

Contents

sun	ım	ary			
Describing, Conceiving and Correlating Compliance Tools, in Order to Use Them Adequately			C		
LEG	Chapter 1 LEGAL AND ECONOMIC APPROACHES TO COMPLIANCE TOOLS33				
the	Un on	Approach to Compliance Tools: Building by Law hity of Compliance Tools from the Definition pliance Law by its "Monumental Goals"	35		
l.	Th	te teleological nature of Compliance Law, attaching all e tools to the monumental goals they serve	36		
	A.	Compliance Law, an extension of Regulatory Law	37		
		Compliance Law, a Regulatory Law beyond the regulated sectors	37		
		2) Compliance Law, bearer of pretensions beyond those of Regulatory Law: the "monumental goals" of compliance	39		
	В.	Unicity of compliance tools through the normativity of monumental goals in relation to those with which they combine	41		
II.		terpretation method and strength of constraint compliance tools			
	A.	The interpretation methods required for all the compliance tools	42		







	В.	to be attached to the link between the tool and the goal	44
		The handling of the distinction between obligation of means and obligation of results superimposed on the distinction between compliance "tools" and the "monumental goals" pursued	44
		2) The required probative culture, based on a systematic program of preconstitution of proof	45
		nomic Approach to Compliance Tools: y, Measure, and Effectivity of Constrained	
	Cho	sen Compliance	47
		URENT BENZONI AND BRUNO DEFFAINS	
l.		nstrained and chosen compliance: an economic taxonomy tailing a legal framework	48
	A.	An economic taxonomy	48
	В.	Legal correspondence	49
II.	Со	mpliance: tools, effectivity, and measures	51
	A.	Constrained compliance and the economics of law: averting risk drives the decision to conform	52
	В.	Chosen compliance: seeking competitive advantages and/or productivity gains	55
Со	nclu	ision	57
		Chapter 2	
RIS	K N	IAPPING, CENTRAL COMPLIANCE TOOL	59
Dra	wir	ng up Risk Maps as an Obligation and the Paradox	
of "		riformity Risks"	61
Ah		ct	61
I.		little noise for so much	
II.		sk mapping, a process often described	02
11.		t rarely legally defined by legislation	63





Contents

III.	The absence of a legal definition of risk mapping reflects uncertainties regarding the qualification of the compliance mechanisms themselves	64
IV.	"Conformity risks", identified elements of risk mapping, a logical reference to the substantial definition of Compliance Law	65
V.	The hypothesis of risk mapping, a legal obligation of results, ancillary to the main obligation of the means to achieve a "monumental goal"	66
VI.	The hypothesis of risk mapping as a legal fact	68
VII.	The hypothesis of a general and autonomous legal obligation of establishing risk mapping for legal subjects in a position to know them	69
VIII.	Third parties subjective right to be disturbed by the knowledge of risk mapping, in order to be able to exercise their freedom of action	70
	ppliance Risk Mapping: First Insight into the Challenges	
	its, and Best Practices NICOLAS GUILLAUME	73
I.	Risk-based regulations: a growing trend!	73
II.	Risk mapping: a means or an end?	74
III.	From error to fault	74
IV.	Risk mapping or risk mappings?	75
٧.	Basic principles common to the different risk maps	76
VI.	A diversity of risk maps reflecting specificities according to the nature of the risk	76
VII.	The art and the manner	77
VIII.	From mapping to risk management	78
IX.	Mapping, an essential tool for strengthening the risk culture	79







PLA	CE	Chapter 3 AND USE OF INCENTIVES IN COMPLIANCE SYSTEMS	81
nce		ive Theory and Governance of Space Activities	83
Sur	nm	ary	83
I.	Int	troduction	84
II.	Со	ntext	85
III.	Iss	ues	87
IV.	Ве	havioural approach	88
٧.	Ar	chitecture of choice and incentives	92
VI.	Те	chniques and biases	94
VII.	. Int	ternational agreements and customary law	97
VIII.	. Co	nclusion	99
'Inc 1.	MA Th	ARIE-ANNE FRISON-ROCHE te tendency to only think of sanctions as "incentives" in ompliance Law	
	A.	Criminal Law, a "formidable" tool for encouraging companies to "comply"	103
	В.	The clash between the rationale of compliance and the fundamental principles of classical Criminal Law	105
II.		the Rule of Lawthe sanction as incentive and the principles	106
	A.	The general terms of the articulation between the sanction as an incentive for companies to reach the "monumental goals" and the principles of the Rule of Law	106
	В.	The need to maintain the prevalence of the principles of the Rule of Law, so that the Law still exists	108
	C.	The preferred solution: a repressive Law remaining autonomous, interpreted teleologically with regard to the monumental goals of compliance	109





in French Compliance113

II. Contract and Compliance: Cass. com., 20 November 2019,

of the Agence française anti-corruption of 4 July 2019115

No. 18.12-817......117

B. A second step: an express recognition......135

through a principle of unjusticiability of supervision acts......136

of the "calls to the law"......136

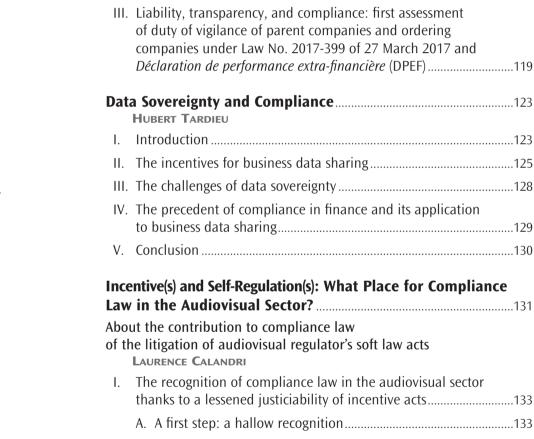
II. The deployment of compliance law in the audiovisual sector

A. The affirmation of a principle of unjusticiability

The Manifestations of Incentive Mechanisms

Fighting corruption: the decision

MARION LAROUER









	B. A recognition favorable to the rebuilding of media regulation	.138
Con	npliance and Incentives: a Promising Tandem	.141
	MARIE-ANNE FRISON-ROCHE	
I.	Incentive compliance, integrating time in the crucial operators to recognize them as second-level regulators:	
	digital and finance	.143
II.	Incentive compliance, integrating industrial projects within	
	operators coordinated in the European zone	.144
III.	Public Supervision substituted for Regulation in the hypothesis of incentive compliance	110
	in the hypothesis of incentive compliance	.140
	Chapter 4	
THE	REQUIRED EXPERTISES IN TERMS OF COMPLIANCE	.149
Aud	lit Of Compliance Systems Antoinette Gutierrez-Crespin	.151
I.	Audit as a steering tool for compliance programs	.151
II.	An essential element of the control and internal evaluation of the compliance program	.152
III.	The scope of application of compliance audits	.153
IV.	A tool for detecting potential breaches	.154
٧.	Approach	.155
VI.	Audit preparation	.156
VII	. Compliance audit actors	.156
VIII	. Performance of the compliance audit	.157
IX.	Reporting, remediation, and follow-up of the compliance audit	.158
X.	Conclusion	.158
The	Development Of Attorneys' Compliance Expertise SIDNE KOENIGSBERG and FRANÇOIS BARRIÈRE	.159
I.	An expertise reinforced through specialization and collaboration	160
II.	An expertise consolidated by a continuous cycle between ex-ante and ex-post aspects	.162
	·	







	mpliance or the Passage from Ex Post to Ex Ante:	
a C	opernican Revolution for the Criminal Lawyer?	165
I.	Compliance: preventing the risks	166
1,	A. <i>Ex-ante</i> approach: a method for compliance	
	B. The role of the criminal lawyer in the implementation	
	of compliance programmes	168
II.	Compliance: controlling the risks	169
	A. Anticipating regulators' controls	169
	B. Anticipating criminal proceedings	171
	Chapter 5	
THI	E GEOGRAPHICAL DOMINANCE OF COMPLIANCE TOOLS	173
	Compliance Toolsoductory remarks JEAN-BAPTISTE RACINE	175
Cor	nception and Application of Compliance in Africa M. Mahmoud Mohamed Salah	183
Ι.	The burst of compliance in African laws	186
	A. The vectors of the burst of compliance in African laws	187
	B. The legal translations of compliance in Africa	190
II.	The efficiency of compliance in Africa	193
	A. The importance of the informal sector reduces the field of deployment of compliance	193
	B. The weakness of state structures	195
Со	onclusion	197
A •	ti Camandian Camalian and Clabal Dimension	
	ti-Corruption Compliance: Global Dimension Enforcement and Risk Management	100
V1 I	Roger Burlingame, Karen Coppens, Noel Power and Dae Ho	
	Introduction	100





Ψ

II.	Importance of anti-corruption compliance programmes underlined in the US, UK and France	200
Ш.	. Requirements established in the US, UK, and France for an anti-corruption compliance programme	202
	A. A Tailor-Made Programme	
	B. Top-Level Commitment	204
	C. Effective Communication and Training, and a Tailored Code of Conduct	204
	D. Third Party Due Diligence and Management	205
	E. Internal Investigation Process and Whistle-Blower Protections	206
IV.	. Conclusion: Different jurisdictions but unifying compliance against corruption	208
	Chapter 6 E MEASURE OF COMPLIANCE TOOLS EFFECTIVITY	209
The	•	
The	E MEASURE OF COMPLIANCE TOOLS EFFECTIVITYe Regulator's Inspection Of The Effectiveness The Compliance Tools Implemented By The Company	211
The Of	E MEASURE OF COMPLIANCE TOOLS EFFECTIVITY Regulator's Inspection Of The Effectiveness The Compliance Tools Implemented By The Company MAXIME GALLAND Ex ante: the regulator specifies the purpose of the rule and	211
The Of	E Regulator's Inspection Of The Effectiveness The Compliance Tools Implemented By The Company Maxime Galland Ex ante: the regulator specifies the purpose of the rule and supports the deployment of the tool	211
The Of	E Regulator's Inspection Of The Effectiveness The Compliance Tools Implemented By The Company MAXIME GALLAND Ex ante: the regulator specifies the purpose of the rule and supports the deployment of the tool	211213213
The Of	E Regulator's Inspection Of The Effectiveness The Compliance Tools Implemented By The Company Maxime Galland Ex ante: the regulator specifies the purpose of the rule and supports the deployment of the tool	211213213215









The Maturity of the Compliance Tool's User, First Criterion
of the Choice of the Salient Tool225
AURÉLIE BANCK
I. The salient tool for a firm is not the one used by another226
II. The "salient tool" for the structure that will use it is not
the one the compliance officer prefers!227
Chapter 7
FRAINING, ALPHA AND OMEGA OF COMPLIANCE229
Compliance Training: Through and Beyond Traditional
Legal Training231
HERVÉ CAUSSE I The International Reality 222
I. The International Reality233
II. Cultural Confrontation
III. The Practice
IV. The Need for Organization237
V. The Practice of Law238
VI. The Requirement of Experience238
VII. The Revival of Classical Law239
VIII. Past and Present Exercises241
IX. A Psychological Part241
Fraining: Content and Container of Compliance245
Marie-Anne Frison-Roche
Abstract245
Introduction246
I. The content: the principles of compliance training249
A. The purpose of compliance training250
1) Through training, helping the company to reach
the "monumental goals", principles of Compliance Law250
2) Through training, reinforcing the interconnection on which Compliance Law is based251



(1	
	+	

		3) Through training, to establish a probative culture through which the company can find its place in Compliance Law	.252
	В.	The determining elements for compliance training programs	.254
		1) The people who recommend compliance training	.254
		2) The people trained in compliance	.255
		3) The teachers	.257
		4) The subjects taught in compliance	.258
		5) The methods for teaching Compliance	.259
		6) Measurement of compliance training programs	.260
II.	Th	e container: the other compliance tools, elements of training.	.261
	A.	The pedagogical dimension of risk mapping, an element of compliance training	.261
	В.	The pedagogical dimension of in-house control procedures, an element of compliance training	.262
	C.	The teaching dimension of normative production, an element of compliance training	.263
Trai	inir	ng and Compliance, Two Correlated Information	
Tra		nission Toolséo Thouret	.265
Int	rod	uction	.265
I.	In	formation circulation, at the heart of compliance law	.267
	A.	Information circulation within the "crucial operator"	.267
	В.	Circulation of information between "crucial operators"	.268
II.	Tra	aining, an efficient tool to circulate information	.269
	A.	The identity element: training makes information accessible by nature	.269
	В.	The difference element: training ensures that information is "well received" by its recipient	.270
III.		ontaneous or imposed implementation of trainings into mpliance programs: the <i>Total</i> and <i>Johnson & Johnson</i> cases	
	Α	The spontaneous implementation of training: the <i>Total</i> case.	272







	B. The forced implementation of training:	
	the Johnson & Johnson case	
Co	nclusion	274
TE/	Chapter 8 CHNOLOGICAL TOOLS AND COMPLIANCE BY DESIGN	275
ILC	EMOLOGICAL TOOLS AND COMPLIANCE BY DESIGN	2/3
Cor	mpliance by Design in Antitrust: Between Innovation	
and	d Illusion	277
	JEAN-CHRISTOPHE RODA	
I.	Paths	
II.	Pitfalls	282
The	Normative Originality of Compliance by Design CÉCILE GRANIER	287
I.	Compliance by design and application of the norm	290
	A. An automatized application of the norm	291
	B. An increased efficiency of compliance by design?	293
11.	Compliance by design and design of the norm	295
	A. The integration of the norm to the <i>design</i>	295
	B. The <i>design</i> control	297
Tec	hnological Tools, <i>Compliance by Design</i> and the GDPR	:
Dat	ta Protection by Design	299
l.	The technological means of data protection by design	302
II.	Compliance of data protection by design	303
Мо	rality by DesignSAMIR MERABET	307
I.	Compliance, a method to elaborate a moral rule	310
	A. The author of the moral rule	310
	B. The content of the moral rule	312





II.	of the moral rule	315
	A. The interest of Morality by design	
	B. The practice of Morality by design	317
	jective Rights, Primary and Natural Tools of Compliand	
_a w	Marie-Anne Frison-Roche	5 19
Sui	mmary	319
l.	Subjective Rights, the most effective tools for an efficient compliance	322
	A. The proliferation of individual rights in economic systems regulated by Compliance and Regulation Law	323
	The unilateral power of the State, formerly sufficient to govern economic fields	323
	2) The admittance de jure of classical subjective rights, a consequence of the integration of co-ordination and compliancy as a part of the rule of law	325
	The hatching of subjective rights renewed or which are specific to Compliance Law: from the right to access to the right of forgetfulness	327
	B. The explanation of the hatching of subjective rights by the will to effectively achieve monumental goals: subjective rights as a pure tool	330
	1) Subjective rights, a technique for private enforcement	
	The specific quarrel regarding the subjective rights of the information provider: the activation of whistleblowers	332
	The specific favour that has to be taken regarding collective mechanisms serving individual subjective rights: Class Action	333
II.	Subjective Rights, the most natural Compliance Law tools	
	characterized as the concern for people	336





Contents

A.	The legitimacy of subjective rights: tools, mirrors of Compliance Law characterized as the concern for people336
	1) The definition of Compliance Law based on its "monumental goal" to protect human beings337
	2) The Legitimacy of all subjective rights: tools for the fulfilment of people's protection and the correlative technical interpretation
В.	The multiplication of subjective- tool - rights and final subjective rights340
	1) The extensive interpretation of subjective rights — media, mirror of the served goal340
	2) The invention of final subjective rights342
Conter	its 343



