

Cooperation UNCTAD and ZHAW / Project COMPAL

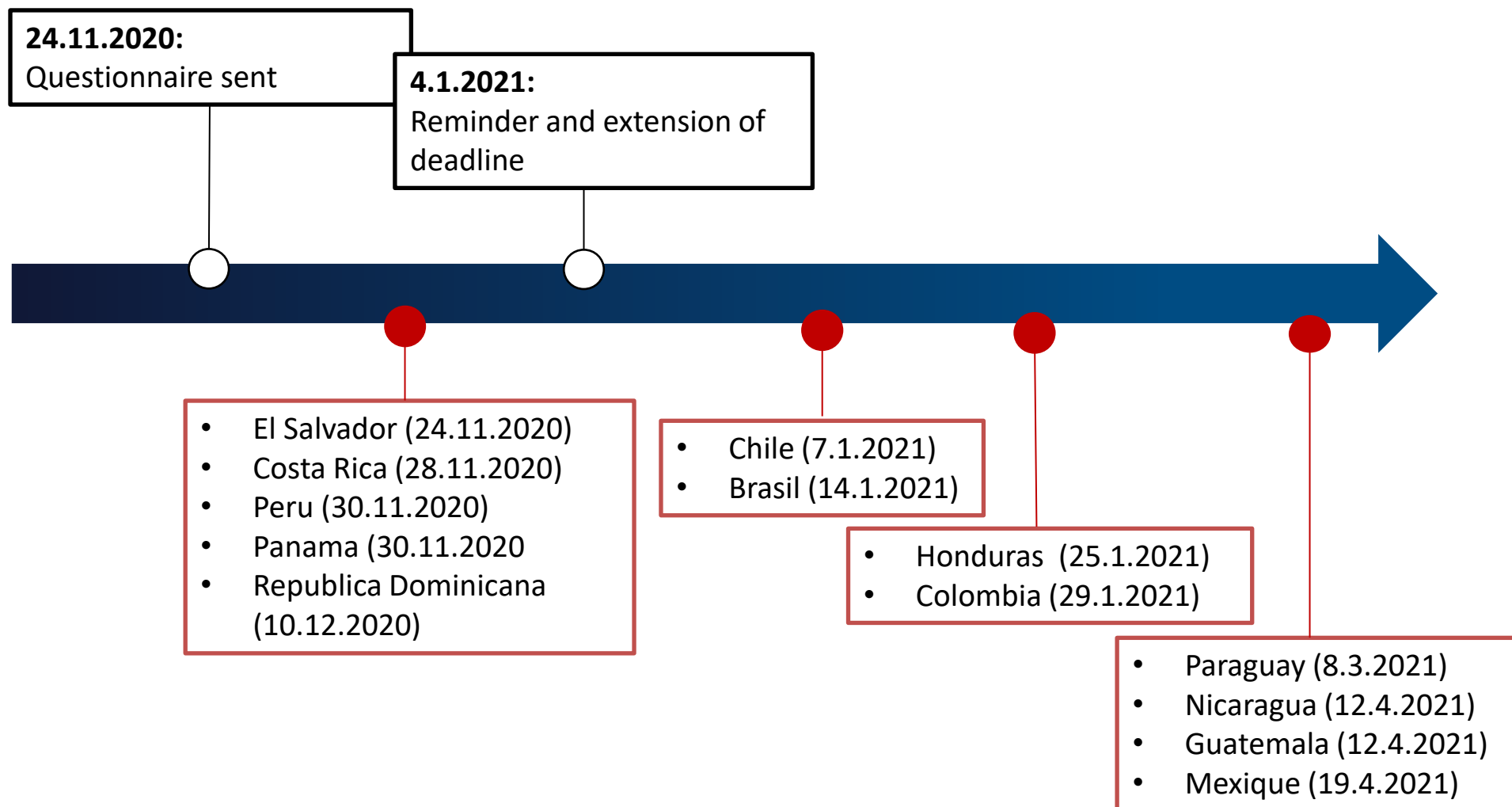


Prof. Dr. iur Patrick Krauskopf, Head of the Centre for Competition Law and Compliance

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„In an empirical analysis, the United Nations Conference on Trade and Development (UNCTAD) is looking into the consideration of compliance programmes by competition authorities and courts in South and Central America. Within the framework of a long-standing international cooperation, UNCTAD has therefore commissioned the Zurich University of Applied Sciences (ZHAW) to investigate, as a first step, how compliance is developing in the practice of competition authorities and courts in South and Central America.“

Timeline



Set up Questionnaire

The questionnaire consists of three parts:

1.^a parte: status quo

1. ¿La Fiscalía Nacional Económica fomenta o apoya la implantación y puesta en marcha de programas de cumplimiento en las empresas?

➤ **Part 1: Status Quo;**

2.^a parte: desarrollo

6. ¿La Fiscalía Nacional Económica planea ayudar a las empresas en el desarrollo de normativas de cumplimiento?

➤ **Part 2: Development;**

➤ **Part 3: Cooperation.**

3.^a parte: colaboración

11. ¿La Fiscalía Nacional Económica dispone de los conocimientos y recursos (personal, departamentos, etc.) para desarrollar medidas de fomento del cumplimiento (listas de comprobación, ¿directrices) para empresas?

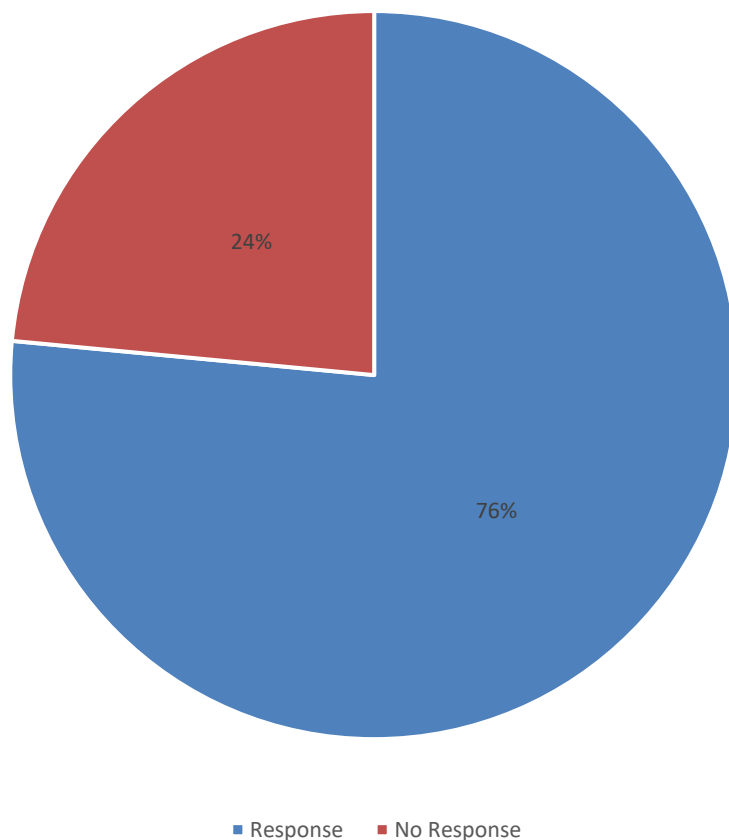
Study Set Up (1)

The questionnaire was sent to the following authorities:

- Argentina,
- Bolivia,
- Brazil,
- Chile,
- Colombia,
- Costa Rica,
- Ecuador,
- El Salvador,
- Guatemala,
- Honduras,
- Mexico,
- Nicaragua,
- Panama,
- Paraguay
- Peru,
- Republica Dominica
- Uruguay.

Total: 17

Study Set Up (2)



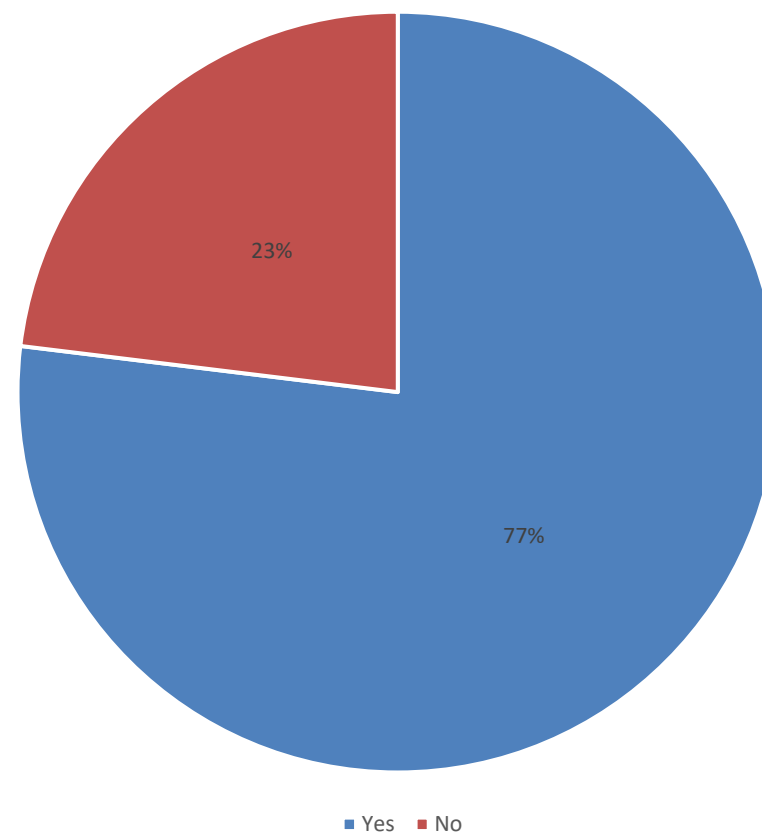
- Brazil,
- Chile,
- Colombia,
- Honduras,
- Panama,
- Paraguay,
- Peru,
- Republica Dominica,
- Costa Rica,
- El Salvador,
- Mexico,
- Guatemala,
- Nicaragua.

This equals a response rate of 76%.

Key Study Findings (1)

The study shows that 77 % of the competition authorities, which have participated in the survey support the implementation of compliance programmes:

- Brazil,
- Chile,
- Colombia,
- Honduras,
- Panama,
- Paraguay,
- Peru,
- Republica Dominicana,
- Mexico
- Nicaragua.



Key Study Findings (2)

A statistical analysis shows that 60 % of the competition authorities surveyed use a combination of two or more methods mentioned to support companies in their compliance efforts.

	The authority advises companies on compliance issues.	The Authority provides companies with compliance-documents.	The Authority has issued guidelines on the implementation of compliance programmes.	The Authority conducts compliance training for companies.	The authority promotes compliance in companies with other measures such as: _____
Brasil			X		
Chile			X		X
Colombia				X	X
Costa Rica	n.a	n.a	n.a	n.a	n.a
El Salvador	n.a	n.a	n.a	n.a	n.a
Honduras					X
Mexiko		X	X	X	X
Nicaragua	X	X	X	X	
Panama	X	X	X	X	
Paraguay					X
Peru			X		
Republica Dominica		X	X		

	The authority advises companies on compliance issues.	The Authority provides companies with compliance-documents.	The Authority has issued guidelines on the implementation of compliance programmes.	The Authority conducts compliance training for companies.	The authority promotes compliance in companies with other measures such
Chile			X		X
Mexico		X	X	X	X
Nicaragua	X	X	X	X	
Panama	X	X	X	X	
Dominican Republic		X	X		

Means to promote Compliance.

Study Findings (3)

As can be seen in the majority of the authorities surveyed do not recognise compliance efforts by companies when assessing the penalty. In none of the jurisdictions surveyed does the existence of a compliance programme lead to an exemption from the fine in the event of a cartel law violation.

Does compliance reduce fines?	Mitigating the penalty	Penalty exclusion	No impact
Brasil	x		
Chile	x		
Colombia			x
Honduras			x
Panama			x
Paraguay			x
Peru	x		
Republica Dominica			x
Costa Rica	n.a	n.a	n.a
El Salvador	n.a	n.a	n.a
Mexico			x
Guatemala			x
Nicaragua			x

Study Findings (4)

Although in some of the jurisdictions surveyed, discussions are being held at the political level to push compliance efforts further in the future, **the study shows that it is not possible for all authorities to name the measures that need to be taken to achieve this goal.** In order to achieve the goal of increased compliance efforts by companies, further research is certainly needed in the future regarding which concrete measures can be taken at the legislative policy level.

Future measures to be taken	Introduction of industry standards (e.g. development of checklists, guide-lines and guidelines).	Introduction of compliance programmes in companies.	Targeted communication between companies and various stakeholders regarding compliance activities.	Strengthening the role model function of managers ("tone from the top").	Others.
Brasil		x	x		
Chile		x		x	
Colombia					x
Honduras		x			
Panama	n.a	n.a	n.a	n.a	n.a
Paraguay	n.a	n.a	n.a	n.a	n.a
Peru	n.a	n.a	n.a	n.a	n.a
Republica Dominica	n.a	n.a	n.a	n.a	n.a
Costa Rica	n.a	n.a	n.a	n.a	n.a
El Salvador	n.a	n.a	n.a	n.a	n.a
Mexico	n.a	n.a	n.a	n.a	n.a
Guatemala	n.a	n.a	n.a	n.a	n.a
Nicaragua		x			

Next Steps

- Elaboration of best practices based on the Empirical Analysis
- Cooperation with (some of) the authorities(?)
- Timetable to be discussed

Thank You very much for your Attention!

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