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Hochschule für
Wirtschaft und Recht Berlin
Berlin School of Economics and Law

Compliance in Public Administration

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Research Questions

Which consequences result from the insights of corporate compliance theory on institutional safeguards for public administrative law?

Which relevance have classical institutes of administrative law that were developed to institutionally secure the constitutional principle of legality of all administrative action?

Is a debate on compliance in public administration required, and which issues would have to be debated and in which manner?



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Legality of all public administrative action

Normative starting point: the constitutional duty of administrative authorities to comply strictly with the law / principle of legality

Factual infringements of administrative law: 1) purposeful violations, e.g. corruption, and 2) non-compliance as a result of legislative or administrative deficits („bad legislation“, „bad governance“)

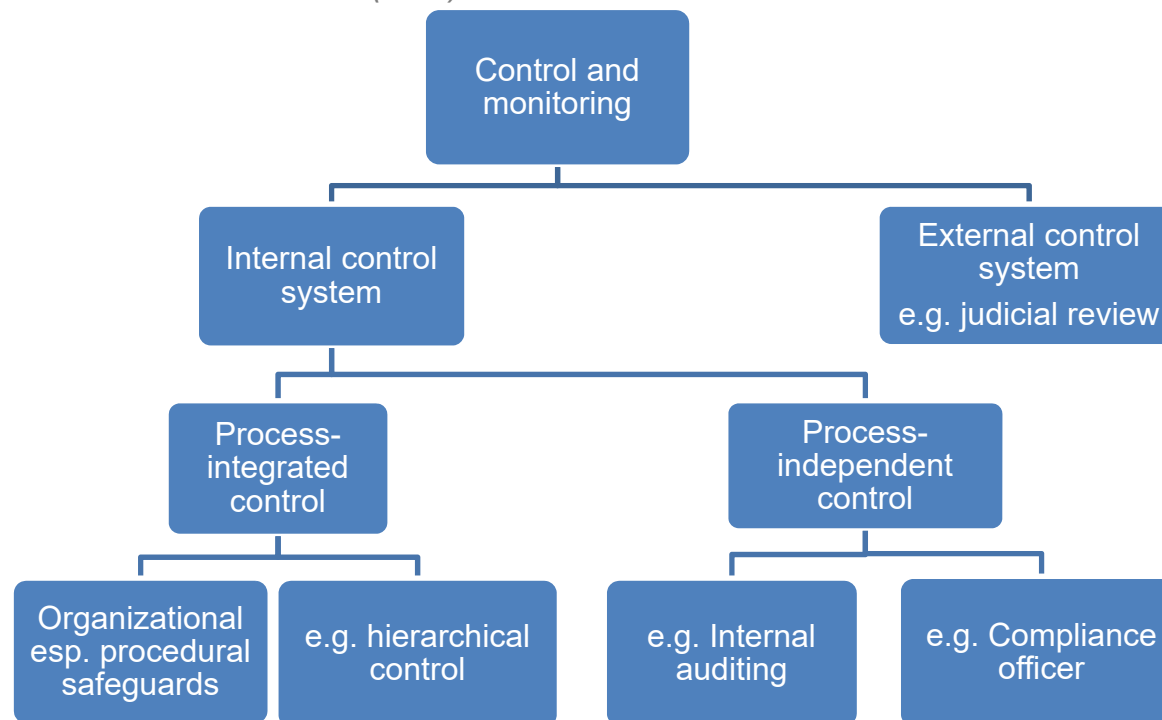
Consequences:

- Illegal action (compensation, sanctions)
- Bad governance esp. control and steering deficits
- Inefficiency and economic damage
- Ideal damage, loss of „confidence in government“



Structural Dimension of Compliance: organizational responsibility

Figure is based on the IDW PS 261 (n. F.) standard:





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Classical Public Compliance Ressources

Classical ressources of compliance in a hierarchical public administration:

- Legislation
- Public Service
- Administrative organization
- Budget control
- Control by other executive body, e.g. data protection official
- Judicial review



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Conclusion & Outlook

- Further assessment of the function and effectiveness of classical public compliance resources: which factual deficits occur, and can insights from corporate compliance be transferred to fill the gaps?
- Esp. if the administrative organization is not hierarchical, but in atypical constellations such as relatively de-coupled administrative entities, public companies, and non-state providers of public goods.



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Literature

Matthias Kötter, Konstantin von Busekist, § 12 Compliance-Überwachung und Sanktionierung, in Rolf Stober / Nicola Ohrtmann (ed.), Compliance: Handbuch für die öffentliche Verwaltung, 2015, p. 282-295 (2nd edition forthcoming)