

# GOVERNANCE

BASEL INSTITUTE ON GOVERNANCE

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## ETHIC Intelligence® certification processes: How can a private standard setter meet civil & regulatory expectation

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### ETHIC Intelligence certification as a standard setter

#### What does ETHIC Intelligence offer?

ETHIC Intelligence is a certification agency that offers OECD-based companies (and other business entities) a means to attest publicly that they have taken appropriate measures to prevent corruption and/or money laundering. ETHIC Intelligence does not certify that an act of corruption or money laundering has not and shall not occur, but rather that necessary steps, based on internationally established practices, have been taken to prevent these economic crimes.

ETHIC Intelligence has defined three groups of four certificates each, based on the codification of international good practices and on international case law:

- **Anti-corruption (AC) certificates**, adapted mainly to OECD-based non-financial companies;
- **Anti-money laundering (AML) certificates**, adapted mainly to OECD-based companies offering financial services;
- **Due diligence certificates**, adapted to OECD companies' intermediaries, such as External Service Providers (ESPs) or Business Partners (BPs), located outside the OECD area.

The twelve certificates are designed to meet the needs of any OECD-based company, whatever its size or sector of activity. The certificates are suitable for a single company, subsidiary, international group and even for a consortium or specific project.

In order to be certified, a company must satisfy the requirements set forth in the terms and conditions of each certificate. The certificates are awarded for a duration of two years. In order to renew a certificate, a company must satisfy the requirements for renewal set forth in the terms and conditions of the corresponding certificate.

#### What are the main aims of each certificate?

The detailed aims and content of these certificates are presented on [www.ETHIC-intelligence.com](http://www.ETHIC-intelligence.com) (in English

and French) and are described briefly (in French) in a book published in October 2006, *L'entreprise face à la corruption internationale* (pp 480/486). A summary of the certificates is presented below.

Table 1: Summary of the anti-corruption (AC) and anti-money-laundering (AML) certificates

Certificates (AC or AML)	Purpose
Vigilant	Attests to the company's vigilance vis-à-vis the risk of corruption/money laundering
Active	Attests to the fact that the company has evaluated its risk of corruption/money laundering and has implemented an appropriate integrity measure
Conform	Attests to the fact that the company has had the effectiveness of its anti-corruption/money laundering measure evaluated by an independent third party
Specific	Attests to the fact that the company has put into place a specific anti-corruption/money laundering measure

Table 2: Summary of the due diligence certificates for External Services Providers (ESPs) and Business Partners (BPs)

Due Diligence Certificates (AC or AML)	Purpose
Partner level 1	Attests to the company's vigilance vis-à-vis the risk of corruption/money laundering
Partner level 2	Attests to the fact that the company has evaluated its risk of corruption/money laundering and has implemented an appropriate integrity measure
Partner level 3	Attests to the fact that the company has had the effectiveness of its anti-corruption/money laundering measure evaluated by an independent third party
Partner level 4	Attests to the fact that the company has put into place a specific anti-corruption/money laundering measure

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## How do ETHIC Intelligence certificates work?

A company that wishes to verify and demonstrate the quality of its anti-corruption and anti-money laundering measures may apply for an ETHIC Intelligence Certificate. In order to do so, the company must ask a consulting firm, selected by ETHIC Intelligence for its qualifications, to carry out the certification process according to the terms and conditions of the corresponding certificate.

Once a company has satisfied the requirements of a given ETHIC Intelligence certificate, a certification file is transmitted by the authorised consulting firm to the ETHIC Intelligence Committee, which then verifies the quality of the certification process.

If the certification process corresponds to the established quality standards, a certificate is issued and awarded to the company by the ETHIC Intelligence Committee. A copy of this document is also transmitted to the Basel Institute on Governance, which validates the ETHIC Intelligence certification processes once a year (see below). ETHIC Intelligence verifies certification processes and awards companies the corresponding certificates.

The certified company is given an ETHIC Intelligence Certificate logo for display on its website. This logo is linked to a specific page on the ETHIC Intelligence site that describes the nature of the certificate, details the corresponding terms and conditions, and provides information about the certification process undertaken. This ETHIC Intelligence Certificate logo allows the company to attest publicly that it is committed to preventing corruption and/or money laundering in its activities, and – even more importantly and innovatively - how it does so.

A certificate awarded to a company by ETHIC Intelligence can be revoked by the ETHIC Intelligence Committee if and only if there is evidence that the company's management deliberately concealed relevant facts during the certification process.

## What makes ETHIC Intelligence certificates legitimate?

The legitimacy of ETHIC Intelligence certificates is based on the relevance of each certificates' terms and conditions, the peer review applied to the process, its validation by an independent body, and – last but not least – on the opportunity it gives to civil society to examine the certification process.

## The legitimacy of ETHIC Intelligence Certificates' terms and conditions

ETHIC Intelligence certificates are legitimate because they are based on internationally recognised best practices. International best practices can be defined as practices that are:

- adopted by a significant number of companies because they consider them valuable;
- recommended by international organisations (OECD, WB, etc.) because they consider them efficient;
- referred to in the administrative proceedings and enforcement actions issued by courts because they consider them to be points of reference.

As regards corruption and anti-money laundering issues in particular, best practices refer to the importance of:

- being aware of the risk, which is the purpose of the Vigilant Certificate (AC or AML)
- being pro-active in preventing corruption or money-laundering, which is the purpose of the Active Certificate (AC or AML);
- carrying out significant controls to ensure that no offence occurs, which is the purpose of the Conform Certificate (AC or AML);
- adopting specific prevention measures when a specific situation requires it, which is the purpose of the Specific Certificate (AC or AML), a certificate that is particularly suited to a consortium of companies or a specific project, for example;
- undertaking appropriate due-diligence action regarding External Services Providers and Business Partners, which is the purpose of the four Due Diligence Certificates (AC or AML).

## The legitimacy of the ETHIC Intelligence certification processes

ETHIC Intelligence certificates are awarded by an independent committee, which is not involved in the certification process, since the latter is carried out by external firms that have been authorised by ETHIC Intelligence. Consequently, there is no conflict of interests between the company that carries out the certification process of a client company and the ETHIC Intelligence Committee, which awards the certificates after having reviewed the certification file.

The ETHIC Intelligence Committee is composed of the following internationally recognised experts:

- **François Vincke.** Chairman of the Anti-corruption Commission of the International Chamber of Commerce (ICC). Lawyer with Willkie Farr & Gallagher LLP (Belgium);
- **Maarten de Jong.** Founder and former Vice President of Europol; Founder and former Director of the Integrity Department at the World Bank. Senior Consultant with Corgwell (The Netherlands);
- **Philippe Montigny.** Chairman of the Working Group on Corruption Prevention of the Council of French Investors in Africa; former member of the private office of the OECD Secretary-General (until the signing of

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the OECD Convention in 1997). President of ETHIC Intelligence (Paris).

## External validation of both the certificates and certification processes

In order to reinforce peer review of the ETHIC Intelligence certification process, an independent and internationally recognised body, the Basel Institute on Governance, has been asked to review the process as a whole. In September 2006, the Basel Institute on Governance evaluated the method and content of the certificates. An evaluation of this sort will be carried out on a regular basis in order to ensure that the certificates always reflect international – and constantly evolving – good practices.

Moreover, to make sure that the certification process remains at the highest level regardless of the country or authorised consulting firm, the Basel Institute has been asked to carry out a quality control of the certificates each year. In order to do so, the Basel Institute will select and control up to 10% of the certificates awarded per year and per country. This control will focus exclusively on the certification process executed. The Basel Institute will contact the authorised consulting firm, which will organise verification meetings in the offices of the certified company. At the end its control, the Basel Institute will send a report to the ETHIC Intelligence Committee.

## The legitimacy gained thanks to the certificates' visibility

The most innovative feature of the ETHIC intelligence certificates is the visibility that they give to the various measures put into place by a company to prevent corruption or money laundering. The fact that the ETHIC Intelligence logo displayed on the certified company's website is linked to a specific page on ETHIC Intelligence's own website that describes the nature of the certificate awarded, its terms and conditions, and the way the certification was executed is a strong indicator of the company's sincerity.

Because the ETHIC Intelligence Certificate logo offers access to various detailed aspects of the company's anti-corruption or anti-money laundering measures, which can be consulted by anyone (shareholders, employees, consumers, NGOs, business partners, journalists, competitors, etc.), it is extremely likely to reflect the company's genuine commitment to preventing corruption and/or money laundering. Publicly displaying such information if it did not correspond to reality would quickly prompt someone to blow the whistle.

The transparency of the ETHIC Intelligence certification process contributes significantly to the legitimacy of the certificates – not least because, considering that compa-

nies use them to enhance their ethical image, any wrongdoing would severely damage their reputation.

## Why are ETHIC Intelligence certificates useful to companies?

ETHIC Intelligence certificates offer every type of company three unprecedented advantages:

1. **Communicating the company's integrity commitments.** ETHIC Intelligence certificates allow companies that have invested significantly in training and monitoring processes to publicly communicate their commitment to preventing corruption and/or money-laundering. This commitment, thus certified by an independent third party, adds value to the company's Corporate Social Responsibility report and makes it easier for non-financial rating agencies to take it into account.
2. **Protecting the company and its top management.** No company – regardless of how strong its integrity measures may be - can be certain that an economic crime will never occur. ETHIC Intelligence certificates, because they are based on internationally established good practices that are recognised by international case law, contribute to protecting companies and their top managers. They prove that the management has taken the appropriate steps to prevent corruption and/or money laundering, and that if an economic crime occurs it has been committed despite the company's best efforts to prevent it.
3. **Giving the company the competitive advantage of ethical value.** Shareholders, consumers and international donors are attaching growing importance to a company's ethical value. Increasingly, international banks, bilateral aid agencies and credit agencies require companies that use their facilities to prove that they will not engage in economic crime. Some international calls for tenders (e.g. World Bank) now require evidence of the effectiveness of a company's policy for preventing corruption and/or money laundering. Displaying a certificate demonstrates not only a company's good intentions, but also the fact that its integrity policy is being enforced.

## How does ETHIC Intelligence certification's standard setting meet civil & regulatory expectations?

In various documents and presentations, Mark Pieth has clearly defined the role and expectations of the three stakeholders (government/international organisations, the private sector, civil society) involved in promoting a corruption-free environment. He has demonstrated that an efficient – and credible - way to combat bribery and money-laundering is a process that would involve all three stakeholders equally.<sup>1</sup> Mark Pieth illustrates this

<sup>1</sup> Mark Pieth, "Multistakeholder initiatives to combat money laundering and bribery", in Christian Brütsh & Dirk Lehmkuh,

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approach very clearly using a triangular “power diagram” in which the Public Sector, Private Sector and Civil Society each occupy one of the three corners.

Although the ETHIC Intelligence certification process is a private-sector initiative, it aims to place the monitoring process for fighting corruption and money laundering at the centre of such a triangle in which all three stakeholders work together. Mark Pieth’s “power diagram” is particularly useful for describing the various relationships involved in the ETHIC intelligence certification process.

What is noteworthy about the ETHIC Intelligence Certificates is not just that their terms and conditions are defined by the private sector on the basis of international case law, but also the fact that, essentially, they disclose publicly what measures the company has put into place to prevent corruption and/or money laundering. Currently, a company may only communicate its integrity via its public commitment, as presented in an ethical charter or code of conduct. ETHIC Intelligence takes this a step further by enabling the company to publicise what it has done concretely to enforce this commitment.

Furthermore, this public declaration is not made by the company itself, but by ETHIC Intelligence as an independent third party. It is worth recalling that, to ensure that there is no conflict of interests, the certification process is not carried out by the ETHIC Intelligence team but by authorised and reputable consulting firms. These firms present a certification file to the ETHIC Intelligence board, which then decides whether or not to award a certificate. Moreover, the certification process itself is in turn evaluated on a regular basis by another party, namely the Basel Institute on Governance.

Last but not least, the fact that the company’s integrity measures are publicly displayed in the details accessible by clicking on the ETHIC intelligence logo awarded offers civil society not only precise information about the company’s actions against corruption, but also virtually guarantees that this information corresponds to reality since it is freely accessible to anybody (employees, clients, competitors, journalists, etc.).

## Conclusion

Fighting corruption is a common goal for the following three stakeholders:

- civil society, which requires and expects a corruption-free world because the costs of corruption are always borne by consumers and tax payers;
- the public sector, which requires and expects a corruption-free administration because corruption distorts how public decisions are made;
- the private sector, which requires and expects a corruption-free environment because corruption introduces unfair competition.

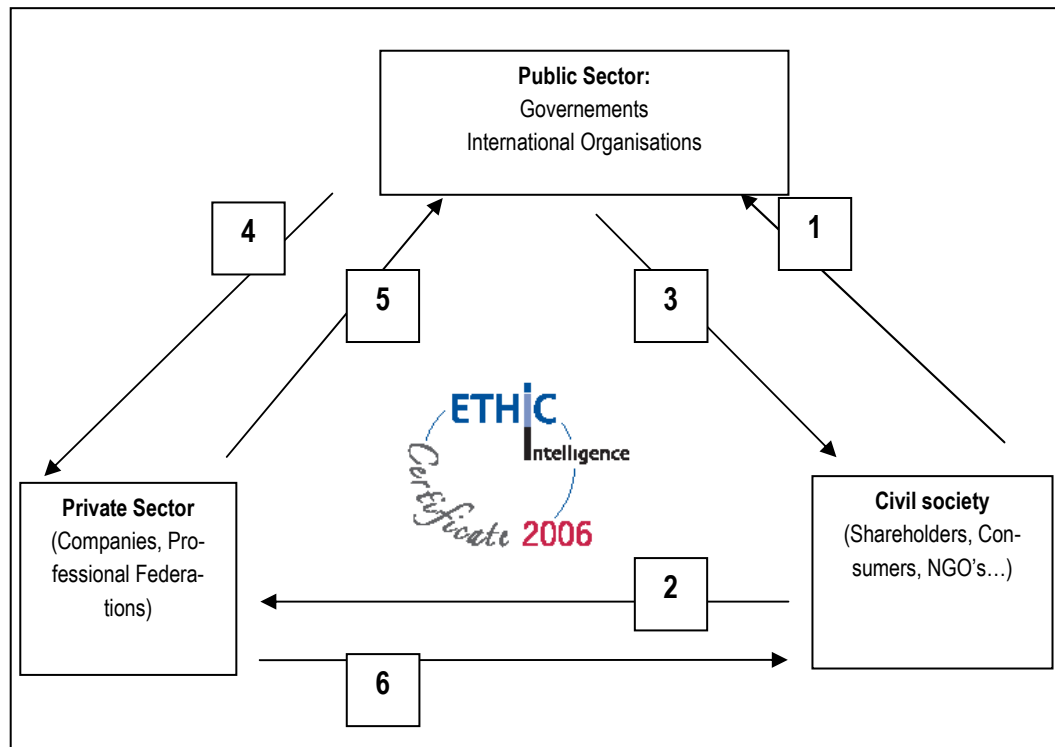
However, corruption, and the associated money laundering, is always surrounded by obscurity, secret arrangements, black money and hidden accounts, and each stakeholder has reason to doubt the sincerity of the other’s commitment to fighting corruption. In issues related to corruption, mistrust characterises the relationships between the public sector, private sector and civil society.

The ETHIC Intelligence certification process is nothing less than an attempt to build confidence among the three stakeholders by creating an open environment in which to define, respect and control internationally established good practices – or, in other words, in which to collectively set up mutually agreed-upon standards.

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Figure 1: ETHIC Intelligence at the heart of a triangular power diagram:



#### Civil Society:

1. puts pressure on the Public Sector and on International Organisations to curb corruption and money-laundering;
2. expects the private sector to demonstrate that it is not engaged in corrupt practices and/or money laundering.

#### The Public Sector and International Organisations:

3. adopt a legal framework to criminalize corruption and money laundering;
4. enforce anti-corruption and anti-money laundering laws, thereby defining the general guidelines (legal proceedings and case law) that serve as the basis for each type of ETHIC Intelligence Certificate: Vigilant, Active, Conform, Specific and Due Diligence.

#### The Private Sector:

5. defines and adopts good practices which are encapsulated in the ETHIC Intelligence Certificates' terms and conditions;
6. uses ETHIC Intelligence Certificates to disclose - publicly and in a transparent manner - the anti-corruption and anti-money laundering measures enforced by the company.