

METHOD, TECHNIQUES, AND TOOLS OF COMPLIANCE INNOVATION AND THEIR CONTRIBUTIONS TO ECONOMIC CRIMINAL LAW

MÉTODO, TÉCNICAS E FERRAMENTAS DE INOVAÇÃO DO COMPLIANCE E SUAS CONTRIBUIÇÕES PARA O DIREITO PENAL ECONÔMICO

MÉTODO, TÉCNICAS Y HERRAMIENTAS DE INNOVACIÓN DEL COMPLIANCE Y SUS CONTRIBUCIONES AL DERECHO PENAL ECONÓMICO



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ABSTRACT

The Self-regulation through programs such as Compliance has expanded its reach in environments where the complexity of economic relations and regulatory rigor demand more sophisticated control mechanisms. In this scenario, Brazil faces several challenges, such as: the non-acceptance of this mechanism, the lack of effective implementation within the corporate environment, and the emergence of "window-dressing Compliance," which compromises surveillance and the efficacy of internal norms. Therefore, this scenario makes the corporate environment more vulnerable to the risk of illegal activities, and it is at this moment that innovations in Compliance emerge, aiming to provide greater support in mitigating corporate crimes. In this sense, the present study proposes to foster an understanding of the relevance of using innovations in Compliance to guarantee exemplary corporate self-regulation. To this end, a qualitative and exploratory methodology with an inductive approach is used, aiming to analyze the available literature and provoke a critical debate on how Economic Criminal Law can be redefined through the integration of new paradigms and technological tools. The results reveal that the tensions between the rigidity of classic Economic Criminal Law and the need for efficiency in Compliance programs delegate the state's duty to solve the problem to the business sector. It is further concluded that, given the challenges presented, innovative strategies emerge, such as: the adoption of Whistleblowing, the execution of a culture based on restorative justice, the publication of compliance programs for transparency, the adaptation of Criminal Compliance to Brazilian law, and the transfer of crime prevention and investigation functions to private entities.

Keywords: Economic Criminal Law. Compliance. Innovation.

RESUMO

A autorregulação por meio de programas como o Compliance tem ampliado seu espaço em ambientes onde a complexidade das relações econômicas e o rigor normativo exigem mecanismos de controle mais sofisticados. Nesse cenário, o Brasil enfrenta diversos

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desafios como: a não aceitação desse mecanismo, a não efetiva implementação no ambiente corporativo e o surgimento do "Compliance de fachada"; comprometendo a vigilância e a eficácia das normas internas. Portanto, esse cenário torna o ambiente corporativo mais vulnerável a riscos de ilícitos, e é nesse momento que surgem as inovações em Compliance objetivando trazer maior suporte na mitigação de crimes corporativos. Nesse sentido, o presente estudo propõe-se a fomentar a compreensão acerca da relevância da utilização de inovações no Compliance na garantia de uma exímia autorregulação empresarial. Para tanto, utiliza-se de uma metodologia qualitativa e exploratória, de caráter indutivo, com o intuito de analisar a literatura disponível e suscitar o debate crítico sobre como o Direito Penal Econômico pode ser ressignificado pela integração de novos paradigmas e ferramentas tecnológicas. Os resultados revelam que as tensões entre a rigidez do Direito Penal Econômico clássico e a necessidade de eficiência dos programas de Compliance delegam ao espectro empresarial o dever estatal de solucionar a problemática; conclui-se ainda que diante do desafio exposto surgem estratégias inovadoras como: adoção do Whistleblowing, execução de uma cultura baseada na justiça restaurativa, publicação de programas de conformidade visando transparência, adequação do criminal Compliance ao direito Brasileiro e a transferência de funções de prevenção e investigação de crimes para as entidades privadas.

Palavras-chave: Direito Penal Econômico. Compliance. Inovação.

RESUMEN

La autorregulación a través de programas como Compliance ha ampliado su alcance en entornos donde la complejidad de las relaciones económicas y el rigor regulatorio exigen mecanismos de control más sofisticados. En este escenario, Brasil enfrenta varios desafíos, tales como: la no aceptación de este mecanismo, la implementación ineficaz en el entorno corporativo y el surgimiento de "cumplimiento fachada", comprometiendo la vigilancia y efectividad de las regulaciones internas. Por lo tanto, este escenario hace que el entorno corporativo sea más vulnerable a los riesgos de actividades ilegales, y es en este punto que surgen innovaciones en Compliance, con el objetivo de brindar mayor apoyo para mitigar los delitos corporativos. En este sentido, este estudio propone fomentar la comprensión de la relevancia de utilizar innovaciones en Compliance para garantizar una excelente autorregulación corporativa. Para ello, se utiliza una metodología cualitativa y exploratoria de naturaleza inductiva, con el objetivo de analizar la literatura disponible y estimular el debate crítico sobre cómo se puede redefinir el Derecho Penal Económico a través de la integración de nuevos paradigmas y herramientas tecnológicas. Los resultados revelan que las tensiones entre la rigidez del Derecho Penal Económico clásico y la necesidad de eficiencia en los programas Compliance delegan al sector empresarial el deber del Estado de resolver el problema; Se concluye también que, ante el desafío planteado, surgen estrategias innovadoras como: la adopción del sistema de denuncia de irregularidades, la implementación de una cultura basada en la justicia restaurativa, la publicación de programas de cumplimiento orientados a la transparencia, la adaptación del cumplimiento penal a la legislación brasileña y la transferencia de funciones de prevención e investigación de delitos a entidades privadas.

Palabras clave: Derecho Penal Económico. Cumplimiento. Innovación.

1 INTRODUCTION

It is verified that globalization has currently impacted several aspects of human life, providing a greater flow of information and interconnections due to technological advances in different areas. Globalization has also established a model of transnational criminality that makes it difficult for the State to prevent illicit attitudes that occur in the business environment. It is in this context that the Compliance program appears as a transformative form of self-regulation, providing a model of surveillance and inspection of business practices with the purpose of ensuring compliance with the guidelines that coordinate its operation. In this way, it is noticeable that *Compliance* does not act away from the government, but rather together with it, helping to obtain evidence and manage illegalities in the organizational panorama.

Economic Criminal Law is the set of rules that govern conducts in the economic sphere aiming at their full protection through criminal sanctions. The crimes that Economic Criminal Law addresses are: crimes against the economic order, tax crimes and crimes against the consumption order. *Compliance*, when trying to ensure compliance with a company's rules, acts in partnership with Economic Criminal Law, providing a lot of feces to an agile and preventive action.

However, there is a problem that is inserted in this environment: the mismatch between the evolution of legal tools and the training of Criminal Law agents. The lack of knowledge and experience of a large portion of criminal law servants, who are not updating themselves on this topic that is increasingly present in daily forensic activity, generates a scenario of institutional insecurity, where resistance to the culture of innovation prevents the mitigation of errors.

Innovation is a vital issue (Alosani *et al.*, 2020). According to the Organization for Economic Cooperation and Development [OECD] (2015), the objective of innovation is to add value and increase benefits for society and the common good; For this, it is necessary to conceptualize and identify the typologies of innovation. The OECD (2018) conceptualizes innovation as: "A new or improved product or process (or combination thereof) that differs significantly from previous products or processes and that has been made available to potential users or put into use."

In the work presented by Alosani *et al.* (2020), innovation is generally defined as encompassing various components, including new organizational structures, new process technologies, new products or services, or new programs or plans for an organization's employees. Regarding the typologies of innovation, Morales and Dandolini (2022) present five typologies of innovation:

- a. Product innovation: is the introduction of a new good or service or the improvement of an existing one in its characteristics or use, aiming to achieve organizational goals;
- b. Conceptual, mission, and paradigm innovation: It is the introduction of new concepts, worldview, paradigms, and new missions;
- c. Process innovation: it is a change in the way an organization operates, which can be an administrative or technological change;
- d. Management innovation: it is the introduction of new management practices, processes, structures or techniques that aim to achieve goals and improve productivity; e
- e. Policy, governance, strategic, and citizen innovation: Policy innovation addresses the development of new policy concepts and re-evaluation of existing policies; governance innovation deals with changing the institutional structure in which organizations operate; strategic and governance innovation deals with the development of relationships and processes with external partnerships; Innovation for the Citizen is about developing tools to facilitate citizen collaboration.

According to these authors, a fundamental decision to be made in relation to the innovation process refers to which approach will be used. Among these approaches are the Methods, Techniques, and Tools for Innovation (MTF-I), which encompass *brainstorming*, morphological analysis, focus group, concept testing, scenarios, return on investment, and the Gantt Table, among others (Buchele *et al.*, 2017).

The use of MTF-I is effective and a substantial element of the innovation process, as it assists the appropriate introduction of new technologies into products and processes, as well as the changes needed by organizations (Buchele *et al.*, 2017).

Therefore, it is necessary to conduct a study that addresses the application of the *Compliance* program in Brazil, how it relates to Economic Criminal Law and which innovation mechanisms and techniques can help its performance.

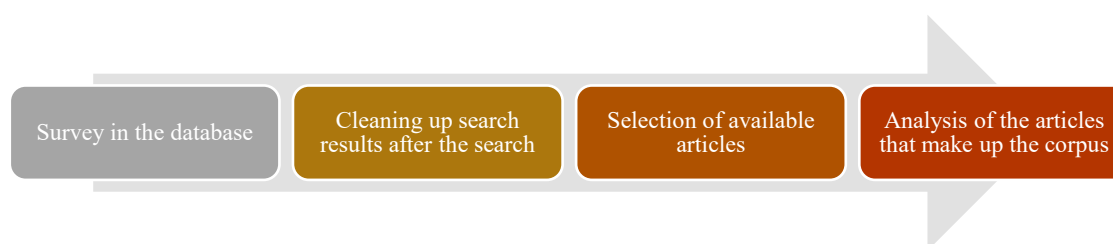
Thus, this article aims to gather the various information available about the relationship between Economic Criminal Law and the Compliance program, making a correlation between both and an analysis of the innovations with the purpose of demonstrating the cooperation of current advances and modifications with the specific part of Criminal Law that deals with the economic field. Thus, a study was carried out based on the following question: How do *Compliance* and its innovations contribute to Economic Criminal Law?

2 METHODOLOGICAL PROCEDURES

The methodology used in the study was a qualitative, exploratory and inductive research since it started from particular cases - individual studies - to reach a more general conclusion, to identify the relationship between Economic Criminal Law and *Compliance*, in the light of the methods, techniques and tools of innovation, integrative review was used, which, according to Torracco (2005), plays an important role in stimulating new research on a theme, leading to the creation of new knowledge. Thus, a procedure was carried out to search for articles and select them to compose the research, as shown in figure 01.

Figure 1

Article search and selection procedure



Source: Prepared by the authors.

Initially, a search was carried out in the *Scopus databases* using the following search terms: "*Economic Criminal Law*" and "*Compliance*" considering the search fields: title, abstract, keywords. The use of the Boolean operator AND stands out, indicated by Pizzani, Silva, Bello and Hayashi (2012) when one wants to obtain articles with intersection of combined terms.

Using this methodology, a total of 07 documents were recovered. In the research, only articles with publications between the years 2013 and February 2026 were considered. The cut of this period is justified by the publication of Law No. 12,846/2013, which objectively holds companies administratively and civilly liable for the practice of acts against the Public Administration, national or foreign. The articles found are presented in Table 01.

Table 1

Articles retrieved and analyzed considering the search strategy

LOBATO, José Danilo Tavares. Brief reflections on criminal compliance. Journal of Criminal Studies , n. 73, p. 53-76, 2019.
BERARDI, Regina Celli; DA SILVA, Linara. The contributions of Restorative Justice in the scope of compliance programs: a new model of business self-regulation. Revista de Direito , v. 15, n. 1, p. 12, 2023.
PANTOJA-RUIZ, Juan Pablo; HERNÁNDEZ-JIMÉNEZ, Norberto. Inhabilidad derivada para contrato con el Estado: ¿ una forma de responsabilidad penal corporativa en Colombia?. Novum Jus , v. 18, n. 1, p. 156-180, 2024.

MARTÍN, Adán Nieto. Hacia un Derecho penal económico europeo de los Derechos humanos. InDret , 2020.
DE ALMEIDA MINAHIM, Maria Auxiliadora; SPÍNOLA, Luíza Moura Costa. Whistleblowing as a means of obtaining evidence in Brazilian Criminal Procedural Law. Electronic Journal of Procedural Law , v. 21, n. 1, 2020.
PALITOT BRAGA, Romulo Rhemo; SANTANA, Jaqueline Rosário. ADECUACIONES DEL DERECHO PENAL BRASILEÑO FRENTE AL CRIMINAL COMPLIANCE: DE LO CONCEPTUAL A LA PROBLEMÁTICA DE LOS OFFICERS. Legal Journal (0103-3506) , v. 4, n. 71, 2022.
HERNÁNDEZ BASUALTO, Héctor. Forced privatization of the economic criminal law: questions of legitimacy. Latin American Legal Studies , Santiago, v. 6, n. 2, 2020

Source: Prepared by the authors.

After reading the abstracts, the article by Pantoja-Ruiz and Hernandez-Jimenez (2024) that did not mention the topic of Compliance was discarded, leaving 06 articles for analysis, which were read in full with the aim of identifying how *Compliance* contributes to Economic Criminal Law.

3 DISCUSSION AND RESULTS

3.1 BIBLIOMETRIC DATA

The scientific production on the topic of the research, how *Compliance and its innovations* contribute to Economic Criminal Law, covered the publication period from 2013 to February 2026. From the analysis of the selected articles, the distribution of publications by year is obtained, as shown in Table 02.

Table 2

Number of articles published per year

Year	Number of articles published
2024	1
2023	1
2022	1
2021	0
2020	3
2019	1

Source: Prepared by the authors.

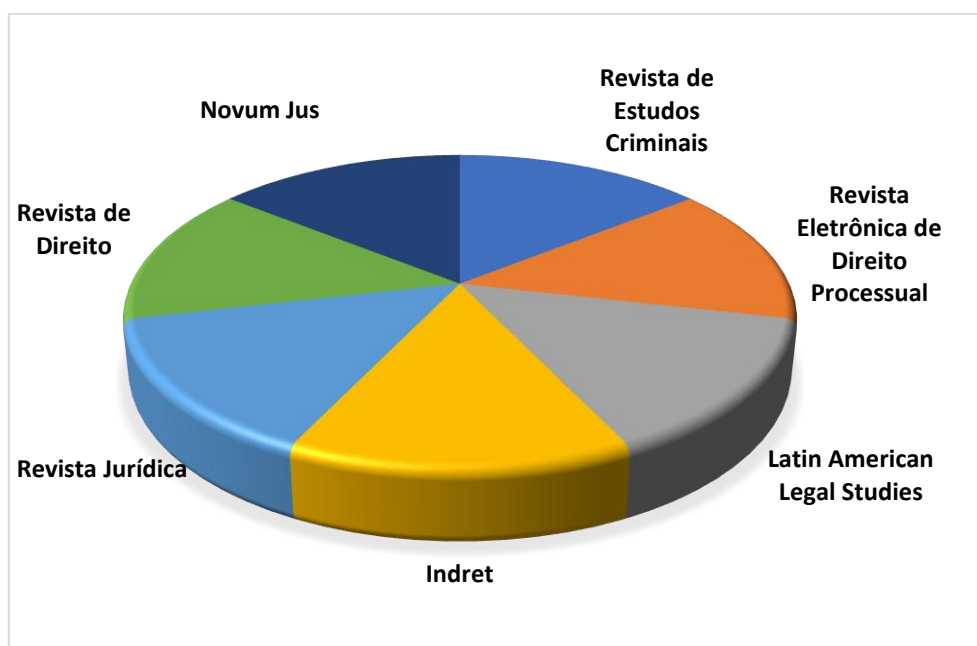
Analyzing table 02, it is observed that in the years 2024, 2023, 2022 and 2019, only 01 article on the subject were published; and in 2020 there was the publication of 3 articles. This fact shows the incipient publication relating the themes of Economic Criminal Law and *Compliance*.

By verifying the authorship of the articles, it is possible to verify the existence of 08 authors, where each author has only one published article.

Figure 2 shows the journals that deal with the theme in question.

Figure 2

Number of articles published by journals



Source: Prepared by the authors.

Analyzing the journals that deal with the subject, it can be observed that the literature is dispersed in several journals, namely: *Revista de Direito*, *Revista Jurídica*, *Indret*, *Estudos Jurídicos Latino-Americanos*, *Revista Eletrônica de Direito Processual*, *Latin American Legal Studies*.

Regarding the citation of the recovered articles, it is verified that the article "*Un Derecho Penal Económico Europeo de Los Derechos Humanos*" was cited 01 time and the article "*Brief Reflections on Criminal Compliance*" had been cited 02 times. This fact corroborates the incipient publication on the subject.

3.2 RESULTS

3.2.1 Analysis of Articles

Considering the articles retrieved in the integrative review, it is noteworthy that the article by Lobato (2019) was unavailable, with closed access, for reading the full text, resulting only in the reading of the abstract, which made it impossible to analyze them with regard to how *Compliance* contributes to Economic Criminal Law.

Thus, in order to identify how *Compliance* contributes to Economic Criminal Law, the articles in Table 1 were read and analyzed.

In the article entitled "*The contributions of Restorative Justice within the scope of Compliance Programs: A new model of business self-regulation*", Berardi and Da Silva (2023) bring a study on how Restorative Justice can be applied to Economic Criminal Law,

enhancing self-regulation. In this sense, the authors state that *Compliance* and Restorative Justice share the idea of pyramidal *enforcement*, especially with regard to community prevention; however, it is necessary to rethink the structure of *Compliance* to achieve the effectiveness and usefulness of this institute with regard to corporate self-regulation. Thus, Business Restorative Justice is a complementary mechanism to the strengthening of self-regulation, through the institution of a new business culture based on ethics and loyalty, in addition to enabling dialogue between the state entity and society, expanding the right of access to justice, giving greater effectiveness to Compliance programs, especially in small and medium-sized companies. That said, the authors state that Compliance and Restorative Justice are interrelated in order to conceive that restorative practices are inserted in the sphere of Economic Criminal Law, delivering to society an innovative model of responses to corporate crimes, more cooperative than punitive.

In the article entitled "*Hacia un Derecho penal económico europeo de los Derechos humanos*", Martin (2020) proposes the emergence of a new look within economic criminal law aimed at the protection of human rights and the punishment of multinational companies. The author reports that the European Union has approved a series of texts within the scope of the Corporate Social Responsibility Policy, which guide the regulation of business conduct related to human rights. An example of this regulation is the publication of non-financial statements for companies with more than 500 employees; that they must publish their compliance programs in the area of human rights, anti-corruption and workers' rights. This regulation represents the idea of transparent regulatory compliance, i.e., the idea of vigilant markets and consumers (Martin, 2020).

In the article "*Whistleblowing as a Means of Obtaining Evidence in Brazilian Criminal Procedural Law*", Minahim and Spínola (2020) demonstrate from a study how *whistleblowing* – a channel for anonymous complaints – ensures greater effectiveness of the regulatory compliance program (*Compliance*). Thus, Minahim and Spínola (2020) support the thesis that it is essential to fight crime in the business sphere with the active participation of the private sector. Thus, to assist *compliance*, *whistleblowing arises*, a practice that provides financial benefits to those who report irregularities in the conduct of others. However, it is questioned how evidence from *whistleblowing* can be used in favor of the defendant. The plaintiffs respond that in view of the complaint that the company committed an unlawful attitude, through *whistleblowing* the company can prove that it was already aware of the occurrence and that it was taking the appropriate measures. Thus, the practice of plea bargaining is a legitimate means of obtaining evidence and any and all practices that go against the behavior admitted in the compliance program must be reported. Therefore, the authors assure that the

anonymous whistleblowing program, already put into practice in other countries, proves to be an extremely safe mechanism in relation to the company's wishes, enabling the exercise of greater control over what happened.

The article entitled "*Adecuaciones del Derecho Penal Brasileño Frente al Criminal Compliance: de lo Conceptual a la Problematic de los Officers*", Braga and Santana (2022) addresses how Brazilian criminal law relates to *compliance*, dealing with what *criminal compliance is*, how it can adapt to Brazil and what are the challenges embedded in the application of the program to the country. Under this bias, the authors state that *compliance* when transported to Brazil needs to undergo changes to better adapt the program, considering that Brazil is a common *law* country - a model of justice based on previous judicial decisions instead of just codified laws -; in addition, the article deals with how Criminal Law and *criminal compliance* complement each other, given that Criminal Law states that one must act in advance of the crime, just as *criminal compliance* acts. However, there are challenges embedded in the use of the program, since occurrences such as resistance to the recognition of corporate crime and the possible risk to those who exercise the duty of vigilance provide practices such as *façade compliance* and the non-permanence of legality on the part of *Compliance Officers* (protector of companies whose function is to ensure that the work is within legal frameworks). Therefore, the authors conclude that there is much to take into account when applying the *compliance* model in the Brazilian business environment so that it works properly.

In the article "*Forced Privatization of the Economic Criminal Law. Questions of Legitimacy*", Basualto (2020) addresses the transfer of crime prevention and investigation functions that are under the purview of state criminal justice to private entities, transferring to them the duties of action in the areas of criminal liability for products, money laundering and employee acts, as well as the development of corporate internal investigations. The author brings that *Compliance* has the responsibility to prevent criminal activity within the organization and highlights that the development of internal investigations within companies does not aim to prevent crimes, but to clarify crimes that have already occurred, enabling the removal of those responsible, identification of management weaknesses and adoption of improvement measures. That said, Basualto (2020) concludes that a good internal investigation system should be a relevant component of any *compliance* or crime prevention program.

3.2.2 Classification of Findings According to the Type of Innovation

Thus, when analyzing the articles, Table 03 was assembled, which lists the type of innovation to which it is classified and the type of MFT-Is, since MTF-Is can be a document, procedure, system or method that makes an objective possible.

Table 3

Types of innovation and MTF-Is used by the authors with regard to Compliance

References	Type of Innovation	MTF-Is
Berardi and Da Silva (2023)	Conceptual, mission, and paradigm innovation	Replace punitive model with cooperative model. Restorative justice.
Martin (2020)	Political, governance, strategic and citizen innovation	Change in business conduct and policies
Minahim and Spínola (2020)	Process Innovation and Management Innovation	Whistleblowing as a tool of proof and control
Braga and Santana (2022)	-	-
Basualto (2020)	Policy & Governance Innovation and Process Innovation	Company now has a duty to investigate itself by introducing internal investigation protocols

Source: Prepared by the authors.

Thus, observing Table 03, it can be seen that among the innovations in *Compliance* addressed by the authors: two are classified as "Political, governance, strategic and citizen innovation", since Martin (2020) discusses the reassessment of existing instruments and the adoption of transparency and public reporting and Basualto (2020) addresses the transfer of functions that were exclusive to the State; two present elements of "Process Innovation" since Minahim and Spínola (2020) introduce *whistleblowing* as a new method of obtaining evidence and Basualto (2020) proposes the implementation of internal investigation protocols to identify failures and improvements; one presents "Conceptual, mission-based and paradigm innovation" since Berardi and Da Silva (2023) propose the replacement of the purely punitive model of Economic Criminal Law with a cooperative model based on Restorative Justice and one presented "Management innovation" as Minahim and Spínola (2020) demonstrate how anonymous reporting channels work as a tool to control and guarantee the effectiveness of the regulatory compliance program.

3.3 DISCUSSION

Considering the analysis of the articles, it can be seen that there is a consensus on the need for corporate self-regulation and that *Compliance* is an essential tool for the prevention of crimes within companies (Braga and Santana, 2022; Bassualto, 2020; Berardi and Da Silva, 2023). Such a statement is in line with what Rodrigues (2019) proposes:

In this context, it is essential to institute mechanisms to control business activity, including from the actions of the corporation itself, aiming at weakening the collective criminogenic factors that surround companies and re-signifying professional conducts based on compliance with rules of conduct in which ethics and essential corporate values prevail. (Rodrigues, 2019, p.46)

Some authors present instruments, such as Restorative Justice, *Whistleblowing*, and internal investigation mechanisms, which can increase the effectiveness and effectiveness of *Compliance programs*, contributing to the strengthening of self-regulation and the obtaining of evidence that can be used in favor of the defendant (Berardi and Da Silva, 2023; Minahim and Spínola, 2020; Bassualto, 2020). In this sense, it should be noted that the internal investigation instrument, within the scope of *Compliance*, serves to clarify crimes that have already occurred, presenting a more punitive than preventive character.

Another point addressed by the authors in Spanish Law is the responsibility of the *compliance officer*, in the context of prevention (Braga and Santana, 2022). Corroborating the authors, Aras (2011) brings the accountability of *compliance agents* in the event of non-compliance with duties, see:

Therefore, the following question arises: can we hold *compliance officers* directly responsible for the crime of money laundering? We would say yes! They would be liable for laundering, both as co-authors and as participants, if they fail to comply with the duty of *compliance*. By the way, it should be noted the rule of article 13, § 2, of the Penal Code that deals with criminal liability for omission. This is criminally relevant when the agent has the duty by law to prevent the result (Aras, 2011, p. 378).

Finally, it should be noted that, with regard to the *Compliance program*, there are challenges in its implementation, such as resistance to the recognition of corporate crime and the risk of *compliance officers* not exercising their duty of vigilance, resulting in a *façade of Compliance* (Braga and Santana, 2020). In this sense, David (2016) states that *Compliance programs* are of great use in Economic Criminal Law, but the inexperience of using such instruments results in the accumulation of activities by the legal departments of companies.

From this perspective, the adoption of the aforementioned innovations emerges as an indispensable optimization mechanism, as it allows mitigating the administrative overload and providing greater rationality to the processes. By transcending traditionalism, such innovations promote a structural transformation in organizations, enhancing the effectiveness of self-regulation and ensuring that the program fulfills its ethical and preventive function before society.

4 FINAL CONSIDERATIONS

It is known that *Compliance* is an instrument for the prevention and control of corporate crime, since the lack of ethics and social values are considered an essential cause of this crime. Thus, if the crime is committed in the business environment, effective Compliance programs increase the possibilities of detection by the companies themselves, enabling the investigation and remediation of the damage caused. In this context, it was necessary to know how Compliance contributes to Economic Criminal Law.

Therefore, in this work, it was sought to map the scientific productions involving Economic Criminal Law and *Compliance*; as well as to descriptively analyze the results of the research produced for the construction of knowledge in the area. To this end, integrative research was used, which resulted in 07 retrieved articles, with productions between the years 2019 and 2024, published by various authors.

From the result of the research it can be concluded that *compliance* programs, when effective and effective, are important tools for Economic Criminal Law; since they should inform and motivate employees to follow legal regulations, detect transgressions, reward behaviors through promotions and sanction employees who have committed any wrongdoing. And that elements such as Restorative Justice, *Whistleblowing* and internal investigation mechanisms contribute to the improvement of the program.

It is also noteworthy that despite the limitation of articles retrieved in the database used, the present research contributed significantly to the consolidation of knowledge about *Compliance* and its innovations, especially regarding their contributions to Economic Criminal Law.

In view of the above, it is expected that this research can shed light on the studies of Economic Criminal Law, especially topics related to *Compliance*, self-regulation of companies and corporate innovation so that other research can be developed. Thus, as a complement to the research carried out, it is suggested to use other databases in order to obtain a more complete overview of the triad between Economic Criminal Law, *Compliance* and the development of new technologies and innovation processes.

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