

## Compliance Officer

# Annual report on the UIC Barcelona Code of Conduct for the 2022-2023 academic year and the measures taken by the Compliance Officer

## Introduction to the legal principles of the liability of legal persons

Organic Law 5/2010, of June 22, *which amended Organic Law 10/1995, of November 23, of the Criminal Code*, introduced the concept of criminal liability for legal persons into the Spanish legal system, aligning with an international trend. This introduction goes beyond the existing civil liability derived from crime and also includes the incorporation of Article 31 bis (see endnote). The initial uncertainties raised by the introduction of this new concept led to the passing of Organic Law 1/2015, of March 30, *which amended Organic Law 10/1995, of November 23, of the Criminal Code*. These uncertainties also led to the revision of the aforementioned provision and the introduction of three new sections (see endnote).

The criminal law reforms and case law interpretations that have been developed to date with respect to the criminal (and general corporate) liability of organisations can be summarised as Compliance and, in the case of UIC Barcelona, as the Compliance of Foundations, the legal form adopted.

## UIC Barcelona Compliance 2022-2023

Compliance should be understood as: **“a set of procedures and good practices adopted by organisations to identify and classify the operational and legal risks they face and establish internal prevention, management, control and reaction mechanisms against them.”** (<https://www.worldcomplianceassociation.com/que-es-compliance.php>).

Therefore, and in summary, the following are objectives of Compliance:

1. To establish internal regulations for the organisation (coherent and aligned with the applicable legal regulations) to prevent legal non-compliance.
2. To exhaustively monitor compliance using both internal and general regulations, internally and in related matters, and implement the appropriate preventive and corrective measures.
3. To promote the internal regulations and their practical application, and foster the ‘culture of the organisation’ regarding regulatory compliance among the members of the organisation and related persons.

The UNIVERSITAT INTERNACIONAL DE CATALUNYA, FUNDACIÓ PRIVADA is committed, in its ideology and actions, to absolute respect for the legal regulations applicable to each area of its diverse activities, ensuring that all members of the UIC Barcelona community coexist within these guidelines. To this end, the following are available (among other regulations):

1. *The Regulations of the University Ombudsman's Office* ([https://www.uic.es/sites/default/files/2020-10/reglament\\_del\\_sindic\\_de\\_greuges.pdf](https://www.uic.es/sites/default/files/2020-10/reglament_del_sindic_de_greuges.pdf)), which, as stated in Article 1, is responsible (as prescribed by Organic Law 2/2023, of 22 March, on the *University System*), for ensuring respect for the rights and freedoms of the members of the university community before the activities carried out by the different university bodies and services.
2. *The UIC Barcelona Code of Conduct* ([https://www.uic.es/sites/default/files/2021-04/Codi\\_Conducta\\_UIC\\_ES.pdf](https://www.uic.es/sites/default/files/2021-04/Codi_Conducta_UIC_ES.pdf)), which, as stated in Article 1, aims to establish the values, principles and rules that will govern the behaviour and actions of each and every member of the UIC Barcelona community as well as the members of its governing bodies; in Article 3.1.1. that no obligated party (those being every member of the UIC Barcelona community), in carrying out their professional duties, will consciously collaborate with third parties to break any national or international law, or collaborate with them in actions or omissions that compromise the principle of legality and that, no excuse, pretext or pressure can justify conduct contrary to the law (national or international) or to internal regulation, with the subsequent obligation for that knowledge of deeds or conduct that may imply a violation of the law should be reported immediately.
3. *3rd UIC Barcelona Gender Equality Plan (2022-2026)* ([https://www.uic.es/sites/default/files/2022-04/ESP III Plan de Igualdad UIC Barcelona web.pdf](https://www.uic.es/sites/default/files/2022-04/ESP_III_Plan_de_Igualdad_UIC_Barcelona_web.pdf)), which, within its policies of respect for people and their rights (coinciding on this point with UIC Barcelona Ideology) and the course initiated in 2009 with the *1st Equality Plan*, aims to establish a series of indicators, objectives, targets and people responsible for achieving, through the different strategic axes, in practice and in each specific area, complete equality of opportunities among all members of the UIC Barcelona community.
4. *The UIC Barcelona Harassment Prevention, Assessment and Intervention Protocol*, which establishes, in accordance with the applicable legal regulations and taking into account the most recent legislative provisions<sup>1</sup>, all situations in which harassment may occur and establishes the corresponding prevention measures and procedures.

The above internal regulations, together with the actions of the departmental heads and those of the different faculties, centres and institutes that make up the UIC Barcelona's structural organisation; the Equality Unit; the Occupational Risk Prevention Unit; the Ombuds Office and this Compliance Officer, during the 2022-2023 academic year, contributed to the defence of legal and institutional regulations, good practices, the identification of legal and operational risks and the prevention, management, control and response to any situation that went against their principles, acting on three different levels:

1. Raising awareness among the UIC Barcelona community

---

<sup>1</sup> See Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom; Law 15/2022, of 22 July, on equal treatment and non-discrimination; Law 4/2023, of 28 February, on the real and effective equality of trans persons and LGTBI people in different social spheres.

2. Intervening in any risk situation
3. Responding to any illegal, unlawful or reprehensible behaviour

To this end, and in order to provide a set of guidelines, the *GAP Report (Gap Compliance Analysis) has been made available to support the Criminal Compliance protocol of the UNIVERSITAT INTERNACIONAL DE CATALUNYA, Fundació Privada* (November 2018). This Report identifies the most relevant indicators of criminal risk, analyses said risks and establishes the measures to be taken following identification for full efficacy. These measures have since been implemented in various cases, subject to the ever-necessary analysis of daily practice and experience and adaptation to current legal regulations.

Thus, based on the above, during the 2022-2023 academic year and under the remit of Compliance:

1. Analyses and studies on how to optimise current internal regulations, internal procedures and development and dissemination actions in the field of Compliance have continued, in order to avoid, as far as is possible, potential situations of risk and improve the response in the event of conflict.
2. Close supervision of the situations covered by said Compliance has continued, facilitated by the *Whistleblower Channel* (canaldedenuncia@uic.es), an email account created to provide a means for submitting potential internal reports in this area, as well as any concerns that any member of the UIC Barcelona community may have in this regard.
3. Immediate action and corresponding procedures have already been carried out in situations that have required the Compliance Officer's intervention.

### **Future outlook**

One of the actions to be implemented in the 2023-2024 academic year is the creation and implementation of a communication channel for reporting unlawful behaviour. This channel (called 'CANAL OBERT', or OPEN CHANNEL) will be set up on the basis of Law 2/2023, of 20 February, *regulating the protection of persons who report regulatory infringements and the fight against corruption*, which transposes into Spanish law Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, which regulates the minimum requirements for channels of communication through which persons may report breaches of European Union law.

Therefore, this regulation, and the measures taken to implement it among the UIC Barcelona community, are intended to protect people from possible retaliation if they identify serious criminal or administrative offences in this area (as it provides that disclosure may be anonymous and confidential). It should also serve as a way for the person responsible for this communication channel to be aware of it and act accordingly.

This implementation corresponds to the entire remit of Compliance, since the behaviour or actions reported correspond to the list of illegal and unlawful behaviour set out in the aforementioned *GAP Report*.

It should also be noted that the *GAP Report* will be reviewed by a professional firm, external to UIC Barcelona, in order to analyse the development and effectiveness of the implementation of measures recommended over the years, and to identify any changes, adaptations and improvements that may be necessary.

In addition to the above, the following measures will also be implemented:

1. To continue to inform the entire university community of the Compliance Officer, their function and responsibilities.
2. To continue studying, analysing and reviewing internal regulations, procedures and actions for the practical development of measures in the field of Compliance.
3. To develop policies on equality and non-discrimination by adopting new measures or improving existing ones.
4. To develop environmental policies by adopting new measures or improving existing ones<sup>2</sup>.
5. To adapt, if necessary, the internal regulations governing Compliance to any modifications that may occur in the corresponding Catalan, Spanish and European laws.
6. To continue monitoring the integrity of collaborating companies, collaboration agreements, work placement centres for students and other relationships with third parties that affect the field of Compliance.
7. Any other action deemed appropriate.

### **Assessment of the implementation of Compliance in the 2022-2023 academic year**

In view of the above, the performance of all internal UIC Barcelona departments involved directly or indirectly in the area of Compliance, and that of the Compliance Officer as a body with hierarchical independence and maximum responsibility in this field, has been deemed wholly satisfactory during the 2022-2023 academic year. Nevertheless, all parties will continue to strive for improvement in future years.

Barcelona, 13 May, 2024.

---

<sup>2</sup> In this regard, UIC Barcelona has a *Framework Document for Sustainability* (2012).

## **FINAL LEGAL ENDNOTE**

---

Article 31 bis of the Criminal Code, as it currently reads, states that:

**1. In the cases foreseen in this Code, legal persons shall be held criminally liable for:**

*a) The criminal offences committed in their name or on their behalf, and to their direct or indirect benefit, by its legal representatives or those that acting either individually or as members of a body of the legal person authorised to take decisions in the name of the legal person or that possess organisation and control powers over such legal person.*

*b) The criminal offences committed when carrying out their corporate activities and, on their account, and to their direct or indirect benefit, by those who, being subject to the authority of the natural persons mentioned in the preceding Paragraph, were able to perpetrate the deeds because the duties of supervision, surveillance and control of their activities were gravely breached in view of the specific circumstances of the case.*

**2. If the criminal offence were perpetrated by the persons indicated in Paragraph a) of the previous Section, the legal person shall be exempt from liability if the following conditions are fulfilled:**

*1.st The management body has adopted and effectively implemented, before the perpetration of the criminal offence, organisational and management models that include measures of surveillance and control appropriate to prevent criminal offences of that same nature or to significantly reduce the risk of perpetration thereof;*

*2.nd The supervision of the functioning of and of compliance with the prevention model implemented has been entrusted to a body of the legal person with self-governing powers of initiative and control or has been entrusted legally with the function of supervising the effectiveness of the legal person's internal controls;*

*3.rd The individual offenders have perpetrated the criminal offence fraudulently eluding the organisational and prevention models; and*

*4.th An omission or insufficient exercise of the function of supervision, surveillance and control on the part of the body to which the second condition refers has not occurred. In those cases, in which only partial evidence of compliance with the preceding circumstances are available, this shall be considered to reduce the penalty.*

*3. In the case of a legal person of small size, the functions of supervision to which the second condition of Section 2 refers may be taken on directly by the management body. For these purposes, legal persons of small size shall be deemed those that, pursuant to the applicable legislation, are authorised to submit an abbreviated profit and loss statement*

**4. If the criminal offence were perpetrated by the persons indicated in sub paragraph b) of Section 1, the legal person shall be exempt from liability if, before the perpetration of the criminal offence, it has adopted and effectively implemented an organisational and management model adequate to prevent criminal offences of the nature of the one perpetrated or to reduce in a significant way the risk of the perpetration thereof. In these cases, the attenuation foreseen in the second Paragraph of Section of this Article shall also be applicable.**

**5. The organisational and management model to which the First condition of Section 2 and the previous Section refer shall comply with the following requirements:**

*1.st Identifying the spheres of activities where the criminal offences to be prevented may be perpetrated;*

*2.nd Establishing the protocols or procedures detailing the procedure for determining the will of the legal person, the adoption of decisions and the implementation thereof in relation to such protocols or procedures;*

*3r.d Possessing management models for financial assets adequate to prevent the perpetration of the criminal offences that are to be prevented;*

*4.th Imposing the obligation of notifying of possible risks and cases of noncompliance to the body entrusted with the surveillance of the functioning of and compliance with the prevention model;*

*5.th Establishing a disciplinary regime to adequately punish not complying with the measures established in the model;*

**6.th Carrying out a periodic audit of the model and, eventually, the amendment thereof whenever material violations of its provisions occur or when changes in the organisation, control structure or the activity carried occur making this necessary**

It currently reads:

#### Article 31 ter

**1. The criminal liability of legal persons shall be applicable whenever there is record of a criminal offence being committed by a person who holds office or carries out the duties referred to in the preceding Article, even if the specific natural person responsible has not been individually identified, or it has not been possible to prosecute that person. When fines are handed down to both as a consequence of these deeds, the judges or Courts of Law shall modulate the respective amounts, so the resulting sum is not disproportionate in relation to the seriousness of such deeds.**

2. Concurrence, in the persons who have materially perpetrated the deeds or those who have made these possible due to not having exercised due control, of circumstances that affect the culpability of the accused or aggravate his responsibility, or the fact that those persons have died or have escaped the action of justice, shall not exclude or modify the criminal liability of legal persons, without prejudice to what is set forth in the following Article.

#### Article 31 quarter

**1. Circumstances that mitigate criminal liability of a legal person may only be deemed to concur when, after the criminal offence is perpetrated, the legal persons carry out the following activities through its legal representatives:**

- a) Having proceeded, prior to having knowledge of judicial proceedings being brought against it, to confess the criminal offences to the authorities;
- b) Having collaborated in the investigation of the deeds, providing evidence, at any moment of the proceedings, that is new and decisive to clarify the criminal liabilities arising from the deeds;
- c) Having proceeded at any time during the proceedings, and prior to the trial itself, to repair or decrease the damage caused by the criminal offence;
- d) Having established, prior to the trial itself, measures that are effective to prevent and discover criminal offences that might be committed in the future using the means or under the coverage of the legal person.**

#### Article 31 quinquies

1. The provisions related to criminal liability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, to Public Agencies and Corporate Entities, to international organisations under Public Law, or to others that exercise public powers of sovereignty or administration.

2. In the case of State Mercantile Companies that implement public policies or provide services of general economic interest, only the penalties foreseen in Sub-Paragraphs a) and g) of Section 7 of

Article 33 may be imposed. This limitation shall not be applicable when the Judge or Court considers that the legal form was established by the promoters, founders, managers or representatives thereof with the aim of eluding a possible criminal liability.