

THE ERASMUS INSTITUTE FOR MONITORING AND COMPLIANCE IN BUSINESS

A research mission statement

The demise of traditional institutions in business, the increasing complexity of highly specialized modern societies, and the global advance of market institutions prompted by recent waves of liberalization and privatization, have not only decreased the role of governments in the production of private and public goods, but has paradoxically at the same time increased the demand for regulation and monitoring of markets. This has led to the development of many novel institutions, both in the public and private realms.

In the public domain, new functional authorities that monitor specific fields of business have arisen next to more traditional legal and political institutions. Examples include authorities that monitor financial and equity markets, on the one hand, and newly created agencies entrusted with the task of safeguarding competition in recently liberalized industries, on the other.

In the private realm, corporate governance codes around the world have called for increased monitoring within business organizations. This has not only led to a more active internal monitoring by both boards and shareholders of publicly listed companies, but also to the creation of new privately originated standards and rules, which are monitored—and sometimes enforced—by (semi-) private parties in a private ordering context.

But although these novel institutions were mostly intended to enhance social welfare and secure fair business practices, it is not clear that they actually promote either as a matter of fact. It is unknown, first, whether the compliance costs of increased regulation and monitoring incurred by business organizations—and society at large—actually weigh up to the residual loss prevented by an increase in regulation and monitoring. Second, newly adopted laws, regulations and standards in this field are often substantively ambiguous, leaving it vague how they should be interpreted, implemented and enforced. It is largely unknown, third, what mix of public and private monitoring is most efficient in securing compliance of—and within—business organizations. This is mostly, fourth, because little is known about the effectiveness of different monitoring and enforcement instruments in both public and private ordering. Finally, it remains highly ambiguous how conditions that influence organizational compliance relate to conditions that influence behavioral compliance (i.e. compliance by natural persons either within or outside business organizations).

The Erasmus Institute for Monitoring and Compliance in Business (EIMoCoB) aims to:

1. to create knowledge on monitoring and compliance in modern advanced economies by conducting *interdisciplinary* academic research that uses theoretical perspectives and methodologies from: law, management, economics and behavioral science;
2. to *actively engage* with professionals and organizations in the field of monitoring and compliance in order to secure both the practical relevance of research activities and the necessary means;
3. to *translate* and *disseminate* acquired knowledge to (future) stakeholders through teaching and advisory services.

EIMoCoB identifies the following research themes which several different projects will be initiated:

1. *Public and private ordering in monitoring and compliance.* Monitoring of, and within, business organizations can take place in both the public and private domains. In public monitoring of markets and business organizations, public laws, regulations and standards are drafted and subsequently monitored and enforced by—more or less autonomous—public agencies. In private ordering, rules and standards (e.g. the new *Lex Mercatoria*) are developed in a private context and subsequently monitored by either markets or (semi) private organizations and institutions. Important questions within this research theme include:

- a. Which public regulation and enforcement modalities (e.g. administrative, criminal, or civil law) are most effective and efficient in securing compliance in different fields of business, and how do these modalities relate to each other in different jurisdictions?
 - b. How do different laws, rules and standards that regulate business come into existence and what role does implementation and enforcement play in law making?
 - c. What are the relevant laws, regulations, and standards in different fields of monitoring and compliance and in different jurisdictions, and how are they to be interpreted, implemented and enforced?
 - d. How does public monitoring and enforcement compare to private monitoring and enforcement in different fields of business? For example: How do reputational penalties in financial markets relate to publicly imposed penalties for violations of public laws and regulations, and what would be the most effective enforcement mix in each field of business?
 - e. What—change of—substantive rules or standards are desirable in a given field in business, given the applicable monitoring and enforcement conditions?
2. *Corporate governance of business organizations.* A substantial amount of monitoring in business takes place in the context of private ordering, either by markets or within business organizations themselves. Corporate governance has been on the agenda for quite some time now, and much is already known about the different mechanisms that together constitute a corporate governance regime. Yet there are also questions that remain to be answered. These include:
- a. What mix of public (legal) and private (markets, corporate charters) best promotes social welfare in different jurisdictions?
 - b. Which laws, regulations and standards relevant to corporate governance exist in different jurisdictions, and what are the effects of jurisdictional competition, harmonization and the increased legal permeability of jurisdictional borders in the EU (e.g. PLC's in the Netherlands, the European Corporation)?
 - c. What role can shareholders play in the governance of public companies, and how does this role relate to other mechanisms of corporate governance, such as board monitoring and the market for corporate control? For example: how do novel institutions (e.g. hedge funds) affect the corporate governance role of shareholders?
 - d. What role do the courts have in corporate governance in different jurisdictions? What do (specialized) courts exclude from jurisdiction in regard to corporate governance (e.g. business judgment rule)? How do (specialized) courts relate to other mechanisms of corporate governance?
 - e. What governance arrangements are socially most efficient for non-public companies (e.g. LLP equivalents prevalent in professional services, or non-profits such as hospitals)? What specific monitoring institutions can be seen to emerge in the professions or in healthcare, and what can be said about their relative effectiveness and efficiency?
 - f. Under what conditions do the governance mechanisms that presumably serve promote shareholder welfare also promote compliance with societal laws and regulations (i.e. do they promote social welfare rather than merely shareholder wealth)? How does public monitoring of business organizations best complement private monitoring within business organizations?
3. *Organizational and behavioral compliance.* Securing compliance of business organizations is presumably driven and facilitated by different conditions than safeguarding compliance *within* business organizations, given that the latter typically involves compliance of natural persons. This implies that compliance is critically affected by factors that play within organizations and at the organization-society interface. Moreover it is important to improve our knowledge on the conditions fostering organizational deviancy and organizational crimes. Many questions remain to be explored here, including:

- a. What are the societal and organizational conditions explaining organizational deviancy and organizational crimes?
- b. How are applicable extra organizational rules and regulations translated into intra organizational procedures and processes?
- c. What role should private business organizations play in efficiently securing compliance with public rules, regulations and policies?
- d. What intra organizational compliance tools exist and how can their effectiveness and efficiency be facilitated?
- e. How is compliance with external rules, regulations and standards organized most efficiently within different kinds of business organizations?
- f. How do codes of conduct and compliance policies affect actual compliance in organizations, and what are the conditions that facilitate optimal compliance?
- g. How do codes of conduct relate to laws, regulations and standards in different fields of business and in different jurisdictions?