Main Aspects of the Book *Compliance Jurisdictionalisation*

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This book, *Compliance Jurisdictionalisation*, takes up a challenge: how can we understand, make coherent and anticipate the evolution of Compliance Law that is characterised as a set of mechanisms that are developed within companies, *ex ante*, with the effect, or even the purpose, of avoiding the judge, while we are constantly reading new court decisions on the subject day after day? Sanctions, controls, appeals, settlements: judges and lawyers are everywhere in compliance mechanisms, creating new situations, sometimes with no solution yet available. Even though compliance tools were designed to avoid the judge and produce security by avoiding conflict.

Is it a sign of failure or of the maturity of this new branch of Law? This present book shows that if we do not see compliance as a mindless mechanism for automatically applying regulations, but as a system whose spirit and normativity are rooted in the Monumental Goals towards which all are converging, then the *jurisdictionalisation of compliance* is, on the contrary, a sign of its maturity. The challenge taken up by this book is to demonstrate this, despite the many technical difficulties, and to anticipate the future of Compliance Law, in which judges and judicial officers will, on the contrary, be at the centre. In this respect, it is closely linked to the previous book on *Compliance Monumental Goals* since it is to achieve these goals that public authorities, companies and judges form an alliance, just

as it is closely linked to the two books that will follow, firstly *Compliance Obligation*, because the enforcement of this obligation, legal, or contractual, or issued by self-regulation is made also by the judge, and secondly *Compliance Evidence System*, because proof, demonstrated notably before the judge, is in fact the primary challenge of Compliance, not only in legal terms but also in financial, managerial and societal terms.

This is why the book opens with a general article written by Marie-Anne Frison-Roche: *Reinforce the Judge and the Lawyer to impose Compliance Law as a characteristic of the Rule of Law*. It shows that it is understandable that compliance mechanisms are perceived by many with hostility, because they seem designed to distance the judge, whereas there can be no Rule of Law system without a judge. It is true that there are solid arguments that present compliance techniques as converging towards the uselessness of the judge, and the first part of this article sets out the solidity of these arguments. Admittedly, there are judges of all kinds, and some very powerful ones, but this may be a sign of imperfection: once the *ex ante* logic has been deployed to its full efficacy, the judge would no longer be needed… and the lawyer would disappear with him. This prospect of a world without judges, without lawyers and ultimately without Law, a world where algorithms could use multiple *ex ante* processes to organise the "conformity" of all our behaviour with all the regulations applying to us; this vision presupposes that we define this new branch of Law as the concentration of processes that gives full effectiveness to all the rules, regardless of their content. Assuming that this engineer's dream is even feasible, even in this very mechanical conception, we cannot do without judges and lawyers.

Therefore, the second part of the article shows that it is imperative to recognise their contributions to Compliance Law, contributions linked and invaluable. Firstly, because there has never been a purely *ex ante* legal system, and even in the days of the Chinese legists, there was still a need for people to interpret regulations, because a legal system must always be interpreted *ex post* by the person who must in any case answer the questions asked to him or her by the subjects of Law, as soon as the political system accepts that they have the right to bring claims before a judge. Then there is the lawyer, whose role, although linked to that of the judge, is distinct from the latter, both more limited and broader, since he or she must appear in all cases where the jurisdictional figure is established. However, Compliance Law has increased the number of such cases since

not only does it extend Regulation Law by conferring numerous powers on the administrative authorities, but it also turns companies into judges, which is what lawyers have to deal with. What's more, Compliance Law only makes sense in terms of the Monumental Goals it serves. It is in this way that this branch of Law preserves the freedom of human beings, particularly in the digital world where compliance techniques protect them from the power of companies through the use that Law forces these companies to make of this very power. Firstly, however, it is the judges who, in their diversity, impose the protection of human beings as a benchmark, either as a limit to the power of compliance tools or as their very purpose. Secondly, the lawyer, once again distinguishing himself or herself from the judge, reminds us that all the parties whose interests are involved must be taken into consideration. In an increasingly flexible and dialogical legal system, each party presents oneself as the "advocate" of this or that monumental goal: the lawyer is entitled to be the first to occupy this position.

From there, the book unfolds into 4 chapters. The Chapter I is devoted to what is specific to Compliance Law: the transformation of companies into prosecutors and judges of themselves, and even of others, the very title of this chapter illustrating the oxymoron: *The Company established Prosecutor and Judge of itself by Compliance Law*. Since the figure of the judge is thus present, the procedure is bound to make its appearance, willingly or by force.

This is why the aim of the Chapter II is to study the interferences that are developing between General Procedural Law and compliance techniques: *Procedural Law in Compliance Law*.

Building on the previous chapters, the Chapter III can broaden the spectrum of analysis on a topic that is not only topical but also, and above all, has a great future: the *Articulation between Compliance Law and International Arbitration*. This chapter measures the influence of the reasoning and requirements of Compliance Law in methods of dispute resolution where it has not, with a few exceptions, been present, but where it has a great future.

This allows the Chapter IV to return in a loop to what began the book: *The Judge in Compliance Law*. Because trials and judgements are indissociable, because legal techniques and the Rule of Law must not be dissociated, but because compliance techniques could paradoxically be used to dissociate them, because the power to judge and the procedures surrounding it must not be dissociated, because compliance and the Rule of

Law must be conceived and then practised, the rise of one must be the sign of the rise of the other, and not the price of the weakening of the Rule of Law, which implies not only thinking about the place of the various judges but also adjusting their role to what is required, by Compliance Law, of companies and public authorities.

CHAPTER I. THE COMPANY ESTABLISHED PROSECUTOR AND JUDGE OF ITSELF BY COMPLIANCE LAW

Marie-Anne Frison-Roche deals directly with the oxymoron imposed on companies by Compliance Law: *the "judge-judged"*, the challenge being to *articulate Words and Things in the face of Conflicts of Interest*. Before even tackling the situation of the company, thus placed as "judge-judged" by Compliance Law, because the issue is first and foremost that of the appropriate qualification, the article begins by stating that three principles must be borne in mind: what Law is in its correlation with reality, entrusting it with the task of maintaining, even in relation to its own power, a minimal link with reality or of restoring the link between words and things, thanks to qualification; what the activity of "judging" is and its corollary, procedure, obliging Law, through what the courts say, to qualify as a "judge" the person who judges in order to better constrain him or her by General Procedural Law; what legal personality is, a concept that allows the enterprise to split into two and thus seems very convenient for sanctioning an employee, or even a corporate officer, but which runs counter to the systemic hostility of Compliance Law towards this concept. With this in mind, the article begins by showing how Law "unmasks" companies that judge and punish by pretending not to do so, a judicial qualification imposed in order to force companies to respect general procedural principles for the benefit of those they prosecute or judge. This becomes acrobatic when the legal entity sues itself, not only in application of legal principles, but also, for example, in the name of the contract or in the name of ethics or *raison d'être*. Nevertheless, judges do so, Compliance Law taking up all the solutions that case law has developed in Regulatory Law concerning administrative regulatory authorities, according to a functional reasoning, to be repeated here, Compliance Law once again extending Regulatory Law. This transposition makes it possible to justify the accumulation of powers by companies which, having to admit the extent of these powers exercised, must therefore organise themselves so that the structural

conflicts of interest they engender are nevertheless resolved. To this end, Impartiality is both a central and sufficient concept.

The second part of the article looks at how companies can sue and judge themselves, albeit impartially. If we consider that ethical heroism, which consists of punishing oneself impartially so that interests other than one's own prevail, is not enough to build a system and sustain it over time, then it is all a question of the art of distance, which must be reconstituted within the "judging-judged" company itself. To avoid sacrificing the coherence of Compliance Law, which can no longer give force to personality, the company must organise distances between who judges and who is judged without resorting to legal personality. If we do not believe that "impartial machines," as promised by the proponents of artificial intelligence, can be a consistent prospect, we need to look more closely at prospects such as internal mediation structures, or even external structures, of which Meta's *Oversight Board* is one experiment. The richest perspective remains that of recourse to human third parties, distinguishing between the different, even divergent, interests involved in the implementation of compliance tools, such as internal investigations, with each of these interests being defended by its own counsel, in particular a lawyer.

Taking a more upstream approach, Cécile Granier leads a *Reflection on the existence of companies' jurisprudence through Compliance*.

Because it overturns established frameworks, Compliance forces us to look at certain concepts in a new light. This is particularly true of case law. Recent developments in compliance raise the question of whether there might not be a body of "case law" produced by companies when they implement compliance procedures. At first glance, the concept of "corporate case law" may seem unnatural, given that case law is traditionally seen as the fruit of the office of the judge and, more particularly, of the State judge. However, the observation that a company can position itself as a judge in relation to itself and others in the context of implementing compliance legitimately raises the question of whether it can produce jurisprudence. The example of Meta's Oversight Board and the first decisions handed down by this body increase the legitimacy of this question.

Thinking about the concept of "company jurisprudence" involves comparing the process of emergence of the jurisprudential norm emanating from the judge with the process of emergence of a "jurisprudential norm" that would be produced by companies in the course of their "jurisdictional" functions. In material terms, an analogy between State case law and

company case law seems conceivable. An organic obstacle then remains to be overcome: can an institution other than the judge be understood as producing case law? In the light of contemporary developments in Law and the practical interest that exists in devising a body of case law for companies, it seems appropriate to adopt a broader vision of case law, one that is detached from the traditional organic criterion. It therefore seems that it is possible, but above all necessary, to consider the concept of "corporate jurisprudence," in order to highlight a new facet of the normative power of companies in the context of compliance, particularly with a view to its supervision.

This power of the operators, stemming in particular from the digital space that they themselves have designed and built, is also the starting point for Luc-Marie Augagneur's examination of *The jurisdictionalisation of reputation by platforms*. He shows that the major platforms are the arbiters of the reputation economy (referencing, notoriety) in which they themselves operate. Although the stakes are usually low on a unit basis, the jurisdictional nature of reputation represents a significant aggregate stake. Platforms are thus required to detect and assess reputation manipulation (by users: SEO, fake reviews, fake followers; or by the platforms themselves, as highlighted by the *Google Shopping* case) which is implemented on a large scale using algorithmic tools. The identification and processing of manipulations are themselves only possible using artificial intelligence tools, of which the article gives many examples. However, this jurisdictionality of reputation has little in common with procedure as defined by Law, which is characterised more by the absence of transparency of the rules and by a probabilistic inductive model based on the identification of abnormal behaviour in relation to centroids, with the *Rule of Law* giving way to *Data is Law*, i.e. a "governance by numbers." In addition, collective jurisdiction is being established, with sanctions stemming from a computational apprehension of the phenomena of the multitude and not from an individual assessment, in man-machine cooperation. To date, the framework for these processes has been based essentially on the mechanisms required by successive laws on transparency, limited adversarial requirements and the availability of appeal procedures, but this remains fairly limited. The author believes that the most efficient forms of this jurisdictionality ultimately come from the role played by third parties in a form of participative dispute resolution, such as trusted flaggers, who identify illegal content on platforms.

In this context, the author believes that this singular jurisdictional configuration (judge and party platform, massive situations, algorithmic systems for handling manipulations) leads us to reconsider the grammar of the jurisdictional process and its characteristics. If Law is a language, it offers a new grammatical form that would be that of the middle voice (*mésotès*) described by Benveniste. Between the active voice and the passive voice lies a voice in which the subject performs an action in which it includes himself or herself. Now, it is the very nature of this jurisdictionality of compliance to make laws by including oneself in them (*nomos tithestai*). In this respect, the arrival of artificial intelligence in this jurisdictional process is an undeniable proof of the renewal of the language of Law.

To illustrate this in a much older activity, Alain Bruneau shows how *The company judges itself* with *the Compliance function in the bank*. He begins by pointing out that the compliance function originated in finance, and that as it developed, it evolved to accompany the transition from Regulatory Law to Compliance Law. Through these changes, compliance has evolved from an *ex post* control function to an *ex ante* enforcement function. The Libor crisis provides an imperfect illustration of the primacy of this transition. The evolution of this role is illustrated by concrete examples.

The article begins by examining the management of reputational risk, a fundamental element for a company prosecutor and judge of itself. Reputational risk is a significant factor for a financial institution, as it can have a negative impact on its capitalisation and even culminate in a systemic crisis. Avoiding a major financial crisis is also one of the Compliance Monumental Goals. In order to avoid complex and inopportune scenarios, Compliance Law intervenes as far upstream as possible and identifies issues likely to have an impact on reputation. Regulations require certain measures to be put in place *ex ante*. The French so-called "Sapin 2" law requires the introduction of tools that concern all companies (and not just banks). In addition to reputational risk, it is essential to consider the risk of corruption. Consideration of reputational risk may justify refusal to carry out certain transactions. From this point of view, compliance must assess the potential consequences of entering into a relationship with a new customer beforehand, so that the provision of services can sometimes be refused. In this way, the compliance function unilaterally assesses the relationship with a view to managing its reputational risk.

Secondly, the internal sanction mechanism instituted by Compliance Law is also discussed, in particular the internal sanctions adopted by compliance in a financial institution. Compliance can oblige the bank to act as a prosecutor *via* committees set up within the business lines. Compliance can also determine and apply sanctions against employees. In this way, we see a dual role of prosecutor and judge for the compliance function within the framework of an extraordinary system of ordinary Law. Finally, the analysis deals with the case of the "judge-judged": following a decision by the bank, the Regulator may take a position that is all the stricter because it considers that the bank is applying its guidelines incorrectly. In this way, Compliance Law, which is established within the banking company, finds itself under the judgement of its own Regulator. The company finds itself on trial and is called upon to be the prosecutor and judge not only of itself, but also of its customers.

Jean-Marc Coulon adopts the same vision, which is both very broad and very concrete, with regard to another sector, when he discusses the way in which companies operate to give concrete form to *Compliance Law in the construction industry and the contradictions, impossibilities and deadlocks that companies face*. He points out that the construction industry is not a regulated sector. Its market is made up of a superimposition of territorial strata which are as many relevant markets, to each of which corresponds a specific microcosm of companies. Finally, the temporary association between companies for the purposes of carrying out a project or work is consubstantial with this sector. The author stresses that the penetration of compliance in this sector is inevitably very heterogeneous and is the result of both exogenous factors (other partners within temporary associations, influence of economic operators from other sectors of activity, investors and financial backers, encouragement from professional organisations) and endogenous factors (such as the submission to a regulator due to recourse to public offerings, the French laws on the duty of Vigilance or the French so-called "Sapin 2" law). For example, subject to all these factors combined, the Bouygues group is particularly permeable to compliance.

Not only is the Bouygues Group an internal "legislator," it is also a "prosecutor and judge," both of itself and of others. In fact, by conducting an investigation, lodging a complaint, triggering an ethics alert or making use of the leniency programme, it is nothing more than an auxiliary to the public prosecutor. Moreover, by scrutinising its stakeholders, sanctioning

its employees, resorting to the *convention judiciaire d'intérêt public* (Judicial Public Interest Agreement) or negotiating its sanction within the framework of a procedure instituted by a multilateral bank, it fulfils the function of a judge. As legislator, prosecutor and judge, the Bouygues group is faced with a paradox: in a way it is encouraged to exercise "sovereignty," yet it enjoys neither the attributes that go with it nor the unfailing support of the competent public authorities.

Christophe Lapp builds on the previous article to analyse *Compliance in companies: the statutes of the process.* He concludes from the previous article that companies are caught in the pincers of Compliance Law, the jaws of which are those of the incentives and sanctions that they must apply to ensure the effectiveness of their processes, for which they are themselves answerable. The first result is that the company has been delegated the task of manufacturing the reprehensible rules that it must apply to itself and to third parties with whom it has dealings. To this end, the company puts in place "processes," i.e. verification and prevention procedures, to ensure that the offences it is likely to commit are not committed. The processes thus constitute a standard of behaviour to prevent and avoid the offences themselves being committed. They are thus one of the elements of the legal rule of civil liability in its preventive or remedial purposes.

Secondly, the author points out that the repression of non-compliance with processes presents companies with two pitfalls. The first pitfall requires the company to define processes *for* its employees and partners that also constitute a quasi-jurisdictional settlement of non-compliance, the company having to reconcile the sanction it imposes with the fundamental principles of traditional Criminal Law, constitutional principles and all substantive rights. Processes thus become the procedural rule. By reversing the burden of proof, the company is then required to prove that its processes are at least as effective as the measures defined by laws and regulations, the *Agence française anticorruption – AFA* (French Anti-Corruption Agency), European directives and various communications on tools for combating breaches of probity, environmental offences and current social concerns. Processes then become the constitutive element, *per se*, of the offence. In seeking to strike a balance between prevention and the sanctions to which it is itself subject, will the company not be tempted to prefer the orthodoxy of its processes to the expectations of the *AFA*, regulators and judges, to the detriment of their effectiveness? In so doing, are we not moving towards instrumental and conformist compliance, which

paradoxically disempowers Compliance Monumental Goals? The author concludes with a series of questions about the future.

This questioning mode is shared by Jérémy Heymann, who wonders what *The Legal Nature of the Facebook "Supreme Court"* is. Seeking to make words and things coincide, his reflection concerns the nature of the so-called "Supreme Court" set up by the Meta group to hear appeals against decisions relating to content on the digital social networks Facebook and Instagram. Is it really a Supreme Court, responsible for "judging" the Meta group? A close look at the *Oversight Board* set up by Meta reveals that, in addition to its title, it can claim to exercise a form of jurisdictional activity in addition to its "advisory" role (which consists of issuing "consultative opinions on Facebook's and Instagram's content policies"). This is essentially conceived in terms of verifying that content published on the Facebook or Instagram social networks complies with the standards issued by these two companies, and that decisions – to moderate or assess this moderation – comply with Law. However, the legal framework of reference is vague, and also seems to have the particularity of evolving according to the geographical context in which the case is examined. It would therefore appear that the *Oversight Board* has a jurisdictional role, even if its role is limited and can only be exercised within a restricted framework.

The author therefore proposes that the nature of the *Oversight Board* should be that of a preventive dispute settlement body – the objective being to avoid referral to state courts by ruling prior to a judicial decision. Various questions must subsequently be raised, both in terms of the legitimacy and the authority of such an *Oversight Board*. But whatever the answers to these questions, the fact remains that the creation of an *Oversight Board* by a company governed by Private Law already reveals the liveliness of contemporary legal pluralism.

This liveliness of practice, which is difficult for Law to put into words, is particularly remarkable in the *Internal investigations within companies*, described by Daphné Latour. She shows that internal investigations, particularly in Labour Law, are not new, but that in compliance their exponential growth is relatively recent, having been accelerated by the French so-called "Sapin 2" law of 2016 and the resulting introduction into the French legal system of the transactional tool represented by the *convention judiciaire d'intérêt public – CJIP* (Judicial Public Interest Agreement). Even if an internal investigation is not, strictly speaking, a legal condition for opening a *CJIP*, the fact remains that the negotiation of a *CJIP*

requires a form of in-depth investigation or audit since the public prosecutor, in order to open discussions, expects the beneficiary company to cooperate actively in uncovering the truth about the offences covered by the negotiation. However, despite the infatuation, albeit sometimes forced, of companies with this new tool, the internal investigation, and the stakes and risks it entails, the author considers that the French legislator has not yet given sufficient consideration to its framework, since there is currently no specific and uniform legal provision governing its use in French Law. This leads companies and their advisers to draw inspiration for their investigation procedures from the relevant Anglo-Saxon Law, the fundamental rights enshrined in particular in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), French Criminal Law and Procedure, as well as from Labour Law and the sometimes contradictory case law it gives rise to in terms of defending employees' rights.

This legal insecurity, resulting from the uncertainty and unpredictability of the applicable rule, is all the more prejudicial given that, at the same time, companies are now being asked to take ever greater responsibility for their own behaviour and that of their employees, and to "self-regulate," thereby assuming certain sovereign functions. Private companies seem to be seen as omniscient and capable of preventing crimes from being committed within their walls, even though modern technological tools make it easier to commit them. Failing that, and *a posteriori,* it is required to detect these offences and/or breaches and prevent their recurrence, in particular through internal investigations.

The increasingly important role that these compliance tools are playing in companies is also illustrated by the French Judicial Public Interest Agreement, as shown by Alexis Bavitot, who describes the *Shaping* of *the company through negotiated Criminal Justice Agreements* in a *French perspective*. The author points out that negotiated justice is "the situation in which the criminal conflict is the object of a trade in the etymological sense of the term *negotio*, that is to say, of a debate between the parties in order to reach an agreement." He wonders whether the French legislator has not succumbed to globalised mimicry by creating the *CJIP* in matters of probity, and then environment, and questions the wider nature of this "convention." Validated by a court order, it does not entail any declaration of guilt, has neither the nature nor the effects of a conviction, and is not entered in the criminal record. The *CJIP* can be used at both the

investigation and pre-trial stages, and is unique in that it avoids either prosecution by the public prosecutor or the wrath of the judge.

A detailed study of the agreements signed shows that, in order to negotiate in the best possible way, the company can and must *shape* itself. The company will shape the facts of its agreement, shape its accusation and, finally, shape its penalty. The article offers a concrete analysis of these three dimensions of the shaping of the company in order to better understand the legal nature of negotiated criminal justice agreements.

But while it is true that the very physiognomy of the company is changing as a result of these new activities, Samir Merabet takes a closer look at the duty of *Vigilance* to see a particular situation with the company *being a judge and not judge*. He believes that Vigilance presents two diametrically opposed dangers. The company is caught in the crossfire. On the one hand, there is the risk that it will perform its role at a minimum, so that the obligations imposed on it are ineffective, thereby taking the risk of incurring its own liability. On the other hand, there is a danger that the company will exceed its role and take the place of the judge. Does Vigilance always present the same dangers? Does it systematically imply the same role for the company? Does being vigilant mean passing judgement? The answer to these questions depends on the content of the obligations that Vigilance entails. Today, these obligations seem to be very diverse.

How can we distinguish between the various due diligence obligations? A first approach might be to consider a formal identification that leads to a distinction being drawn between Vigilance in the *strict sense*, as envisaged by the French so-called "Sapin 2" law and identified as such, and obligations that are similar to it, for example the duty of moderation of companies on social networks, which, although not called a duty of vigilance, is nonetheless close to it. The extension of Compliance Obligations leads to a blurring of the boundaries between what exactly constitutes due diligence and what does not. A more substantive approach is needed to consider the degree of control exercised by the company. On this basis, two categories can be distinguished: negative vigilance, which implies the identification of a risk, and positive vigilance, which implies even more the neutralisation of the risk. The former presupposes a limited role for the company, while the latter encourages it to act positively, even before an authority has taken a decision. This time, the company's role is closer to that of the judge. It is clear that not all due diligence obligations can be approached in a uniform manner.

Since the company is led – if not to substitute itself for the judge – to act even before the latter has had the opportunity to give a ruling, it seems legitimate to frame the implementation of the company's duty of vigilance by a form of proceduralisation of compliance. Both the company and its employees or partners would benefit from greater supervision of Vigilance. Insofar as not all due diligence obligations call for the same role on the part of the company, it is advisable to envisage guiding principles for due diligence, more or less intense depending on whether positive or negative due diligence is involved.

This first chapter has shown what happens in companies that are called upon to prosecute, investigate, listen and judge. It is therefore desirable, and fortunately inevitable, that General Procedural Law penetrates Compliance Law, which is the subject of the chapter II.

CHAPTER II. PROCEDURAL LAW IN COMPLIANCE LAW

Nicolas Cayrol opens this chapter by looking at the *Procedural principles in Compliance Law*. It would certainly be sufficient to examine the reception of General Procedural Law principles in contentious compliance cases and the distortion that compliance techniques justify in procedural mechanisms. But the innovation represented by this emerging branch of Law, Compliance Law, justifies going further. From this perspective, we must ask ourselves what is the very legitimacy of the general procedural principles in this branch of Law, in that General Procedural Law is built on the notion of "litigation," whereas Compliance Law deals with such enormous situations, concerning the fate of the planet for example, that this notion seems inadequate, and that General Procedural Law would therefore be outdated.

If, however, we maintain this perspective of Compliance Law confronting the greatest challenges of our time from an almost warlike point of view, the relevance of General Procedural Law requires us to rethink the very definition of litigation. Compliance proceedings call into question the future of systems and it is in this capacity that they call to account the entities at the heart of these systems. This is why liability proceedings are more like "accountability" proceedings, enabling the judge to demand action for the future, proceedings in which commitments are made and the "intentions" of those involved are tested.

From the same highly innovative perspective, François Ancel raises a question, which is like a proposal: *Compliance Law, a New Guiding Principle for the Trial?* The aim is to elevate the principle of compliance to the status of a guiding principle of litigation. To support this, in the first part of his article, the author emphasises the convergence of the goals of compliance and the purpose of litigation. Indeed, recalling that Compliance Law does not oust either the State or the judge, from the moment compliance means that the person must respect his commitments and that the trial is also based on the principle that the parties must comply with the principles and their own "discourse," compliance thus becomes a guiding principle of the trial. In the second part of the article, the author illustrates his point in very concrete terms. Firstly, the procedural protocols drawn up by the courts and bar associations are commitments that should justify a form of constraint which, while it does not need to be of the same form and nature as that of the laws, must nonetheless have consequences when a party fails to comply, for example with regard to article 700 of the *Code de procédure civile* (French Civil Procedure Code). Secondly, based on French case law which has sanctioned a party who had accepted the principle of arbitration and then systematically obstructed its implementation, the author suggests that the principle of compliance could encompass the currently scattered notions of the principles of loyalty, consistency (estoppel) and effectiveness. In this way, practice would already validate this theoretical proposal exposed in the first part.

In any case, these new types of lawsuits will certainly be influenced by the American conception of the lawsuit and the role of judges and prosecutors. At the very least, it is important to take into account the way they operate in order to understand how Compliance Law, which is often global in scope (finance, digital, climate), works. Bryan Sillaman proposes *Taking the Compliance U.S. Procedural Experience globally* and apply it to a key practical issue: professional secrecy and cooperation. He points out that the French legal system is evolving, organising interactions between lawyers, regulators and prosecutors, particularly in investigations into corruption or corporate misconduct, adopting American methods of resolution, as exemplified by the *Convention judiciaire d'intéret public – CJIP* (French Judicial Public Interest Agreement) which encourages "collaboration" between them. The author describes the evolution of American institutional doctrine and describes the evolution of French legal system, inspired by the American procedural experience from which

this mechanism originates. The DOJ has published several memorandums on the subject of "collaboration," according to which professional secrecy must remain intact when the information is not merely "factual," in order to maintain trust between prosecutors, regulators and lawyers.

The French authorities had not followed this path, but the very recent law recognises a sort of solicitor-client privilege *à la française*, particularly useful when they are involved in internal investigations within companies.

However, the perspective of the authorities issuing injunctions or sanctions must also be taken into account, as their normative framework has evolved more in the subsequent phase of the procedure. Alexandre Linden, for example, studies the rules governing the *Motivation and publicity of the decisions of the Restricted formation of the* French Data Protection Authority *(Commission nationale de l'informatique et des libertés – CNIL) in a Compliance Perspective*. He points out that in the event of a breach of the rules on the protection of personal data, the *CNIL*'s Restricted formation issues fines, compliance orders or reminders. It may order the publication of these measures, which may be challenged before the *Conseil d'État* (French Council of State). It is essential that reasons are given for these decisions, not only to comply with the Rule of Law, but also to ensure that the public concerned, which is very heterogeneous, understands them, as the *CNIL*'s educational role also applies.

The principle of publicity is handled with nuance, as data controllers often request closed hearings and very few members of the public attending it. Conversely, publicising decisions is in itself a sanction. Moreover, publication may not be total, or may only be for a limited period of time. Anonymisation often allows a balance to be struck between the need to educate and the need to protect interests, and the *CNIL* pays close attention to the actual methods of publication, even though it cannot control the circulation and media use that is subsequently made of the information.

Lawyers take a more radical view of the place that should be given to the rights of individuals, particularly the rights of the defence, at all stages of the process. Sophie Scemla and Diane Paillot set out what they describe as *The difficulty for Compliance Enforcement Authorities to comprehend the Rights of the Defence in compliance matters*. They point out that since December 2016, the French so-called "Sapin 2" law has required French companies falling within its scope to put in place eight highly restrictive anti-corruption measures, such as risk mapping, an alert system and a

procedure for evaluating third parties. In order to ensure that these obligations are implemented, the "Sapin 2" law created the *Agence française anticorruption – AFA* (French Anti-Corruption Agency) which has three missions: firstly, to help anyone prevent and detect corruption; secondly, to monitor the quality and effectiveness of the anti-corruption programmes deployed; and thirdly, to impose sanctions, via its Sanctions Committee, for any breaches found.

However, as the *Conseil d'État* (French Council of State) has pointed out, the powers given to administrations have become stratified and multiplied. While the Council of State is proposing to improve the conduct and effectiveness of administrative controls by harmonising practices and simplifying their powers and responsibilities, we also feel that there is an urgent need to remedy the many procedural shortcomings that are highly prejudicial to the rights of the defence. During its inspections, the *AFA* assumes various powers, some of which are not provided for by law and most of which infringe fundamental rights and freedoms, foremost among which are the principle of adversarial proceedings and the right not to incriminate oneself. For example, the *AFA* does not consider it necessary to draw up minutes of the hearings of the individuals it hears, depriving them of the possibility of defending themselves against statements that would be reported by the supervisory authority to the Sanctions Committee.

More structurally, the scope of *AFA*'s mission is extremely broad, as the law allows it to demand that it be provided with "*tout document professionnel ou toute information utile*" ("any professional document or any useful information"), without further specifying the notion of usefulness. The *AFA* also considers that professional secrecy cannot be invoked against it and that the voluntary and unconditional handing over of documents means that the entity waives its right to invoke professional secrecy. Apart from the potentially serious consequences if proceedings were also initiated by a foreign authority, the concept of "voluntary surrender" in no way reflects the reality of these controls. Audited entities cooperate under the threat of prosecution for the offence of obstruction, which forces them to disclose documents at the risk of contributing to their own incrimination.

This is undoubtedly all the more reason not to pit General Procedural Law and Compliance Law against each other. Marie-Anne Frison-Roche's article, *Adjusting General Procedural Law to Compliance Law by the Nature of Things,* attempts to find a better link between the two. The article begins by pointing out that Geneal Procedural Law is an invention, essentially due

to Professor Motulsky, which goes far beyond the benefits of comparing different types of procedures. As he said, there is a sort of natural Law in General Procedural Law, in that, as soon as there is a Rule of Law, cannot be excluded, whatever the "procedure," or even the "process," a particular way of doing things: for example, of deciding, of referring the matter to the person who decides, of listening before deciding, of challenging the person who decides.

The first part of the article draws the conclusions from the fact that General Procedural Law is based on the nature of things, but Compliance Law organises things in a new way. Therefore, the simple and ironclad principles of General Procedural Law find their way into places where they are not at first sight expected, notably because there is no judge, the figure around whom procedures are usually organised. They are particularly prevalent in companies. Even if the regulations say nothing about it, it is up to the judges, and in particular the Supreme Courts, to recognise this nature of things, because it is on this effect of nature that General Procedural Law is built: when compliance mechanisms oblige companies to strike, General Procedural Law must oblige, even in the silence of the texts, to arm those who may be struck, or even stand up against systems that would too easily rule out these defences, which are considered to be contrary to effectiveness.

In the second part, the article shows that, because it is a question of making room for that nature of things which the Rule of Law entrusts the care to the judge and the lawyer, General Procedural Law must also adjust to what the extraordinary Compliance Law is. Indeed, Compliance Law is extraordinary in that it expresses the political claim to act now to ensure that the future shall be not catastrophic, in particular by detecting and preventing the occurrence of systemic risks, or even that it shall be better, in particular by building effective equality or genuine concern for others. Because it is the issue at stake that defines this new branch of Law, a disputed systemic issue, possibly disputed by several parties before a judge, the general procedural principles must be considerably broadened: they must then include civil society and the future. General Procedural Law thus naturally acquires an even more important place than in the traditional branches of Law since on the one hand it imposes itself outside legal proceedings, particularly in companies, and on the other hand before the courts it involves people who had little say in the matter and who enter into the "compliance cases" now debated before the judge.

These “compliance cases” are “systemic cases” and will increasingly be brought before all kinds of judges, judges that everyone will look at because the cases will involve more and more people, and judges that are increasingly global because the issues themselves will be increasingly global. Therefore, international arbitration, which is by nature a global jurisdiction, is destined to play a major role in Compliance Law in the future. The following chapter is devoted to this specific dimension.

CHAPTER III. ARTICULATION BETWEEN COMPLIANCE LAW AND INTERNATIONAL ARBITRATION

Jean-Baptiste Racine raises the issue of the relationship between *Compliance and arbitration* and makes *an attempt at problematisation*. He points out that the arbitrator is a judge, indeed the natural judge of international trade. Arbitration is therefore naturally destined to encounter compliance, which transforms corporate action in an international context. However, the links between compliance and arbitration are not obvious. The aim here is not to provide firm and definitive answers, but rather, and above all, to ask questions. We are in the early stages of reflection on this subject, which explains why there is, for the time being, little legal literature on the relationship between compliance and arbitration. This is not to say that there are no connections. Quite simply, these relationships may not have come to light, or they may be in the making. We need to look at the existing or potential bridges between two worlds that have long gravitated separately: compliance on the one hand and arbitration on the other. The author thus formulates what seems to him to be the central question: is or can the arbitrator be a compliance judge and, if so, how?

In all cases, arbitrators come into contact with matters that require compliance methods, tools and logic. In addition to the prevention and repression of corruption, three examples can be given. Firstly, arbitration has for several years been faced with economic sanctions (embargos in particular). The link with compliance is obvious, insofar as texts providing for economic sanctions are often accompanied by compliance measures, as in the United States. Arbitrators are concerned by the way in which they deal with economic sanctions in disputes. Secondly, Competition Law is a subject that has come into contact with Arbitration since the late 1980s. The arbitrability of this type of dispute has now been established and

arbitrators regularly apply it. At the same time, compliance has also made its entry into Competition Law, albeit more vigorously in the United States than in France. The existence, absence or inadequacy of a compliance programme designed to prevent breaches of the competition rules are thus circumstances likely to help the arbitrator in assessing anti-competitive behaviour. Thirdly, Environmental Law is also concerned. There is such a thing as Environmental Compliance, with regard, for example, to the French law of 27 March 2017 on the duty of Vigilance. Companies are thus responsible for helping to protect the environment, by internalising these concerns in their internal and external operations (within their sphere of influence). As soon as an arbitrator is tasked with settling a dispute relating to Environmental Law, the question of the relationship with compliance, from this angle, naturally arises. The author concludes that the multiple interactions between compliance and arbitration, both actual and potential, are thus opened up.

Eduardo Silva-Romero and Raphaëlle Legru illustrate this general proposition by asking: *What place is there for compliance in investment arbitration?* The authors emphasise the new and growing role of compliance in international arbitration, particularly in terms of the need to respect ethical values, since arbitrators can introduce a moral code that is sometimes lacking in international trade, and should only use their power in the service of law-abiding investors.

In this way, compliance is achieved through the traditional review by arbitrators of the legality of the investment, which applies both to the establishment of the treaty itself and to the investor. More recently, arbitrators can exercise control over an investor's "social licence to operate," a concept linked to corporate social responsibility that has emerged in particular for the protection of indigenous peoples. Moreover, compliance may justify a substantial assessment by the arbitrator of the effective respect of human rights and the environment through an investment treaty, with the State party being able to act to ensure the effectiveness of these rights.

The chapter continues with a more technical breakdown of international arbitration, starting with its main player. Mathias Audit examines *The arbitrator's position on compliance*. For an arbitrator to intervene in compliance matters, there must be an "obligation to comply." Identifying such a duty is tricky because it cannot generally be identified *per se*, if it is only understood in terms of Criminal Law, which does not directly fall

within the scope of arbitration, which has developed an independent concept of acts, particularly corruption, that are otherwise punishable under Criminal Law. But, because the Compliance Obligation is itself autonomous since it involves detecting and preventing various offences and breaches, arbitrators rely on detection and prevention mechanisms as such, distinct from the possible commission of acts that were not intended to occur.

But the question of the source of this Compliance Obligation is central because it must originate in a standard that can lead to arbitration. This could be a contract, for example an intermediary contract, which not only prohibits all corrupt practices but also provides for audit or control, or a national law, in particular the U.K. Bribery Act or the French so-called "Sapin 2" law, or even decisions imposing compliance programmes or the uncoerced adoption of such programmes by the company. Depending on the source, the arbitrator will take it into account. If a compliance obligation, having a source that gives it scope in arbitration proceedings, is considered by the arbitrator to have been disregarded, the consequences often depend on the source. The solution is classic if it concerns the *lex contractus*, but more difficult if it is a law that has inserted the obligation into the *lex societatis*, as compliance requirements are generally considered to be mandatory provisions. If arbitrators are unable to apply the sanctions imposed by Criminal Law, they may base their decision on the breach found to assess the lawfulness of conduct or the validity of a contract, using the *ICC Rules on Combating Corruption* as a guide.

Keeping pace with arbitration and the strategies of legislators, contracting parties and litigants, Elie Kleiman analyses *The objectives of compliance confronted with the actors of arbitration*. He reminds us that International Arbitration, which remains the preferred method of settling disputes arising from international commercial relations, is being overtaken by compliance, the manifestations of which are everywhere: arbitration centres, arbitrators and courts reviewing the international legality of awards are regularly called upon to take into account the rules of compliance.

The author notes that compliance has undeniably taken hold of those involved in arbitration. As players in an unregulated activity, arbitration institutions and arbitrators must generate trust; their ability to regulate themselves effectively is a prerequisite for the success of arbitration, and this requires transparency and exemplarity. This self-imposed compliance is today consubstantial with arbitration and is illustrated in particular in the traditional areas of preventing conflicts of interest and monitoring the

availability of arbitrators, but also in the newer areas of parity and diversity, and reducing the carbon footprint. Furthermore, arbitration activity, and in particular the monitoring of the international legality of awards, is not exempt from the *ex post* application of compliance criteria, particularly in the fight against corruption and money laundering. There is therefore room for debate, particularly in France, due to the porosity of the boundaries between the methods specific to mandatory compliance rules intended to prevent the most serious offences and those specific to the establishment of the constituent elements of such offences in criminal matters. This is an important issue, especially as the increasing imperative nature of climate change and human rights requirements will extend the scope of these overlaps between compliance methods and the review of arbitration awards.

But arbitration is also taking over compliance. Arbitrators are called upon to rule on controversies arising from economic activities that have their origins in compliance: contracts relating to the implementation of anti-corruption and anti-money laundering measures, such as due diligence obligations, transactions relating to the reduction of the carbon footprint and climate change, and so on. In addition, compliance is also a subject that can be arbitrated, with arbitrators having to apply or take into consideration compliance rules in the settlement of commercial or investment disputes, particularly in view of the consequences that can be drawn from ignoring or observing them.

CHAPTER IV. THE JUDGE IN COMPLIANCE LAW

On the contrary, the judge is the link between the company and the compliance obligations that it takes on, by order of the legislators or because it shares their desire to serve common interests, this link being tested and reinforced through legal proceedings. Therefore, as Compliance Law matures, it will leave an increasingly limited role to the criminal courts, in favour of a more general conception of the role of the ordinary courts, which are themselves renewed by Compliance Law in that they will be more in *ex ante*, particularly in digital and climate-related matters.

With this in mind, Marie-Anne Frison-Roche opens this final Chapter by examining *The Judge, the Compliance Obligation and the Company: the Compliance Evidence System*. Before the courts, the company must prove

that it has implemented its compliance obligation, the proof thus establishes the link between the company in its relationship with the compliance obligations it assumes and the judges to whom it is accountable in this respect: this link is established through the use of evidence. The evidentiary system has yet to be developed, and this contribution sets out the prolegomena. To this end, the article begins with a description of what is referred to as the "evidence square" in an "evidence system" that is superimposed on the system of rules of substantive Law. This is all the more important as compliance seems to be in head-on collision in its very principles with the general principles of the evidentiary system, in particular because it seems that the company must prove the existence of the legal rules or that it must definitively bear the burden of proving the absence of a violation, which seems contrary not only to the presumption of innocence but also to the principle of freedom of action and enterprise. In order to re-articulate Compliance Law and the compliance obligations that legitimately fall on companies, it is necessary to revisit the evidentiary system specific to compliance, so that it remains within the Rule of Law. This presupposes that we adopt a substantive definition of compliance, that is not simply a conformity with the rules, which is only a minimal dimension, but require the definition of Compliance Law by the Monumental Goals for which, in a substantive way, the public authorities and companies form an alliance. The general evidentiary system brings into play its four cornerstones: the burden of proof, the object of proof, the means of proof and their admissibility. Compliance Law is not outside this evidence square, marking its full membership of the Rule of Law and laying the foundations for the evidentiary system specific to Compliance Law. The first part of the article sets out the specific evidentiary requirements of Compliance Law, distinguishing between structural measures and expected behaviour. The first involves proving that the structures required to achieve the monumental goals of compliance have actually been put in place. The object of proof is then the effectiveness of this implementation, which presents the effectiveness of the system. As far as behavioural obligations are concerned, the object of proof is the efforts made by the company to obtain these behaviours, the principle of proportionality governing the establishment of this proof, while the systemic efficiency of the whole reinforces the evidentiary system. But for the company, even though the principle remains that of freedom of proof, the wisdom of proof consists in establishing the effectiveness, efficacy and efficiency of the system as a whole, independently of the burden of proof.

The second part of the article focuses on those who bear the burden of proof under Compliance Law. As a matter of principle, Compliance Law places this burden on the company, in terms of its legal obligations. This burden stems from the legal origin of the obligations, which blocks the "round of the burden of proof." But in the interplay of the different vertices of the evidentiary square, the issue becomes more delicate when it comes to determining the contours of the compliance obligations that the company must fulfil. Moreover, the burden of proof may itself be the object of proof, just as the company's performance of its legal obligations may also be the object of contracts, which brings us back into the system of proof ordinarily applicable to contractual obligations. The situation is different when it comes to a "compliance contract" or when it comes to one or more "compliance clauses," concepts that have not yet been fully developed in Contract Law. Furthermore, as all branches of Law belong to a legal system governed by the principle of the Rule of Law, other branches of Law interfere and modify evidentiary methods and solutions. This is the case when the fact, which is the object of proof, may give rise to a penalty, Repressive Law imposing its own solutions in terms of the burden of proof.

The third part of the article examines the relevant means of proof in Compliance Law, used because Compliance Law is above all a branch of Law whose object is on the one hand Information and on the other hand the Future. Open questions remain, such as whether companies could be forced by the courts to develop technologies to invent new means of proof in order to show that they are actually achieving the Monumental Goals with which they are charged. The fourth part shows the vital nature of the pre-construction of Evidence, which reflects the *ex ante* nature of Compliance Law: evidence must be pre-constructed in order to avert the very prospect of having to use it, by finding every means of establishing the effectiveness, efficacy and even efficiency of the various Compliance tools. If companies do all this methodically, the Compliance Evidence System will be established, in harmony with the General Evidence System, Compliance Law and the Rule of Law.

Juliette Morel-Maroger shows the role played by Judges in making compliance an integral part of the Rule of Law, particularly in Europe, by studying *The application of compliance standards by European Union judges*. She shows that, intended to pursue objectives of general interest – or Monumental Goals – compliance standards are in principle aimed at

modifying and guiding the behaviour of economic operators. To achieve these objectives, compliance uses the full range of the normative spectrum. What is and should be the role of the judges of the European Union in the face of the development of compliance standards? As in domestic Law, the very legality of the compliance standards drawn up by the regulatory authorities is being challenged.

Beginning by analysing the control exercised by the judges of the European Union in this respect, the question arising here is essentially on rules of soft Law which can be challenged in two ways: by way of an action for annulment and, by way of exception, by a reference for a preliminary ruling. But beyond the control of the legality of compliance standards exercised by European judges, they also contribute to their application. The effectiveness of compliance depends first and foremost on the support of those to whom it is addressed, and economic operators are undoubtedly the key players in its success. However, the judges of the European Union, who have jurisdiction to settle disputes between Member States, European institutions and individual claimants concerning the application of European Union Law, may be called upon to ensure the effectiveness of European compliance standards and to interpret them.

Jurisdictional efficiency also depends on simplicity. With this in mind, Sophie Schiller talks about *A single judge in the event of an international breach of compliance obligations*. She stresses that, given the highly international nature of the issues involved, the players involved and therefore the litigation in compliance matters, it is essential to know whether a person can be accused before several judges, attached to different states, or even whether they can be condemned by several jurisdictions. The answer is provided by the *ne bis in idem* principle, which is the subject of a wealth of case law based on Article 4 of Protocol No. 7 to the ECHR, which is clearly inapplicable to courts in different countries. In order to assess whether breaches of compliance obligations may be subject to multiple sanctions in different states, it will first be necessary to ascertain whether there are any textual grounds on which they can be invoked. At European level, Article 50 of the Charter of Fundamental Rights now allows the *ne bis in idem* principle to be invoked. Applicable to all areas of compliance, it provides very strong protection covering not only convictions but also prosecutions. Like its effects, the scope of Article 50 is very broad. The proceedings concerned are those of a repressive nature, over and above those handed down by criminal courts in the strict sense, which makes

it possible to cover decisions handed down by one of the many regulatory authorities competent in compliance matters. Internationally, the situation is less clear. Article 14-7 of the International Covenant on Civil and Political Rights can be invoked, provided that a number of obstacles are overcome, including the Human Rights Committee's decision of 2 November 1987, which restricted its application to the domestic context, i.e. the case of a double conviction by the same State.

Even if the bases are applicable, two specific features of compliance situations risk hindering their application, the first relating to the applicable procedural rules, in particular the rules of jurisdiction, and the second relating to the specific features of the situations. The application of the *ne bis in idem* rule is formally accepted only in relation to universal jurisdiction and personal jurisdiction, i.e. extraterritorial jurisdiction, which is only one part of jurisdiction. The *Cour de cassation* (French Court of cassation) confirmed this in the famous "Oil for Food" ruling of 14 March 2018. The refusal to recognise this principle as universal, whatever the jurisdictional rule in question, deprives French companies of a means of defence. In addition, violations of compliance rules are increasingly being dealt with through settlement mechanisms. These do not always fall within the scope of the European and international rules laying down the *ne bis in idem* principle, as they are sometimes not qualified as a "final judgment" under the terms of Article 50 of the Charter of Fundamental Rights and Article 14-7 of the International Covenant on Civil and Political Rights.

Compliance breaches are often based on multiple acts. This results in statutes of limitations whose starting point is postponed until the last event to occur and makes it easier for French courts to assume jurisdiction if only one of the constituent acts is recorded in France. In terms of compliance, the *ne bis in idem* principle does not generally protect companies and does not prevent them from being sued in the courts of two different countries for the same matter. It does, however, afford them some additional protection, by requiring foreign decisions to be taken into account when determining the amount of the penalty. The penalty imposed on *Airbus SE* in the *convention judiciaire d'intérêt public – CJIP* (French Judicial Public Interest Agreement) of 29 January 2020 is a perfect illustration of this.

The supreme courts, or the "judge of the Law," who exist more in the civil Law systems than in the common Law ones, cannot be absent from this general movement. It is this judge that Olivier Douvreleur examines

in this new comparison: *Compliance and Judge of the Law*. The author admits that compliance has a complex relationship with the Judge, and even more so with the Judges of the Law, who, as a matter of principle and for example the *Cour de cassation* (French Court of cassation) in the French judicial system, have no knowledge of the facts and leave them to the sovereign judgement of the judges of the merits. At first sight, compliance is a technique that is internalised in companies, and the place occupied by negotiated justice techniques calls for little intervention by the judge of the Law.

However, the role of the judge of the Law is destined to develop, particularly in relation to the duty of vigilance or in the articulation between branches of Law when compliance meets Labour Law, or in the adjustment between American Law and the other legal systems. The way in which the principle of proportionality takes its place in Compliance Law is also a major challenge for the judges of Law.

To integrate so many different perspectives, the judge must use new methods, of which soft Law is a central element. Fabien Raynaud studies *The Administrative Judge and Compliance*. He highlights the close relationship between compliance and soft Law, as introduced by the French administrative courts in their case law. This was particularly the case with the *Conseil d'État* (French Council of State) 2016 judgements on Regulatory Law, which Compliance Law extends. This consist of internalising in companies what the public authorities want, method that the French Council of State, in small steps from 2010, has been continually taking in account and fleshed out in 2016. This is particularly the case when the documents issued are "likely to produce 'significant effects,' particularly of an economic nature, or are intended to have a significant influence on the behaviour of the persons to whom they are addressed," which is directly related to compliance issues. The new approach adopted by the French Council of State has led it to review numerous "positions," "recommendations," "guidelines," etc., adopted by various authorities, in particular to protect the persons on whom these acts have a "significant effect," sometimes even censuring the issuing body. The soft Law on banking compliance, more specifically the one issued by the EBA, has given the administrative courts the opportunity to adjust their review to that exercised by the Court of Justice of the European Union in response to a reference for a preliminary ruling.

Thus, through its jurisprudence on the justiciability of soft Law acts, the French Council of State is asserting itself as a player in the compliance field by allowing the entities targeted by these acts and subject to a compliance obligation to bring an action for annulment of these acts before the administrative judge, so that they can be subject to a legality review and, where appropriate, annulled. But the case still has to be referred to the administrative court. This may be the case in new areas, such as climate change, as was the so-called *Grande Synthe* case. With its decisions, the French Council of State thus goes to the logical end of the mechanism put in place by the legislator and the regulatory authority to implement the Paris agreements, which are based on a form of compliance on a global scale, with each signatory State committing, in a way, to do what is necessary to achieve a common objective by a given date, with each State being responsible for organising itself to achieve it. In the absence of an international judge capable of verifying compliance with these commitments, the national judge seems the most natural to agree to verify, when a dispute is referred to him or her, that these commitments do not remain a dead letter.

Finally, which is logical since Compliance Law is defined by its Monumental Goals, which may themselves be found in the ambition to protect the individual, Erik Wennerström concludes this book with *Some Reflections on Compliance and the European Court of Human Rights*. The author points out that the development of the case law of the European Court of Human Rights, contributing to European integration, has incorporated the substantial idea of "compliance," which goes beyond the idea of legality, in relation to which companies remain passive, and promotes legal systems as interacting with one another. The author develops the spirit and scope of Protocol 15, which sets out both the principle of subsidiarity and the margins for manoeuvre of the signatory states to the Convention, mechanisms informed by the principle of proportionality. Subsidiarity implies that States are in the best position to devise the most appropriate application of the Convention, with close links between States enabling it to be applied effectively. In addition, the advisory opinion procedure, which enables a national court to obtain the non-binding opinion of the ECHR on a pending case, ensures that compliance is more effective in terms of the objectives of the Convention.

The Court's case law takes up this substantive requirement through its doctrine, particularly as set out in the *Bosphorus* case, emphasising that a State's European Union membership presumes its compliance with the obligations arising from the ECHR, by implementing European Union Law, even if this presumption may be rebutted if the protection is manifestly deficient, which has been accepted in several cases, particularly concerning the right to an impartial tribunal in matters of economic regulation. The different legal orders are thus articulated. The author concludes that the European Court of Human Rights, like the Court of Justice of the European Union, contributes to the construction of Compliance Law in Europe, from an *ex ante* perspective favouring opinions rather than *ex post* sanctions, and creating, notably through the *Bosphorus* doctrine, elements of security and confidence for European integration around values common to the different legal systems articulated and leaving the States adequate margins to favour this integration.

This is the conclusion of this book that shows not only the extent of the *Jurisdictionalisation of Compliance*, but also the benefits that the *Rule of Law* will have to draw from it in the future, so that Compliance does not mean blind obedience to so many regulations, which is the hallmark of totalitarian systems, but rather tends, in an alliance between public authorities and crucial economic operators, towards the achievement of Monumental Goals, of which the protection of the individual is at the heart, the hallmark of democracies.

This is also the global challenge of Compliance Law.