivalent to action in the following cases:

- a) When there exists a specific legal or contractual duty to act.
- b) When the person who omitted action created a situation of risk that required intervention.

## 06 Case law

### *Case Law on Corporate Criminal Liability (Spain)*

#### Liability of Directors

SCR n°619/2021, July 9th, 2021

The directors of the company were convicted of committing a tax offense and money laundering.

Their position as guarantors of lawful behavior imposed a duty to prevent tax fraud, based on two levels of responsibility:

1. Decision-making level: They held management powers for controlling and directing the company's activities.
2. Organizational failure: The omission of their duty to act directly resulted in the commission of the criminal offense.

Conviction of the Legal Entity: Tax Offense

The company was convicted of a tax offense, due to the absence of effective internal control measures designed to prevent or reduce, as far as reasonably possible, the commission of criminal offenses by individuals within the organization.

#### Liability of the Board of Directors

SCR, n°217/2024, march 7th, 2024

**Conviction of the Company's Board of Directors: Tax Offense**

The Board of Directors was also convicted of a tax offense, based on its guarantor position to prevent tax fraud.

The legal entity was convicted because it lacked an effective compliance system capable of eliminating—or at least significantly reducing—the risk of criminal conduct within the company.

The offense was committed by a natural person acting in the course of corporate activities and for the direct benefit of the company.

## 06 Case Law

### *Case Law on Corporate Criminal Liability (Spain)*

#### Liability of Directors

SCR 89/2023, Feb 10th, 2023

**Conviction of Members of the Board of Directors:** Ongoing Offense of Falsification of Annual Accounts in Concurrence with Misrepresentation of Financial and Economic Information.

The members of the Board of Directors of a company were convicted of a continuing offense of falsifying the annual financial statements, committed in ideal concurrence (concurso medial) with the offense of misrepresentation of financial and economic information.

**Conviction of the Legal Entity:** Misrepresentation of Financial and Economic Information

The legal entity was convicted of the offense of misrepresentation of financial and economic information. Corporate criminal liability arises when a criminal offense is committed by a person who: Acts on behalf of or for the benefit of the company and Holds representational powers or decision-making authority within the company and has acted to the company's benefit.

#### Liability of the Board of Directors

Audiencia Nacional Ruling, 18/2023, Oct 3rd

**Conviction of Board Members and the Legal Entity:** Offense of Corruption in International Transactions

Members of the Board of Directors and the legal entity were convicted of the offense of corruption in international business transactions. They made illicit payments (bribes) to foreign public officials in order to secure the execution of a commercial contract. The individuals took advantage of their positions within the organization to carry out the criminal conduct. Furthermore, the organization they managed failed to implement any preventive compliance measures, which directly led to the criminal conviction of the legal entity.

#### Liability of Directors

Audiencia Nacional Ruling 1/2023, Jan 9th, 2023

**Conviction of Company Executives:** Offense of Bribery

The executives of a company were convicted of the offense of bribery.

Through the use of a corporate vehicle, the executives established both an operational and accounting infrastructure designed to facilitate illicit payments (bribes) as gifts or rewards to public officials. They leveraged the company's commercial structure and created a parallel accounting system funded by false invoicing, which served, among other purposes, to finance these unlawful payments to public servants.

## 06 Case Law

### *Case Law on Corporate Criminal Liability (Spain)*

#### Recent Supreme Court Rulings on Corporate Criminal Liability

##### SCR 36/2022, Jan 20th

- The Spanish Supreme Court **convicted both a legal entity and its director** for the offense of fraud. The Court held that no double punishment (*bis in idem*) occurred, as the director was not the owner of the company's share capital. Therefore, the conviction did not amount to dual liability for the same offense.

##### SCR 813/2022, 14th Oct

- The Court emphasized **the need for implementing compliance programs** within companies, not only to prevent corporate criminal liability, but also to detect and mitigate internal fraud and the economic harm it may cause to the company itself.

##### SCR 1014/2022, Jan 13th 2023

- In the same ruling, the Supreme Court observed that compliance systems are not only useful to prevent crimes that could lead to corporate criminal liability, but also serve to deter internal conduct that may result in self-endangerment, where a company becomes the victim of crimes committed within its own structure.
- In this particular case, although the offenses under scrutiny (embezzlement) could not trigger corporate liability—as they are not among the offenses listed in Article 31 bis of the Criminal Code—the Court still noted that preventive measures (such as oversight of powers of attorney) could have avoided abuse of personal relationships within the organization (in this case, a sports club, which was the victim of the fraud).

##### SCR 89/2023, 10th Feb

- In a ruling on the high-profile Pescanova case, the Supreme Court addressed several key issues related to corporate criminal liability, with particular emphasis on the concept of “benefit” as a requirement under Article 31 bis.
- The Court clarified that **the law does not require a legal entity to have actually obtained a real, direct, or indirect benefit** from the crime. Instead, it is sufficient that the offense was committed “for its benefit”—even if the company ultimately suffered harm as a result.. Thus, a legal person can be convicted for criminal conduct that initially aimed to provide some form of direct or indirect benefit, even if that benefit did not materialize or the conduct caused financial or reputational damage to the entity.