

Public Sanctioning Law and Compliance

Master in L&M 6E 2026/2027

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Class Schedule 9:00-13:00

Introduction

This course offers an in-depth analysis of the relationship between law enforcement and compliance. It is divided into two large blocks: the first deals with general principles and problems of law enforcement and compliance and the second is dedicated to sectoral issues, especially in the context of financial markets, antitrust, AML / CML, and AI regulation.

Goals

This course aims to cover, in an integrated and comprehensive manner, the main problems and challenges that companies and their leaders face in their interactions with law enforcement, providing students with up-to-date training in terms of public sanctioning law in general and its multiple extensions. The course also challenges students to internalize the advantages of aligning corporate practices with the multiple legal and regulatory requirements that impinge on them. In this context, the course promotes objective answers and solutions, incorporating the practical knowledge necessary for the design of compliance programs and effective internal control systems for the application of these programs.

Methods

The course adopts a comparative law perspective, covering the United States, given its pioneering character in these matters, as well as Germany, Spain, Italy, and Portugal, in continental Europe, where the same matters have assumed a growing importance, in legislation, case law and literature. The development and densification of subjects are versatile, and the teaching approach is sufficiently flexible to accommodate students' interests to balance each of the points of the syllabus, while respecting the need to address the syllabus in its entirety.

Contents

FUNDAMENTAL CONCEPTS

- I. Law Enforcement, Compliance & Corporate Liability
 - 1. Command and Control Regulation
 - 2. Responsive Regulation
 - 3. Voluntary Self-Regulation
 - 4. Enforced Self-Regulation
 - 5. Compliance Programmes

CORPORATE STRUCTURES AND ATTRIBUTION OF LIABILITY

- II. Parent Company Liability
 - 1. Undertakings
 - 2. Legal Entities
 - 3. Akzo Nobel 2009
 - 4. Goldman Sachs 2021
 - 5. Standard of Proof
 - 6. Evidentiary Presumptions
 - 7. Burden of Proof
 - 8. Compliance Matters

EVIDENCE, PROOF, AND PROCEDURAL GUARANTEES

- III. Privilege Against Self-incrimination
 - 1. Duty of Collaboration
 - 2. Transmission of Information Between Procedures

ENFORCEMENT TOOLS AND INVESTIGATORY POWERS

- IV. Enforcement challenges in transnational market abuse
 - 1. Citigroup 2005
 - 2. Lessons for the Future: MAR and MIFID II
- V. Dawn Raids
 - 1. EU: Regulation No. 1/2003
 - 2. CJEU Case Law
 - 3. ECHR Case Law

LENIENCY, SETTLEMENTS, AND COOPERATIVE MECHANISMS

- VI. Leniency Programmes
 1. Immunity
 2. Fine Reduction
 3. Percentages
 4. Administrators and Directors
 5. Immunity Applications
 6. Marker
 7. Immunity Procedure
 8. Fine Reduction Procedure
 9. Inspections
 10. Settlements
 11. Reactive and Proactive Methods

EMERGING CHALLENGES: AI REGULATION

- VII. AI Regulation
 1. EU: AI Act and Omnibus Package
 2. EU: High-Risk AI Systems
 3. EU: AI Regulatory Sandboxes
 4. EU: Real-Life Testing
 5. EU: Declaration of Conformity
 6. EU Countries: Open Issues
- VIII. Students Training

Assessment

Students will be evaluated based on:

- a) Open-Book Take-Home Exam – 72 hours (50%)
- b) Oral participation in class discussions and written assignments (50%)

References

- AYRES, Ian / BRAITHWAITE, John, *Responsive Regulation – Transcending the Deregulation Debate*, Oxford: Oxford University Press, 1992.
- BRAITHWAITE, John, “Enforced Self-Regulation: A New Strategy for Corporate Crime Control”, *Mich. L. Rev.*, No. 80, 1982, pp. 1466-1507.

- BRAITHWAITE, John, *Regulatory Capitalism – How it Works, Ideas for Making it Work Better*, Cheltenham, UK / Northampton, MA, USA: Edward Elgar, 2008.
- BRAITHWAITE, John, “Fasken Lecture: The Essence of Responsive Regulation”, *U.B.C. L. Rev.*, No. 44, 2011, pp. 475-520.
- COGLIANESE, Cary (ed.), *Achieving Regulatory Excellence*, Washington: Brookings Institution Press, 2017.
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- DONOVAN, Anna (ed.), *Reconceptualising Corporate Compliance – Responsibility, Freedom and the Law*, 2nd ed., London: Bloomsbury, 2021.
- GORDON, Jeffrey N. / RINGE, Wolf-Georg (ed.), *The Oxford Handbook of Corporate Law and Governance*, Oxford: Oxford University Press, 2018.
- LUCHTMAN, Michiel, *Choice of Forum in Cooperation Against EU Financial Crime – Freedom, Security and Justice and The Protection of Specific EU-Interests*, The Hague: Eleven, 2013.
- MENDES, Paulo de Sousa, “Responsive Regulation, Enforced Self-regulation, and Corporate Liability”, *Criminal Law Forum*, Vol. 33, No. 4, 2022 pp. 285-321.
- MOLONEY, Niamh / FERRAN, Eilis / PAYNE, Jennifer (ed.), *The Oxford Handbook of Financial Regulation*, Oxford: Oxford University Press, 2015.
- POSNER, Richard A., “The Concept of Regulatory Capture: A Short, Inglorious History”, in: CARPENTER, Daniel / MOSS, David (ed.) *Preventing Regulatory Capture – Special Interest Influence and How to Limit It*, Cambridge: Cambridge University Press, 2013, pp. 49-56.
- SIEBER, Ulrich / ENGELHART, Marc, *Compliance Programs for the Prevention of Economic Crimes – An Empirical Survey of German Companies*, Berlin: Duncker & Humblot, 2014.
- VAN ROOIJ, Benjamin (ed.), *The Cambridge Handbook of Compliance*, Cambridge: Cambridge University Press, 2021.
- WILS, Wouter P. J., “The Use of Leniency in EU Cartel Enforcement: An Assessment after Twenty Years”, *World Competition*, No. 3, 2016, pp. 327-388.