



COMPLIANCE LAW AND SYSTEMIC LITIGATION

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15 September 2025

- The world is changing
- Compliance Law is the traduction of this transformation : companies have the legal obligation to put themselves regulations in application (internalisation of regulations)
So few people have a positive opinion of Compliance Law.... :
 - so many regulations
 - so complex and uncertain regulations
 - so expensive and heavy regulations for companies
 - so news !
- **Maybe the worse?** The Judge...
 - so many courts (national, foreign, international)
 - so complex, slow and costly litigation

SOME EUROPEAN COMPLIANCE BLOCKS :

- General Data Protection Regulation (**GDPR**)
- Digital Markets Act (**DMA**) ; Digital Services Act (**DSA**)
- Corporate Sustainability Reporting Directive (**CSRD**)
- Corporate Sustainability Due Diligences Directive (**CS3D**)
- Artificial Intelligence (**AI Act**)
- Digital Operational Resilient Act (**DORA**)
- Network and Information Security (**NIS 2 directive**)
- Data Act and Data Governance Act (**DA / DGA**)

SOME COMPLIANCE JUDICIAL DISPUTES:

● Case *Shell* (*La Haye, London, ...*)

● Case *Total* (*Paris*)

● Case *BNP* (US)

- Always very active litigants who ask « for » the world, present and future
- « Monumental » demands: save the world, save the Democracy, save the children ; because it is the duty of the defendant ?

THE TENTATION:

- First tentation : to destroy this so awful new Compliance Law
 - Trump (FCPA)
 - European Omnibus Regulation

- Second tentation :
 - to protect enterprises against Compliance blocks
 - to obtain a no-confrontation with courts

A BETTER SOLUTION:

- Developing a new conception and practice of Compliance Law, with a new rôle for the in-house lawyers
- Considering the Compliance Litigation in its very new nature: a Systemic Litigation, with a second very new rôle for the in-house lawyers

I.

WHAT IS COMPLIANCE LAW: A SET OF LEGAL TOOLS WITH NORMATIVE UNITY IN THEIR « MONUMENTAL GOALS » OF SYSTEMIC SUSTAINABILITY

(what is really the burden of the Compliance legal obligation)

- The unmanageable mass of Compliance Blocks
- the **professional challenge**: not admitting the unmanageability of compliance blocks, but without transferring totally them to algorithms : remedy worse than the evil (« conformity »)
- practice Compliance as a systemic set of powerful tools to obtain the non-collapse of systems (banking, financial, energy, transport, climate, digital, supply chains, enterprise itself)
- The Sustainability of systems = the common goal of all blocks of compliance = unity and simplicity of Compliance Law (teleological branch of Law)
- The sustainability of systems by concern for the human beings, giving legal normative unity to European Compliance Law

● The companies « obligation of result » to set up Compliance Structures

- Risk Mapping
- Alert mechanism
- Vigilance mechanisms
- Internal Education

● The companies « obligation of means » to produce efficient systemic effects contributing to achieve the Monumental Goals targeted by the political authors of the compliance blocks

- Efficacy and Systemic Efficiency
- Compliance Evidence System
- Burden and preconstitution of proofs (major rôle for in-house lawyers)

II.

THE JUDGE, **GUARDIAN** OF THE UNIFIED NORMATIVE ANCHORING OF COMPLIANCE BLOCKS

- **The judge is the guardian of the Compliance Obligation**
- **Guardian with the enterprises themselves**
 - **DPA and new functions of Compliance sanction**
 - **entreprises transformed in Judges (Internal investigations/rights of defence/confidentiality)**
- **Guardian through special regulations**
 - **forthcoming Litigation (AI Litigation)**
- **Guardian through classical branch of Law**
 - **Compliance and Contract Litigation (« engagements »)**
 - **Compliance and Tort Litigation (CSR and Tort Law)**
 - **Compliance and Human Rights (Vigilance Duty, ESG)**
- **Guardian through porosity with CSR, ESG, and policy**

III.

THE EMERGING SYSTEMIC LITIGATION, TRANSLATION OF THE SYSTEMIC COMPLIANCE LAW

- **The system is inside the case**
- **The novelty of « Systemic Litigation » brought by Compliance Law**
 - who speaks for the interest of the system implied
 - clear for the Criminal Litigation (DPA, AML mechanisms)
 - no-clear for the other Litigation
- **The adaptation of civil and commercial litigation**
- **The revolution of Arbitration litigation : adequation because it's a contractual jurisdiction but new Arbitration Culture required**

IV.

THE RENEW ROLES OF EACH IN THE CONTINUUM OF COMPLIANCE LAW AND SYSTEMIC LITIGATION

- The new rôle of the parties in the dispute, « split » into two
 - Ethics, *Raison d'être*, asking for the present and the future

- « Parties to the proceedings » alongside the litigants in the dispute
 - *Amici curiae*
 - debate principle as a scientific judicial method
 - preservation of the « space of justice »

- The office of the Judge in Systemic Compliance Litigation
 - organising the debate
 - fixing a general policy for the future by a judicial dialogue
 - giving sort of *guidelines* as Regulators do ?

- The Judge, a Systemic player for creating solutions for the future

The new rôle of in-house lawyers

- to imagine the contractualisation of Compliance (for a real « Contractual Compliance System »)
- to propose solution for the future (mediation, remediation)
- mix legal perspective and other perspectives, internal and external
- mix legal perspective and other perspectives, ethical and cultural : a « culture of compliance » for his/her specific entreprise, his/her specific technical sector, his/her Europe
- reconcile the very Ex-Ante (enterprise global strategy) and the very Ex-Post (systemic litigation) to elaborate concrete solutions for the future with the Judge

CONCLUSION

It is just the beginning

- **mafr**, *Compliance Obligation, 2025* : [click HERE](#)
- **mafr**, *Compliance Law and Systemic Litigation, 2025* : [click HERE](#)

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