

Compliance Programs and Corporate Criminal Liability

Il convegno conclude il ciclo di incontri e seminari organizzati dalle Università partecipanti al progetto di ricerca finanziato dalla Commissione Europea sulla responsabilità dell'ente da reato, in particolare nella materia dei *compliance programs*.

Muovendo dai risultati della comparazione tra gli ordinamenti giuridici dei 27 Paesi Membri dell'Unione Europea, obiettivo del convegno è portare a compimento gli studi sin qui elaborati nel quadro della ricerca, intesi a propiziare, nell'ottica dell'armonizzazione, il coordinamento della disciplina dettata da ciascun Paese Membro in materia di responsabilità 'da reato' dell'ente.

In sintonia con il titolo e l'impostazione data alla ricerca, si punta a cogliere con matura consapevolezza i significati e le implicazioni che discendono dal collegamento (di carattere tendenzialmente 'genetico') tra l'illecito ascrivibile all'ente ed il reato; collegamento che risulta alla base della regolamentazione adottata in larga parte dagli Stati membri dell'Unione europea, indipendentemente dalla qualificazione (amministrativa, para-penale o propriamente penale) impressa alla responsabilità dell'ente.

Seguendo questa prospettiva, il convegno curerà di far emergere la logica sottintesa ai modelli legislativi costruiti sul piano 'nazionale', a partire dalla selezione dei criteri d'imputazione della responsabilità all'ente, anche in rapporto alla relativa 'natura' (amministrativa, 'para-penale' o 'penale').

L'analisi terrà conto dell'esigenza di articolare la disciplina della responsabilità ascrivibile all'ente in modo da superare alcuni schemi tradizionali, specie se fondati su criteri - come quelli incentrati sulla immedesimazione organica - caratterizzati da un possibile, oggettivo 'automatismo' nell'imputazione della responsabilità. Si valuterà l'ipotesi di stabilire nessi di vera e propria 'appartenenza' dell'illecito

all'ente, a partire da una lacuna organizzativa ad esso rimproverabile, anche alla luce di un accertamento *ex ante* della idoneità dei modelli organizzativi; valorizzando al contempo profili di effettiva 'soggettività' dell'illecito, in modo da individuare il concreto atteggiamento dell'ente, evitando comunque che la prova della responsabilità si esaurisca nella verifica di deviazioni meramente oggettive dai canoni della organizzazione preventiva.

The conference concludes the series of congresses and seminars organized by the Universities participating in the research project financed by the European Commission on Corporate Criminal Liability, with particular reference to compliance programs.

Building on the results of the comparison between the legal systems of the 27 European Union Member States, the conference goal is to conclude the projects so far developed in the research, which are directed to propitiate, in view of harmonization, the coordination of national disciplines in the issue of responsibility '*ex crimine*' of collective entities.

According to the title and the research's approach, it aims at developing the meanings and implications arising from the connection (in principle 'genetic') between the wrongdoing, which can be attributed to the entity, and the criminal offence committed by individuals. This link is at the basis of the disciplines adopted by most of the EU Member States, regardless of its classification (administrative, para-criminal or properly criminal) attributed to the responsibility of collective entities.

Following this perspective, the conference will bring out the underlying logic to the legislative models built at the 'national' level, starting from the selection of the criteria of imputation, also in relation to their relevant 'nature' (administrative, 'para-criminal' or 'criminal').

The analysis will take into account the need to articulate the discipline of collective entities' responsibility to overcome some traditional patterns, especially when based on criteria - such as those focused on the identification principle -

characterized by a possible, objective 'automatism' in the attribution of responsibility to the organization. We will consider establishing a link stating a real 'personal connection' of the offense to the entity, starting from a 'lack of organization' which can be blamed to it, also in light of an *ex ante* assessment of the organizational models' adequacy; while valorising profiles of effective 'subjectivity' of the wrongdoing, in order to identify the 'real attitude' of the entity, avoiding, however, that the proof of responsibility consists in the ascertainment of merely objective deviations from rules of preventive organization.

Organizing committee of the conference:

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**COMPLIANCE PROGRAMS AND CORPORATE CRIMINAL
LIABILITY**
(JLS/2008/JPEN/009)

Roma Tre University
Aula Magna, Faculty of Law
Via Ostiense, 161

9 - 10 July 2012

Monday, July 9th

9.00 Opening Session

Prof. Guido Fabiani - Rector - Roma Tre University

Dr. Pasquale Basilicata - Head of Administration - Roma Tre University

Prof. Paolo Benvenuti - Dean of the Faculty of Law - Roma Tre University

Prof. Giorgio Spangher - Dean of the Faculty of Law - Sapienza University of Rome

Opening remarks - S.E. Prof. Paola Severino - Minister of Justice

Prof. Vincenzo Mannino - Head of Department "Diritto dell'economia ed analisi economica delle istituzioni" - Roma Tre University

Prof. Antonio Fiorella - Project leader for Roma Tre University, Head of research

Session I

General report.

Problems of Italian and Spanish law. The analysis of English and North American experience of compliance programs

Chair: Prof. Antonio Fiorella

10.00 *The responsibility 'ex crimine' in Europe: models of discipline and perspectives for harmonization* (Prof. Klaus Tiedemann - University of Freiburg i. Br.)

10.45 *The nature of collective entities' liability in Italy* (Prof. Avv. David Brunelli - University of Perugia)

Coffee break

11.40 *Corporate criminal liability in Spain: the Ley Orgánica of 2010* (Prof. Adán Nieto Martín - University of Castilla-La Mancha)

12.10 *From the identification principle to the 'organizational fault': the models proposed by 'Corporate manslaughter Act' and 'Bribery Act'* (Prof. Celia Wells - University of Bristol)

12.40 *Models of corporate criminal liability in U.S.: the role of compliance programs* (Prof. Ryan Burg - National Research University of Moscow)

Lunch

Session II

Insights on the conditions for harmonization. Convergences and differences in European legislations on collective entities' liability 'ex crimine'

Chair: Prof. Luis Arroyo Zapatero

15.00 *The legal entities subject to liability 'ex crimine' in E.U. Member States disciplines. Issues and perspectives* (Prof. Enrico Maria Ambrosetti, University of Padua)

15.30 *Logic, structure and possible developments of compliance programs* (Prof. Antonio Fiorella, Sapienza University of Rome)

16.00 *The 'catalogue' of sanctions: common choices and divergences in Member States* (Prof. Vincenzo Militello, University of Palermo)

Coffee break

16.45 Workshops

SUBJECTIVE AND OBJECTIVE SCOPE	IMPUTATION CRITERIA	SANCTIONS
Chair: Prof. Enrico Maria Ambrosetti	Chair: Prof. Antonio Fiorella	Chair: Prof. Vincenzo Militello
Secretary Panel: Dr. Nicola Selvaggi	Secretary Panel: Dr. Juliette Tricot	Secretary Panel: Dr. Manuel Espinoza
Scheduled interventions: Dr. Maurizio Bellacosa Dr. Camilla Cravetto Dr. Dario Franzin Dr. Marco Manno Dr. Silvia Massi Dr. Daniele Piva Dr. Elisa Scaroina	Scheduled interventions: Dr. Francesco Compagna Dr. Marc Engelhart Dr. Giulia Escurole Dr. Vincenzo Mongillo Dr. Elena Emma Piccatti Dr. Licia Siracusa Dr. Mariateresa Trapasso Dr. Anna Salvina Valenzano Dr. Enrica Villani	Scheduled interventions: Dr. Greta De Martino Dr. Jordi Gimeno Dr. Massimiliano Lei Dr. Francesca Rocchi Dr. Chiara Silva Dr. Micaela Vitaletti

Tuesday, July 10th

Session III

**Summary of workshops' results and development of the
analysis and proposals of the Research Group**

Chair: Prof. Geneviève Giudicelli-Delage

9.00 *Reports on workshops' results* - (Nicola Selvaggi, Juliette Tricot, Manuel Espinoza)

10.00 *Developments of the analysis and proposals on the subjective and objective scope of application* - French Research Unit (Prof. Stefano Manacorda, University of Naples II, University of Paris-Sorbonne)

10.30 *Developments of the analysis and proposals on sanctions and cooperation* - Spanish Research Unit (Prof. Adán Nieto Martín, University of Castilla-La Mancha)

Coffee break

Imputation criteria, with particular reference to compliance programs

11.20 *Developments of the analysis and proposals* – Sapienza University of Rome Research Unit (Prof. Alfonso Maria Stile, Sapienza University of Rome)

11.50 *Developments of the analysis and proposals in the perspective of labour law* - Roma Tre University Research Unit (Prof. Arturo Maresca, Roma Tre University)

12.20 *Developments of the reflections on the Guidelines on collective entities' liability 'ex crimine' elaborated by the Research Units and on proposal for harmonization of imputation criteria* – Roma Tre University Research Unit (Prof. Antonio Fiorella, Research Unit Roma Tre University)

Lunch

Session IV
Round tables

(15.00- 19.00)

Chair: Prof. Alfonso Maria Stile

Systems analysis

Prof. Mauro Catenacci (Roma Tre University), Prof. Enrico Mezzetti (Roma Tre University), Prof. Andrea Castaldo (University of Salerno), Prof. Bartolomeo Romano (University of Palermo – C.S.M. member), Prof. Paolo Patrono (University of Verona).

Coffee break

Perspectives of reform

Prof. Sergio Moccia (University of Naples), Prof. Marco Pelissero (University of Genoa), Mr. Eugenio Selvaggi (Ministry of Justice – Italy), Mr. Michael Carlin (European Commission), Prof. Hans Nillson (European Council), Mr. Andrea Venegoni (Olaf).

Concluding remarks

Prof. Antonio Fiorella, Sapienza University of Rome