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COMPLIANCE AND CONTINENTAL LAW

« Corporate social responsibility », « sustainable development », « compliance », these words are now part of the corporate world's everyday life and mirror an in-depth evolution of the place taken by law in the workings of the economy. Within this complex mix of legal norms – labour law, competition law, environment law ... – but also of recommendations, guidelines and « good practices », one now even witnesses the consolidation of constitutional level obligations with a reference to the observance of Human Rights both at U.N. level, or through the OECD guiding principles. Whereas many jurists still remain skeptical in respect of the actual scope of what they consider as « soft law », the realities of economic activity draw a very different picture. Compliance policies are now a major preoccupation for corporate lawyers.

For if the nature of a legal prescription is its compulsory nature, as it entails a sanction, how else should one read the impact upon Apple's public image of the denunciation of working conditions experienced in the factories of its Chinese supplier Foxconn ? Is a sanction by its consumers not at stake when a large telecom group is being criticized by an NGO for the behaviour of one of its subsidiaries in an Arab-speaking country which allegedly accepted the request of the authorities to block access to Internet and the social networks so as to prevent demonstrators joining the « Arab spring »?

The larger number of economic operators still sees in such compliance requirements the illustration of the stifling proliferation of regulations weighing down entrepreneurial freedom. In this, they remain aligned with the deregulation dogma epitomized by the so-called « Washington consensus ». They are then free to underline the competitive disadvantages in respect of emerging economies, which are said to profit from the unsufferable legal straightjacket that developed countries are tying up their own corporations into.

But another vision is breaking through, both in Europe and the U.S. Experts like Michael Porter, who cannot be taxed with being hostile to business, are showing that corporations as important as General Electric, Walmart, Intel or Nestlé are now geared towards taking into account the interests of all the stakeholders they partner with, the shareholders of course, but also clients, suppliers, employees and the social environment at large. Economic efficiency now calls for this approach. As these world-class corporations cannot allow themselves to practice double standards according to which country they have settled in, they are now disseminating legal exemplarity through their subsidiaries, especially within emerging economies.

A virtuous convergence therefore appears between the best interests of a company and the concern of jurists for the progress of the rule of law. Businesses need lawyers so that the rules they abide by at home mutate more and more into international standards that are compulsory for all. A strategic shift becomes obvious in the role played by legal rules. Instead of being a burden, they morph into a long-term investment which will enhance differences with competitors who are unable to guarantee that their production is "compliant". Just as the consumer now shows he has an increasing inclination for what is certified to be organic, he will require tomorrow a guarantee that the product he wishes to buy was, for instance, made in a factory which observes labour law standards.

In the context of this major upheaval, continental law finds an extraordinary opportunity to get better known. By tradition, it has always been a law drafted to keep a balance between the different interests at stake. We therefore have to promote our own kind of legal compliance and work towards an improved convergence between the rule of law and the interests of businesses.

From **André Ride**, the General Inspector of the Judicial Services

Performance inspections of the Courts

The mission of carrying out performance inspections of the courts which is incumbent upon the Inspectorate General of the Judicial Services is similar to performing an audit. Thus their objective is to evaluate the courts' activity and their organization, and to make recommendations to the chief judicial officers, the chief court officers [Translator's note: the First President and the Prosecutor General], and civil servants. Similar in nature to audits due to the application of the audi alteram partem principle [Translator's note: the right of all parties to be heard], these are submitted to discussion by the magistrates and civil servants concerned, and also the absence of any coercive aspect in the overall inspection process. Thus the goal of these missions is in furtherance of improving the quality of justice.

The missions differ from audits as that term is traditionally used by the power of the Inspectorate General to advise the Minister of Justice of any irregularities found and, where appropriate, the failure to implement the recommendations made to them by the courts that have been inspected. They also differ insofar as the information that they provide to the Conseil Supérieur de la Magistrature [National Judicial Council] in its capacity as the recommending and appointment institution in the career development of magistrates.

For the purpose of effectuating a systematic evaluation of the courts, at regular intervals or promptly upon any irregularity reported, the Inspectorate General of the Judicial Services has since 2006 prepared a methodology that applies competence standards that are appropriate to each of the courts which it inspects: the district courts, regional courts, courts of appeal, and the commercial courts.

This work has been made possible by the former extensive and diverse professional experience of the magistrates who are members of the Inspectorate General of the Judicial Services and the advice of certain appellate court chief judicial officers who are recognized for their knowledge and expertise in the administration of the courts.

This has allowed for identifying five missions that are common to all courts, and for verifying the circumstances under which each of them is performed: the mission of the general administration and activities of the court's services, the mission of ensuring civil and criminal justice, the mission of ensuring juvenile justice and lastly, the mission of ensuring access to justice.

For each of these activities, the Inspectorate General of Judicial Services asked itself what are the risks of irregularity, and then prepared the corresponding points of inspection; thus, as regards the administration of the court, it is appropriate to ensure that the number of magistrates and the head count of the court clerks are suitable to the volume of its activity; that the steering of the court, the sharing of information by the chief judicial officers between themselves and with the head clerk of the court, in other words, that the internal communications are sufficient; that the evaluation of their budgetary resources and their management are satisfactory; that the inspection of internal accounting processed is properly ensured.

As regards the points of inspection relating to civil justice and criminal justice, their adherence to reasonable periods of time in the process of the proceedings, the allocation of an appropriate number of magistrates and civil servants for the handling of the foregoing, the age of inventory and its turnover also constitute points of inspection.

The Inspectorate General of the Judicial Services has insisted on the broad dissemination of the competence standards in order to ensure their transparency. Thus they have been posted on the web site of the Ministry of Justice which can be accessed not only by all of the magistrates but especially as regards the chief judicial officers, that they be able to retrieve the elements required for an inspection of the courts of their respective branch that are mandated by the Code of Judicial Organization.

These tools are regularly updated to ensure their conformity with amendments to the legal rules and with the applicable ministerial recommendations.

The conferences on inspections of courts, judges and prosecutors of the European Union

The first conference of the institutions whose purpose is the inspection of the courts, judges and prosecutors of the countries of the European Union took place in 2008 in Madrid upon the initiative of the General Council of the judiciary of Spain. The second was held in Paris on the 19th of February 2010 under the auspices of the French Inspectorate General of the Judicial Services. The next conference is currently under preparation by the General Council of the judiciary of Italy.

The objective of these conferences, to which are invited those countries that are candidates for membership in the European Union, is to share the fundamental principles, the methodology and the professional practices that the member states have implemented. If their objective is the same, meaning the assurance of efficient justice and substantiating the trust of the persons appearing before the courts, their economic partners and their staffs, the status of the institutions charged with inspections of the courts varies from one country to another. Increased mutual awareness of these institutions and a sharing of their practices constitute a major contribution to the mutual recognition of judicial decisions, the principle adopted by the European Union on the occasion of the summit meeting in Tampere in 1999 and confirmed by the Hague program in 2004. The conference of Paris allowed for the official adoption of the principle of convening regular meetings in one of the EU member states and implementing a follow-up task force to carry out work between the meetings. It also provided the opportunity of drawing up a listing of the institutions involved, and providing the name of each along with that of a contact person.

The international activity of the Inspectorate General of Judicial Services

The Inspectorate General of Judicial Services, an administrative body that reports directly to the Minister of Justice, has been developing an appropriate international activity.

Accordingly, it offers its expertise and cooperation to countries that in some cases do not have court inspection services in place, as well as to those countries that are seeking to reform their existing inspection services.

The Inspectorate General welcomes delegations to Paris on a regular basis to present its own various missions, and also hosts foreign inspectors whom it includes in its performance inspections of the courts. This was recently the case with an English inspector general and Moroccan inspectors.

The General Inspector and the French inspectors travel to foreign countries to provide expertise in cases where the latter are desirous of establishing or improving their inspection systems (for example, in 2010, travel to the United Arab Emirates, to China, Lebanon and Jordan) and taking part in international colloquia dedicated to the quality of justice.

One inspector of the Judicial Services is specifically seconded to handle the organization and the coordination of such international activities.

ltw Monsieur Christoph FRANK

Attorney General
President of the German Association of Judges and Public Prosecutors

As President of the German Association of Judges and Public Prosecutors, could you tell us what are the major current European or international issues that are of concern to your members today?

The German Association of Judges more and more often, in articulating its positions, engages in the review of the legislative proposals of the European Union. Recently, the German Association of Judges presented its position on the Green Paper dedicated to European contract law and in response to the EU consultation on collective redress. We have made it clear that the introduction of European contract law can have meaning only if it is supported by a legally transparent and understandable system for the citizens. In this case, a sample reference to codified law of the countries of continental Europe would be very welcome. In addition, we have recently stated our opposition to the continued implementation of class actions at the European level. The class action pending in the United States since 2001 against Wal-Mart shows that class actions are not very effective in legal practice.



Your institution has partnered in the drafting of the joint brochure describing the benefits of continental law, which followed an earlier initiative undertaken by the legal profession in Germany to launch a brochure entitled “Law Made in Germany”. Can you identify the reasons which have led German judges to associate themselves with these initiatives and what is their point of view?

The Association of German Judges, which is one of the five founding members of the Alliance for German law, takes part in the promotion of German and continental law. Within the framework of the global competition between legal systems, it is always necessary to underline the advantages of the continental legal systems. It is in this context, in cooperation with the Fondation pour le droit continental, that the joint leaflet “Continental law” has been drafted which sets forth the advantages of the continental law legal systems. The requests that have been flowing in from different countries to translate the Franco-German brochure into their language serves as proof that continental law is very well prepared for this competition. The effective constructs of countries endowed with a continental legal system need to find resonance throughout Europe. This is why they are supported by the Association of German Judges, as well as by the Alliance for German law. I can easily imagine that this jointly drafted brochure on continental law will be further buttressed by the inclusion of other examples of cases flowing from countries having a continental law tradition.

You sit on the board of the Fondation pour le droit continental under the auspices of the German Foundation for International Legal Cooperation (IRZ). Can you tell us how the experience of the Foundation from the point of view of German jurists has inspired you?

As a member of the German judiciary, what strikes me is that the Fondation has developed an approach that is influenced by the economy such as the close ties between the law and the economy that exist in France. We must point out, in particular, the work done by the Fondation in assessing the contribution of the justice system to the overall economic development in determining the role it plays in the development of the gross domestic product. It is by means of such a quantification of the importance of the justice system that we are better able to impart the usefulness of the justice system within the framework of a policy that is based on indicators. I would like for the same approach to be taken for the German justice system as regards legal activity in Germany. I am certain that the German justice system contributes not only to the industrial peace within society, but that it also makes a major contribution to the economic development of the country.

A Green Paper is a statement issued by the European Commission on a specific policy area. These are mainly documents addressed to interested parties, organizations and interested individuals which are invited to participate in a process of consultation and debate. In some cases, the Green Paper gives the impetus required to launch a legislative procedure.

The CEELI institute in Prague



The "Central and Eastern European Law Institute" (CEELI), housed in the Villa Gröbovka in Prague, is an independent, non-profit organization that specializes in providing continuing legal education for lawyers. Its mission is to develop a community of reformers committed to the rule of law. By means of training programs, the Institute seeks to encourage the lawyers and judges of the "countries in transition" in their efforts to promote the continuing development of free market economies and democratic institutions as well as support for human rights ([HYPERLINK "http://www.ceeliinstitute.org"](http://www.ceeliinstitute.org) www.ceeliinstitute.org). Since its establishment in 1999, the Institute has welcomed more than 1,500 participants from 35 various countries.

The CEELI Institute came into being as the result of an initiative of the American bar to provide support to the new political regimes that arose as a result of the democratic reforms following the fall of the Berlin wall. Today, this initiative is being developed worldwide under the name of ABA-ROLI (American Bar Association – Rule of Law Initiative).

The CEELI's three central areas of activity take the form of training that is focused primarily on a specific theme, such as "adjudication in a democratic society" in the area of "supporting democratic institutions", intellectual property law in the area of "supporting free market economies", and the "protection of human rights in a democratic legal system" in the area of human rights.

The resources that support the CEELI come primarily from the association of the Friends of the CEELI Institute (82 %) and various businesses (16 %). Support is also provided by a variety of public or parapublic institutions such as the United States Agency for International Development (USAID), the British Department for International Development (DFID) or by professional associations that themselves are supported by public financing. The vast majority of its contributors are located in the United States. The Institute's annual budget is the range of one million dollars.

Beyond providing training in the strict sense of the word, the goal of the Institute is to establish a network of legal correspondents throughout Central and Eastern Europe, and to disseminate tools for assessing policies of legal reform. In addition to obtaining training in the substantive law, CEELI participants are exposed to examining various forms of judicial reasoning as well as the organization of legal systems.

The Institute is basically a program conceived of and headed by American lawyers for the so-called "countries in transition" of Central and Eastern Europe. Participation by European jurists is very limited inasmuch as the participants also include judges from the member states of the European Union. There is but one course offering on European commercial law, with the remainder consisting of training content that largely reflects the influence of the American participants. This is the case, for example, of a seminar that brings together high-level judges in connection with the projected legal network.

These traits also provide evidence of the nature of the CEELI Institute. In contrast to the Academy of European Law in Trier, it is not an organization that provides training in European Union law. Rather, this institution reflects a certain policy vision of the law, as evidenced by the program entitled "Supporting free market economies" and its emphasis on the protection of intellectual property rights. By the same token, its nearly exclusive focus on magistrates corresponds to an approach that is strongly colored by the common law tradition. Inasmuch as nearly all of the trainees of these programs are from continental law countries, there are scarcely any program instructors who are practitioners of this legal tradition.

The CEELI Institute thus constitutes a source of legal influence on Central and Eastern Europe, notwithstanding its status as a NGO, which promotes a specific view of the law. Although this is not problematic in itself, it does however fail to reflect a balanced approach to legal diversity and specifically as regards familiarity with the continental law tradition.