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The Hybrid Nature Of The Management Act: Between Legal Logic And Managerial Rationality

Dr. Boudebza Djahida [1], Melki Khalfallah [2]

[1] Associate Professor "A" ; Higher School of Social Security (ESSS) -Algeria-

[2] PhD Candidate, Faculty of Law, Said Hamdine, -University of Algiers 1, Algeria-

Abstract

The criminalization of management acts raises a structural tension between criminal liability and economic rationality, particularly within public economic enterprises. In the absence of stabilized normative criteria, judges are often led to assess managerial acts solely based on their outcomes, to the detriment of the executive's legal certainty.

This article proposes a functional typology of management acts (routine, circumstantial, and risk-based) and demonstrates that their hybrid nature necessitates a differentiated evaluation of their legitimacy. By mobilizing risk governance standards and the logic of the Business Judgment Rule, this study defends a conception of legal certainty as a prerequisite for decisional rationality. It advocates for a hybrid evaluation model that reconciles the review of legality with a contextualized assessment of the managerial decision.

Keywords: management act, legal certainty, managerial liability, Business Judgment Rule.

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Introduction

In Aspects juridiques du capitalisme moderne (1951), Georges Ripert highlights a foundational contradiction of contemporary corporate law: the structural dissociation between the concentration of economic power in the hands of the executive and the persistence of their legal subordination. By qualifying the civil and criminal liability of the manager as the "ransom of their powers," Ripert does not merely describe a liability regime; he reveals a systemic logic through which the law of capitalism transfers corporate risk to the executive without granting them true normative autonomy. The executive, legally reduced to the figure of an agent (mandataire), nonetheless performs a function of economic governance, in that they guide the allocation of resources, arbitrate uncertainty, and carry out strategy. This asymmetry between de facto power and de jure power engenders a normative pathology: the law demands results without guaranteeing the legal means for their pursuit. Ripert's formula—"it would be of no use to pursue an end that no means would allow one to reach"—thus expresses a requirement for systemic coherence between economic rationality and legal rationality.

This requirement is part of a broader theory of legal certainty, considered a prerequisite for rational action. As Bergel has demonstrated, legal certainty is not a purely procedural value, but a "practical imperative, necessary for action" (Bergel, 2008, pp. 245, 274, 275). It refers to the predictability of norms, the stability of legal situations, non-retroactivity, and normative trust, thereby allowing economic actors to integrate the law into their decisional calculus.

However, when the boundary between legitimate management and a criminal offense becomes blurred, managerial rationality is neutralized. Decision-making is then dominated by the fear of criminal risk rather than the economic evaluation of risks.

Managerial doctrine and jurisdictional practice express a structural tension between decisional rationality and criminal accountability. This tension manifests with particular acuity in organizations with hybrid statuses, situated at the interface of commercial law and repressive public law. By way of illustration, public economic enterprises (EPE) in Algeria offer a significant example of this institutional configuration.

In this type of organization, the executive combines the status of a manager subject to market constraints with that of an agent assimilated to a custodian of public funds, exposed to a specific criminal regime for the protection of public monies. While the criminalization of certain forms of negligence—notably through Article 119 *bis* of the Algerian Penal Code—responds to a logic of moralizing public management, it becomes problematic when it relies on a strictly retrospective reading of the harm. In this framework, the legality of the decision is inferred from the result rather than from the *ex ante* conditions of its adoption. Criminal law thus tends to transform into an instrument for sanctioning failure, substituting a rationality of result for a rationality of decision.

However, this drift does not stem from legislative excess, but rather from a conceptual vacuum: criminal law lacks the necessary categories to apprehend the management act as a decision made under uncertainty. In the absence of norms allowing for the legal characterization of economic rationality, the judge is led to assess the executive's liability solely based on the observed prejudice, without being able to legally reconstruct the logic of the assumed risk. The result is a pathological judicialization of the managerial decision, in which economic risk is transmuted into criminal risk.

This situation reveals an epistemological flaw in economic law: the legal system's inability to integrate the inherent temporality of strategic decision-making. Where management operates within uncertainty, criminal law judges within the certainty of the harm. Where management reasons in probabilities, the law reasons in causal imputations. In the absence of normative tools that allow for the legal translation of the logic of risk, references to indeterminate notions such as "the interest of the company" become a fragile substitute for a true legal theory of managerial decision-making.

Consequently, the central question is not limited to whether a management act can be criminalized, but whether the law is conceptually capable of distinguishing fault from risk. In other words:

To what extent can a management act exposed to risk be criminally characterized—without undermining the manager's legal certainty—in the absence of fraudulent intent or a characterized breach?

To address this inquiry, this study adopts a three-step approach. It first proceeds with a conceptual construction of the management act as a juridico-managerial category through a functional typology. It then examines the conditions for the legal legitimation of these acts according to their nature and degree of risk. Finally, it analyzes the pathways for a normative refoundation of managerial liability, based on the integration of risk management into positive law as a condition for a legally secure decriminalization of managerial action.

I.The Juridico-Managerial Construction of the Management Act

The analysis of managerial liability, particularly within public economic enterprises, cannot be rigorously conducted without a prior clarification of the notion of the "management act." Although widely utilized in both practice and doctrine, this notion remains legally imprecise, making it difficult to distinguish between a legitimate managerial decision and one susceptible to criminal prosecution. Therefore, before addressing the specific question of the criminalization of the management act, it is essential to define its conceptual and doctrinal foundations. This approach aims to define the management act in its various meanings and its functional typology, distinguishing routine management acts from circumstantial acts and those falling under a logic of management by risk. Such an approach allows for the identification of relevant criteria to assess, from a juridico-managerial perspective, the legitimacy of each type of these acts and the liability that may arise therefrom.

A. The Doctrinal Concept of the Management Act

The notion of the "management act" refers to a specific function within an organization—regardless of its legal status or field of activity—exercised by a person (manager, executive, administrator, etc.) invested with decision-making power within the scope of their missions. This power must be exercised in direct connection with the organization's corporate purpose (objet social) and in its interest, whether under normal or circumstantial conditions, or to make strategic choices pertaining to the organization's development policy.

In the context of corporate management, the management act—whether considered from a legal, fiscal, or managerial angle—designates a voluntary act performed by a manager, or any other official invested with decision-making power, within the framework of their statutory or contractual functions. This act is presumed to contribute to the proper functioning of the company, the preservation of its interests, or its development, while implying a certain degree of independence from the economic outcome (Aït Youcef, 2022; Jarnevic, 1977; Napoli, 2010).

In short, managerial logic is based on the postulate that a failure or an error of judgment cannot, in itself, call into question the validity of a management decision. However, the application of this principle must be nuanced according to the nature of the act concerned: routine management, circumstantial management, or development strategy. Consequently, the manager's liability regarding potential prejudices suffered by the company cannot be assessed uniformly and independently of the context and nature of the act.

This evaluation becomes more complex when the act in question stems from a manager's initiative which, although aligned with the company's corporate purpose—namely its sustainability and development (Nurit-Pontier & Rousseau, 2012)—is neither expressly stipulated in the company's articles of association nor formalized in the manager's mandate or employment contract. Such a configuration raises significant challenges regarding the identification and assessment of the legitimacy of the decisions taken, particularly when these are contested on the grounds of liability, especially criminal liability.

Thus, the understanding of the notion of the management act cannot be fully operational without taking into account the diversity of acts performed by managers in the exercise of their prerogatives. This diversity implies a differentiated analysis according to the nature, purpose, context of execution, and level of risk inherent to each type of act, in order to determine the tools and criteria for assessing and evaluating the merits of managerial liability, particularly in criminal matters.

B. Functional Typology of Management Acts According to the Degree of Risk

In the exercise of their duties, managers are called upon to perform a variety of management acts, which can be classified according to their origin and nature into three broad distinct categories: 1- routine management acts, 2- circumstantial management acts, and 3- acts of management by risk.

1. Routine Management Acts

Routine management acts are the everyday operations, generally repetitive, that a manager performs within the normal scope of the company's activity. They possess neither an exceptional nor a strategic character. The company generally maintains appropriate procedures that frame this type of act. Routine management acts are characterized by their predictability, insofar as they are generally explicitly stated in the company's articles of association and incorporated, for the most part, into the manager's employment contract or letter of mission—such as the payment of salaries, settlement of invoices, negotiation of a supply contract or an employment contract, etc.—which are not intended to durably modify the structure or orientation of the company (Grossi et al., 2021).

These acts may also be formalized through a set of specifications (cahier des charges) or a job description, particularly concerning heads of projects or departments such as finance and accounting, human resources, or commercial and technical services. These actors exercise decision-making power within the framework of their duties without a formal obligation of result.

2. Circumstantial Management Acts

Circumstantial management acts are incidental decisions that often fall within the discretionary leeway of an organization's primary manager (GM, CEO, Chairman of the Board) to address exceptional or urgent unforeseen circumstances, or as part of a strategic choice to reorient the initial approach of the company in the face of an unexpected event (Helfer et al., 2016). Unlike routine management acts, circumstantial management acts are not initially provided for in the statutes or the manager's employment contract. They require a contextual assessment insofar as they respond to unforeseen situations and often involve a more or less high level of risk. Their legitimacy rests essentially on the presumed interest of the company, outside the principle of management normality. Examples include the decision to renegotiate a debt or a commercial contract to avoid prejudice to the company, or the implementation of measures in the face of an economic or health crisis.

However, it should be noted that the evaluation of the normality of circumstantial management acts, when aimed at assessing the liability of their author, tends to converge whether conducted according to a legal or managerial approach.

2.1. Circumstantial Management Acts in Legal Doctrine

From a legal perspective, a circumstantial management act is defined as a measure adopted in response to an exceptional or temporary situation likely to compromise the assets or the sustainability of the company. It is an act performed outside the ordinary framework of management, but rendered necessary, or appropriate, by particular circumstances for the purpose of preserving the interests of the company (Cornu, 2016).

More precisely, these acts are not performed within a logic of regular and planned development of commercial activity, but constitute punctual responses to unforeseen events likely to compromise the balance or sustainability of the company. The circumstantial nature of the act must thus be assessed in light of the conjuncture in which it was adopted, taking into account the criteria of necessity and proportionality of the decision.

Furthermore, this legal conception of the circumstantial management act finds a significant echo in the field of public administrative management, where such acts pertain to decisions adopted by the administration in response to specific events, with the aim of preserving the general interest or protecting public domain interests, without necessarily being part of a continuous management policy (Bon et al., 2020). Although deviating from ordinary management, it remains a legitimate and necessary initiative as long as it aims to preserve the proper functioning of the public service or to protect the public domain in a context of urgency or the unforeseen.

2.2. Circumstantial Management Acts in Managerial Doctrine

In managerial doctrine, the notion of the "circumstantial management act" likewise refers to the set of exceptional measures taken by the manager outside the usual operational framework to address critical, uncertain, or urgent situations, with the aim of protecting the organization or restoring its functional balance.

These consist of specific and temporary decisions taken by the manager to maintain the company's organizational equilibrium in response to unforeseen situations that the enterprise regularly encounters. This idea is reaffirmed by Ansoff (1980), who highlights the concept of "instantaneous strategic decisions" adopted under constraints of time and limited information.

This doctrinal approach considers circumstantial management acts as unplanned but oriented responses to unforeseen environmental disturbances. These decisions, akin to a form of stochastic reaction, aim to reduce uncertainty and restore a certain organizational balance; their effectiveness depends closely on the manager's managerial skills and their ability to mobilize and coordinate available resources to respond to the situation in an appropriate manner (Prévalet, 2017).

3. The Act of Management by Risk (Risk-Taking)

The rapid evolution of economic models, coupled with intensifying competition in constantly changing markets—notably under the effect of the transition to the digital economy, the emergence of new institutional actors, and the rise of information and communication technologies—imposes continuous strategic adaptation upon companies. In this context, even a policy exclusively focused on risk prevention, however rigorous it may be, is no longer sufficient to guarantee the sustainability or competitiveness of the company. It must be complemented by a managerial culture based on the reasoned acceptance of uncertainty, integrating risk-taking as an essential lever for agility, innovation, and growth. This perspective aligns with that of Darsa (2016, p. 293), a risk management expert, who emphasizes that "the company must take risks by nature (...) and the sustainability of companies depends, and will always depend, on the capacity of creators and leaders to take risks."

It is within this logic that the concept of "risk appetite" is situated, understood not merely as a simple response to threats, but as a strategic approach in its own right. Unlike routine management acts that execute precise and delimited tasks, and circumstantial acts that react ex post to unforeseen and punctual events, management by risk relies on a dynamic anticipation of uncertainties and their controlled integration into ex ante decision-making processes. In addition to strengthening organizational resilience, these acts capture growth opportunities by steering managerial choices toward proactive and deliberate development (Le Ray, J., 2022).

Naturally, the focus here is on "measured risk-taking," which is a strategic approach by which an organization voluntarily accepts a portion of uncertainty, provided it is delimited, evaluated, and controlled. It consists of identifying and seizing development opportunities while preserving the fundamental interests of the organization. In other words, it is not about taking risks blindly, but acting with lucidity amidst uncertainty, transforming risk into a lever for progress.

To better grasp the different forms of management acts, their logic of action, their points of divergence and convergence, as well as the level of risk they carry, the following table (Figure 1) provides a comparative synthesis organized around three main categories: routine management acts, circumstantial acts, and acts of management by risk.

Figure 1. Comparative typology of management acts.

Category	Definition	Origin / Formalization	Example	Risk Levels	Legitimacy Criteria
Routine management acts	Repetitive acts linked to the daily functioning of the company.	Statutes, employment contract, letter of mission, job description, etc.	Payment of salaries, cash flow management, negotiation of a supply contract.	Low	Compliance with internal and external texts.
Circumstantial management acts	Punctual decisions taken to address an unforeseen or exceptional event.	Contextual decision, not always planned in advance.	Debt renegotiation, crisis response, unforeseen strategic adjustment.	Moderate to high	Contextual assessment, opportunity, proportionality, general interest.
Acts of management by risk	Strategic approaches deliberately integrating controlled	Not formalized *a priori*; they stem from an anticipatory	Launch of an innovative product, activity diversificatio	High	Strategy, risk governance, contribution to development.

	risk-taking for the purpose of growth or innovation.	and proactive steering logic.	n, risky investment.		

This typology reveals that management acts can be understood according to an inverse gradient between their legal certainty and the level of risk assumed. The further an act moves away from the pre-established normative framework—comprised of legislative texts, company statutes, employment contracts, or internal procedures—the more it is exposed to an increased risk of both economic and legal prejudice. This departure weakens its legitimacy, particularly in the event of litigation, where the absence of a clear normative reference can compromise the author's defense, even when the act was initially motivated by the company's interest.

II. The Legal Legitimacy of the Management Act: From Formalism to Uncertainty

The typological analysis of management acts has highlighted that the notion of legitimacy varies according to the nature of the act in question, whether it is textually regulated, as is the case for routine management acts, or merely nuanced, as with circumstantial acts and, more specifically, acts of management by risk when they stem from a managerial choice.

Routine management acts, pertaining to habitual operational activity and anchored in the company's routine, are generally framed by specific legal or regulatory provisions and incorporated into internal work procedures. Their legitimacy, therefore, rests on strict compliance with these norms. Consequently, when these provisions are accompanied by criminal sanctions, the author's liability can only be engaged in the event of a manifest violation or failure to respect the prescribed obligations. In other words, the criminalization of a routine management act can only be considered if its author expressly violates a legal or regulatory norm characterizing the act committed as a breach or an offense, which reduces the risks of unjustified criminal prosecution. This logic is reflected in the offenses provided for by various legal frameworks governing the activity of commercial enterprises, such as the Commercial Code, the Penal Code, legislation relating to the prevention and combat of corruption (particularly in public procurement), monetary and banking legislation (for illustrative purposes, Algerian Law No. 23-09, Arts. 150 to 154), the Customs Code, or labor regulations.

In contrast, circumstantial management acts often escape strict normative framing, insofar as they are adopted in emergency situations or in response to unforeseen events. Their legitimacy is therefore more difficult to establish, as it can only be assessed a posteriori—not based on pre-existing formal legal norms, but on contextual analysis. This analysis takes into account factual circumstances, economic stakes, the degree of reactivity expected from the manager, as well as their intent, which is measured against the relevance of the decision said to be "taken in the interest of the company."

Although stemming from contextual necessity, circumstantial acts can engage the author's liability if their appropriateness or proportionality is questioned a posteriori. Indeed, the lack of explicit recognition of managerial discretionary power in the legislative texts of certain national jurisdictions—for illustrative purposes, Algerian legislation—as well as the imprecision of notions such as "mismanagement" in criminal matters, combined with the frequent absence of a formalized risk management policy within organizations, tend to favor a restrictive interpretation by both oversight bodies and criminal judges. This interpretation then relies on an inherently subjective evaluation, often based solely on the criterion of the result. This lack of objectification increases the risk of criminal liability, sometimes indirect, for managers—particularly in organizations with public capital—based on a simple error of judgment, even in the absence of fraudulent intent or personal enrichment (Spire, 2013).

The assessment of liability becomes more complex when the management act results from a managerial choice—rather than an overriding necessity imposed by urgency—and often eludes fully informed

evaluation. Although these acts are generally oriented toward performance, development, or innovation—in other words, toward the company's interest—they present a higher level of risk due to the uncertainty they involve and the possibility of legal consequences in the event of failure or miscalculation. Furthermore, while they are usually consistent with the company's corporate purpose, these acts are rarely explicitly formalized in the employment contract, the director's mandate, or the company's statutes; they are generally summarized in the following vague formula: "everything that pertains to the corporate purpose of the company."

This lack of a precise normative framework raises significant challenges regarding the legal characterization and assessment of the legitimacy of these acts in the absence of a rigorous steering mechanism based on an anticipatory and structured approach. Such an approach would allow for the identification, evaluation, and control of risks likely to affect the achievement of the strategic or operational objectives pursued. Such an approach certainly requires an internal formalization of decision-making processes based on international standards, such as ISO 31000:2018 or the COSO ERM framework (Saidi, 2014; COSO, 2017). It also necessitates explicit recognition of the managerial discretionary power of public managers in legislative texts and the clarification of the notions of "mismanagement" or "deficient management" to reconcile legal certainty with the economic efficiency of managerial acts.

From this arises the real challenge of the decriminalization—or re-penalization—of the management act, which is not limited to the adoption of standardized and formal risk management methodological frameworks, but extends to a complete overhaul of the legal treatment of managerial acts. It therefore becomes pertinent to examine the concept of decriminalization and its various applications.

III. The Criminalization of Managerial Risk: Crisis and Recompositions

The concept of decriminalization does not aim for a radical challenge to the legal order, but rather an evolution aimed at resolving the conflict of characterization of an act while maintaining its supervision through administrative or disciplinary sanctions (Pradel, 2019). In other words, the act moves out of the criminal sphere without being decriminalized in the strictest sense: it ceases to be an offense but remains subject to a liability regime.

Several international experiences illustrate the evolution of liability regimes in management. In France, Law No. 2004-204, known as Perben II, relating to the adaptation of justice to developments in criminality, marks this transformation: breaches such as delays in filing annual accounts now fall under administrative fines, while offenses such as bankruptcy, misuse of corporate assets, or negligence require proof of fraudulent intent to engage criminal liability (Champeil-Desplats, 2004). In Italy, Legislative Decree No. 61/2002 decriminalized false accounting (falso in bilancio) when inaccuracies were not deemed financially significant. However, this approach was partially revised by Law No. 69/2015, which reintegrated certain forms of false accounting into the criminal field (Wikipedia, 2025). In Canada, the Supreme Court, in the judgment BCE Inc. v. 1976 Debentureholders (2008), established the principle of the "business judgment rule," which creates a presumption of good faith in favor of the director and limits judicial intervention in the assessment of management choices. In the United States, this same Business Judgment Rule (BJR) is applied by courts to protect decisions made in good faith in the interest of the company. It is complemented by "safe harbor provisions," which frame certain managerial decisions and exempt directors from liability provided they meet criteria of diligence, loyalty, and transparency (Delaware Supreme Court, 1985; American Bar Association, 2016).

This dynamic is not limited to the economic field: in Portugal, the use of illicit substances for personal purposes has been considered an administrative offense since 2001, while in South Africa, a 2018 law decriminalized the private consumption of cannabis.

As an illustrative example among others, Algeria has recently addressed the issue of the decriminalization of the management act within the framework of the revision project of the Commercial Code (amended Ordinance No. 75-59), examined by the Government on April 12, 2023 (Fadheli, 2023). Although this project, like other reforms observed in various legal systems, now subordinates the criminalization of the

management act to bad faith or fraudulent intent, it makes no explicit distinction between a management error committed in good faith and deliberate fraudulent acts. Such ambiguity keeps managers in a zone of criminal insecurity, even in the absence of malicious intent or personal enrichment.

To remedy these shortcomings and translate the principles of good governance into an operational normative framework, several orientations appear necessary. First, it is essential to explicitly recognize in legal texts management errors made in good faith, particularly when they result from circumstantial acts. Second, a clear distinction must be made between these errors and offenses falling within the criminal field, such as fraud or corruption. To this must be added the establishment of robust legal certainty guarantees, including those with retroactive effect, to protect managers acting in the interest of the company. Finally, strengthening the transparency of decision-making processes, particularly within organizations with public capital, constitutes an essential condition for reconciling managerial efficiency with the requirement for accountability.

This reform dynamic thus lays the foundations for a necessary legal formalization of managerial logic, with a view to coherently articulating economic rationality, liability, and legal certainty.

IV. Toward a Juridification of Risk Management

Following the momentum of decriminalization, the question now arises regarding the legal formalization of managerial logic. In other words, this involves integrating modern risk governance tools within the legal framework. We generally distinguish between two categories of tools:

1. **Technical tools**, referred to as "relevance assessment tools," which steer circumstantial decisions and guide strategic choices based on identified risks.

2. **Legal tools**, which allow for the evaluation of the compliance of management acts with legal and regulatory requirements.

This approach aligns with the Business Judgment Rule, which protects the rationality of managerial decisions against sanctions based solely on failure. Put differently, it is not the outcome of a decision that is sanctioned, but the absence of a rational and informed decision-making process.

1. Technical Tools for Assessing the Relevance of Management Acts

Tools for assessing the relevance of management acts are technical mechanisms that allow for the identification, evaluation, understanding, and control—both preventive and corrective—of potential or proven risks to which an organization may be exposed. A variety of these mechanisms serve as essential levers for effective and enlightened steering, such as strategic risk monitoring, dashboards, or the internal auditing of control systems (Darsa, J.-D., 2016). Their integration occurs primarily through integrated management systems, such as the ISO 9001:2015 standard. Centered on quality management, this standard structures processes in an integrated manner around QSE (Quality, Safety, Environment) pillars and contributes to anticipating operational risks while ensuring compliance with legal and normative requirements.

However, for a more targeted and strategic risk management, the ISO 31000:2018 standard—toward which our interest is particularly directed—represents a technical instrument of reference that warrants our attention. Dedicated exclusively to managing all forms of risk regardless of the sector of activity, it proposes a strategic and transversal approach that allows any organization, regardless of its sector or size, to prevent threats and also to take controlled risks within a logic of innovation and performance (ISO, 2018). In other words, it constitutes a normative foundation for establishing risk governance based on the rationalization of choices and the securing of decisions in an uncertain environment.

❖ The ISO 31000 Standard: A Risk Governance Framework

According to Jean Le Ray (2022), the ISO 31000:2018 standard does not constitute a rigid methodology but rather a flexible basis founded on principles adaptable to each organization. This standard aims above all to integrate risk management into the global strategy, governance, and organizational culture.

In this perspective, the analysis developed by Jean Le Ray (2022) constitutes a particularly enlightening contribution. The author insists on the flexible and evolving nature of the ISO 31000:2018 standard, which he presents not as a fixed prescriptive device, but as an adaptable framework allowing for the institution of a true organizational risk culture. He proposes a reading structured around its major principles, its essential components, and the operational tools it mobilizes, as follows:

❖ **Principles and Scope of the Standard.**

The ISO 31000 standard rests on three essential principles: adaptation to the specific context of the organization; a systemic, iterative, and dynamic approach to risk; and finally, the active involvement of stakeholders accompanied by increased accountability of managerial actors. This positioning makes the standard applicable to various institutional environments, both public and private.

❖ **Structuring of the Standard.**

The ISO 31000 standard is organized around three fundamental components that form a coherent architecture of risk management:

➢ **The Framework:** which includes the risk management policy, assigned roles and responsibilities, as well as elements related to organizational culture.

➢ **The Process:** which covers all stages of the risk management cycle, notably identification, evaluation, treatment, monitoring, and review.

➢ **The Principles:** which guide action according to values such as transparency, integration into decision-making processes, customization of approaches, and continuous improvement.

This structuring enables a progressive yet robust implementation and fosters the transversal integration of risk management across all decision-making functions within the organization.

❖ **Operational Tools of the Standard.**

Jean Le Ray (2022) emphasizes the importance of concrete tools in the effective implementation of the ISO 31000 standard. He notably cites risk mapping, which allows for a synthetic visualization of the severity and probability levels of identified risks; risk dashboards which, fed by Key Risk Indicators (KRIs), enable dynamic monitoring and continuous assessment; the risk register, which centralizes all relevant information on risks, their causes, consequences, and the corrective measures implemented; the criticality matrix, a prioritization tool facilitating decisions based on frequency and impact; and finally, the SWOT analysis cross-referenced with risks, which links traditional strategic analysis (strengths, weaknesses, opportunities, threats) to risk management, thereby strengthening the alignment between strategy and prevention.

❖ **The Rational Basis of Liability.**

Jean Le Ray advocates for a proactive approach to risk management, in which the ISO 31000 standard serves as a lever for organizational transformation. It provides a governance framework based on accountability, transparency, and the traceability of decisions, particularly in public and semi-public organizations. This standard encourages informed decision-making in uncertain environments and prompts the establishment of clear mechanisms for the allocation of responsibilities. It thus contributes to the emergence of a genuine risk culture, which is essential for sustainable performance and institutional credibility.

2. Legal Tools for Assessing the Compliance of Management Acts

The objective of specifically distinguishing legal tools for assessing the compliance of management acts—even though they fall under the broader category of technical risk management mechanisms, as legal risk constitutes an essential dimension thereof—is to highlight the need for a hybrid evaluation system. Such a system allows for the integration of criteria specific to the liability of public enterprise managers, taking into account both the nature of the management act and the context in which it is performed.

❖ **Legal compliance assessment tools**

refer to the entirety of organizational, procedural, and technological devices intended to ensure that the organization respects the laws, regulations, professional standards, and contractual obligations applicable to its activities. At the organizational level, these mechanisms are divided into internal and external devices.

Among the internal mechanisms for legal compliance control, several tools can be mobilized, notably internal procedures, codes of conduct, regulatory monitoring systems (particularly automated ones), and legal risk mapping (Figure 2), which allows for the identification and prioritization of fiscal, labor, environmental, and contractual risks, among others, to better address them. These devices must be supplemented by internal legal audits, intended to periodically evaluate the compliance of processes and documents with the legal and regulatory requirements in force.

Figure 2. Examples of legal risks relevant to the assessment of management act compliance.

Legal Domain	Identified Risk	Risk Level	Preventive Measures
Commercial Law	Non-publication of corporate accounts	Medium	Regulatory monitoring, automation.
Tax Law	Failure to file returns (VAT, Corporate Tax, etc.)	High	Tax schedule, internal control.
Labor Law	Undeclared employment, irregular dismissal	High	Monitoring of social obligations, HR audit.
Economic Criminal Law	Management acts characterized as fraud	Very High	Clarification of delegations, documentation of decisions.
Procurement Procedures	Awarding without tender, or non-compliance with procedures	Medium	Training, procedural compliance.

Furthermore, external mechanisms may intervene through compliance audits entrusted to independent firms or inspections conducted by competent administrative authorities, depending on the relevant fields (labor inspection, taxation, data protection, etc.). The adoption of a corporate governance code based on universal principles of good conduct, such as the G20/OECD Principles of Corporate Governance, strengthens transparency, efficiency, legislative compliance, and managerial effectiveness (OECD, 2023).

V.Legal Certainty through the Hybrid Evaluation of Decisions

The diversity of management acts—whether routine, circumstantial, or strategic—fully justifies the establishment of a hybrid evaluation system, articulating the requirements of legal compliance with the imperatives of managerial relevance. Indeed, unlike circumstantial acts and strategic development decisions, routine management acts are not subject to an assessment based on their appropriateness or strategic efficiency, but fall exclusively under a review of legality. Failure to comply with legal obligations, such as the application of health and safety standards, the regular publication of social accounts, the holding of general meetings within legal deadlines, or the registration of employees with social security bodies, constitutes an objective breach of normative prescriptions that cannot be justified by any discretionary power of the manager. These breaches constitute legal faults, directly engaging the liability of their author.

Moreover, the statutory uniqueness of Public Economic Enterprises (EPEs) constitutes a particularly revealing illustrative example of the need for a dual-dimension evaluation system. By way of illustration, in certain legal orders—such as in Algeria—EPEs are constituted as private law companies with public capital (Art. 2 of Ordinance No. 01-04), while being subject to governance, management, and control mechanisms that resemble, in many respects, those applicable to public establishments.

This hybridity is notably reflected, in these systems, by the status of "public official" conferred upon managers, as illustrated in Algeria by Article 119 bis of the Penal Code and Article 2 (paragraph 2) of the Law on the Prevention and Combat of Corruption. Such a qualification entails reinforced submission to obligations of integrity, transparency, and compliance in sensitive areas such as the management of public funds, public procurement, or the prevention of corrupt practices.

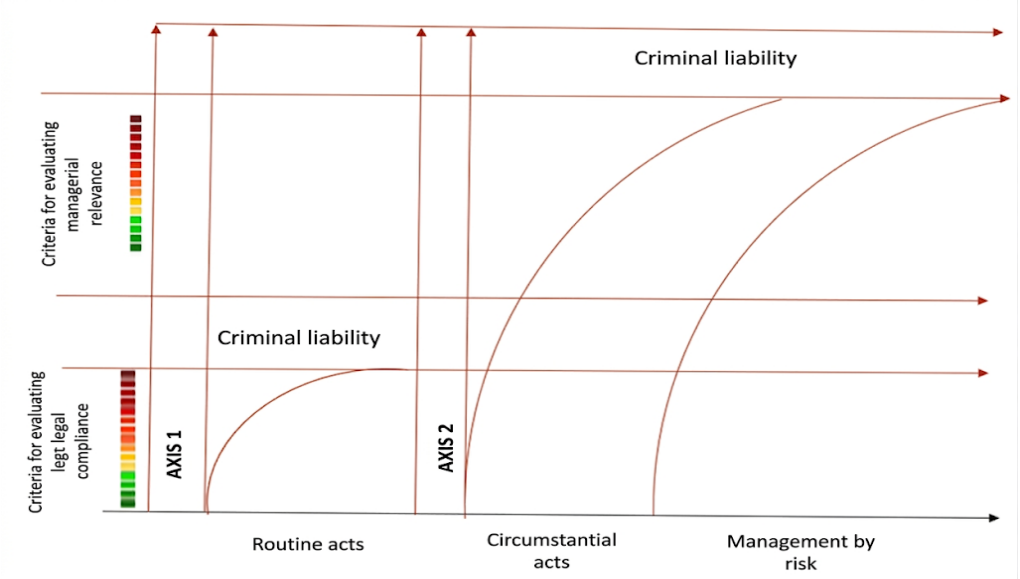
In this sense, certain legal systems offer an enlightening illustration of the coexistence of dual-level control mechanisms applicable to hybrid-status public enterprises. For example, in the Algerian case, Public Economic Enterprises (EPEs) are subject to a dual control framework. On one hand, an a priori functional control, exercised by the tutelary ministry, concerns the general strategy of the company as well as its structural decisions, as provided for in Articles 12 to 17 of Ordinance No. 01-04 of August 20, 2001; on the other hand, an a posteriori external control is ensured by supreme audit institutions, such as the Court of Auditors and the General Finance Inspectorate (IGF), in accordance with Article 2 of Executive Decree No. 09-96 of February 22, 2009, setting the conditions and procedures for the control and management audit of EPEs.

These mechanisms, typical of structures with public capital operating within a market framework, primarily aim to assess the legal compliance of management acts, without necessarily evaluating their managerial relevance or economic efficiency.

Consequently, the institutional specificity of public enterprises with hybrid status—as illustrated notably by the EPE model in certain legal orders—imposes the implementation of a hybrid evaluation system. This system must articulate, on one hand, a rigorous control of legal compliance and, on the other, a reasoned assessment of managerial relevance, modulated according to the nature of the management act concerned (Figure 3).

Such a mechanism would ensure a proportionate allocation of liability, avoiding both the trivialization of management faults and the excessive judicialization of managerial action, while simultaneously strengthening the efficiency and legitimacy of the control mechanisms applicable to companies with public capital.

Figure 3. Model of Articulation between Managerial Liability & Legal Certainty in Uncertain Environments



This diagram illustrates the logic of a hybrid evaluation system based on a dual analytical grid, articulating legal and managerial criteria.

❖ **Axis 1. Legal Compliance Criteria:** These are predominant in the evaluation of **routine management acts**, for which any manifest deviation from legal or regulatory norms is liable to engage

criminal liability of an objective nature, regardless of the appropriateness or the economic outcome of the decision.

❖ **Axis 2. Managerial Relevance Criteria:** These are mobilized to assess **circumstantial and strategic acts**, which fall under a logic of management by risk, in light of objectives regarding performance, efficiency, and the control of uncertainties.

The curve of exposure to criminal liability thus varies according to the nature of the management act: it is more direct and rigid for routine acts but progressively attenuated when decisions stem from strategic choices made in an uncertain environment, where the managerial margin of appreciation must be more broadly recognized in the interest of legal certainty and economic rationality.

VI. Normative Perspectives for the Legal Securing of the Management Act

At the conclusion of this analysis, it appears necessary to undertake a structural normative evolution in order to move beyond the strictly repressive approach to the management act and promote a balanced legal framework that reconciles accountability, economic rationality, and legal certainty.

In the context of companies with public capital, and more specifically public economic enterprises, such an evolution presupposes not the weakening of control, but its reconfiguration around a hybrid evaluation model, articulating legal compliance requirements and managerial relevance criteria.

In this perspective, several orientations can be proposed:

1. **Institutionalize a Formalized Hybrid Evaluation System**

It would be advisable to establish a structured analytical framework combining—according to the typology of management acts (routine, circumstantial, strategic)—legality criteria and indicators of managerial rationality, in order to base the assessment of liability on an *ex ante* logic rather than an exclusively retrospective one.

2. **Create a Multidisciplinary Expertise Body**

The establishment of a "Management Act Evaluation Council," composed of legal scholars, practitioners, and specialists in public management, would help enlighten the judicial authority or oversight bodies. Similar to professional orders, this body could intervene in an advisory capacity or within the framework of litigation procedures to objectify the assessment of liability.

3. **Integrate International Risk Governance Frameworks**

The adoption of standards such as ISO 31000 within internal governance frameworks would contribute to structuring decision-making around recognized methods of risk identification, assessment, and treatment, while fostering an organizational culture based on traceability and anticipation.

4. **Strengthen the Traceability and Justification of Decisions**

The introduction of a requirement for written and reasoned justification for management acts involving strategic or circumstantial risk would materialize the ex ante rationality of the decision and facilitate its subsequent evaluation within a legally secure framework.

5. **Guarantee Legal Protection Against Retrospective Recharacterization**

Finally, the introduction of a guarantee of legal certainty—even in the event of evolving assessment standards—would prevent decisions made loyally in an uncertain context from being sanctioned a posteriori based on new or unpredictable criteria.

Conclusion

In the final analysis, the examination of management acts—illuminated by doctrine, jurisprudence, and the evolutions of economic law—reveals a structural tension between the manager's decisional rationality and traditional logics of criminal imputation based solely on outcomes. This tension is exacerbated by the

absence of a legally stabilized definition of the "management act" and the persistent centrality of the criterion of harm in criminal characterization. These factors constitute major sources of legal uncertainty, particularly for the executives of public economic enterprises.

The primary contribution of this study lies in the proposal of an unprecedented hybrid evaluation model. This model breaks away from the classical unidimensional approach by articulating, within a single analytical framework, both legal compliance requirements and managerial relevance criteria. Far from aiming to weaken liability, this model seeks to reconfigure it around a logic of ex ante decision-making, founded on proportionality, economic rationality, and structured risk management. It thus aligns with a perspective similar to the Business Judgment Rule, while remaining adapted to the specificities of civil law legal traditions.

By integrating international risk governance frameworks—notably the ISO 31000:2018 standard—and explicitly recognizing the legitimacy of decisions made in good faith within an uncertain environment, this model paves the way for the legal formalization of managerial logic. it allows for transcending the sterile alternative between systematic criminalization and impunity, in favor of a balanced normative framework that guarantees legal certainty, economic efficiency, and trust in the managerial function.

Thus, far from being limited to a technical reform, the proposed hybrid evaluation system constitutes a new conceptual architecture for managerial liability. It is intended to inform contemporary debates on corporate governance, the decriminalization of management acts, and the transformation of economic law in transition economies.

References

Books

1. Bon, P., Auby, J.-B., & Terneyre, P. (2020). *Droit administratif des biens* (8th ed.). Paris: Dalloz. (Collection: Précis).
2. Committee of Sponsoring Organizations of the Treadway Commission (COSO). (2017). *Le management des risques de l'entreprise : Une démarche intégrée à la stratégie et à la performance – Synthèse*. https://docs.ifaci.com/wp-content/uploads/2018/03/COSO-ERM-2017-synthe-se.pdf
3. Cornu, G. (2016). *Vocabulaire juridique* (11th ed.). Paris: PUF.
4. Darsa, J.-D. (2016). *La gestion des risques en entreprise* (4th ed.). Gereso. Collection Agir face aux risques.
5. Grossi, I., Merland, L., Mestre, J., Mestre-Chami, A.-S., Pancrazi, M.-È., & Vignal, N. (2021). *Activité commerciale et structures d'entreprise : Commerçants, sociétés et autres groupements* (Vol. 1, 31st ed.). Paris: LGDJ.
6. Helfer, J.-P., Kalika, M., & Orsoni, J. (2016). *Management stratégique* (10th ed.). Paris: Vuibert.
7. Le Ray, J. (2022). *De la gestion des risques au management des risques : Pourquoi ? Comment ?* Paris: AFNOR Éditions.
8. Nurit-Pontier, L., & Rousseau, S. (2012). *Risques d'entreprises : quelle stratégie juridique ?* Paris: LGDJ Lextenso éditions.
9. Pradel, J. (2019). *Droit pénal général* (22nd ed.). Paris: Cujas.
10. Prévalet, M. (2017). *La gestion des risques dans la fonction publique*. Collection « Agir face aux risques ». Éditions GERESO.
11. Riper, G. (1951). *Aspects juridiques du capitalisme moderne*. Paris: LGDJ.

Scientific Articles

12. Ait Youcef, S. (2022, September 28). Le risque management et la préemption de culpabilité ! *El Watan*, p. 4.

13. Ansoff, H. I. (1980). Strategic issue management. *Strategic Management Journal*, 1(2), 131–148.

14. Bergel, J.-L. (2008). La sécurité juridique. *Revue du notariat*, 110(2), 271–285.

15. Champeil Desplats, V. (2004). La responsabilité du dirigeant à l'épreuve du droit pénal des affaires : analyse de la loi Perben II. *Revue de Science Criminelle et de Droit Pénal Comparé*, 2004(3), 611–627.

16. Jarnevic, J. P. (1977). Les dirigeants des entreprises publiques. *Revue française d'administration publique*, (4), 91–122. https://www.persee.fr/doc/rfap_0152-7401_1977_num_4_1_978

17. Napoli, P. (2010). Pour une histoire juridique de la gestion. In P. Bezes, L. Bérard, S. Bernatchez, & A. Siné (Eds.), *L'invention de la gestion des finances publiques* (pp. 273–299). Institut de la gestion publique et du développement économique. https://doi.org/10.4000/books.igpde.1724

18. Saidi, Y. (2014). L'impact de l'évolution du référentiel COSO sur l'activation du contrôle interne dans l'entreprise : Avec référence au cas de l'Algérie. *Revue des Sciences Humaines – Université Mohamed Khider Biskra*, (34–35), 45–59.

19. Spire, A. (2013). Pour une approche sociologique de la délinquance en col blanc. *La délinquance en col blanc : études de cas* (Vol. X). OpenEdition Journals. https://journals.openedition.org/champpenal/8582

Legal Texts and Standards

20. Ordinance no. 01-04 of August 20, 2001, regarding the organization, management, and privatization of public economic enterprises. *Official Journal of the Algerian Republic*, no. 47, August 21. https://www.joradp.dz/FTP/jo-francais/2001/F2001047.PDF

21. Executive Decree no. 09-96 of February 22, 2009, setting the conditions and procedures for control and management audit of public economic enterprises by the General Inspectorate of Finance. *Official Journal of the Algerian Republic*, no. 14, March 9. https://archive.gazettes.africa/archive/dz/2009/dz-government-gazette-dated-2009-03-04-no-14.pdf

22. Law no. 23-09 of June 21, 2023, regarding the monetary and banking law. *Official Journal of the Algerian Republic*, no. 43, June 27.

23. Law no. 24-06 of April 28, 2024, amending and supplementing Ordinance no. 66-156 of June 8, 1966, establishing the Penal Code. *Official Journal of the Algerian Republic*, no. 30, April 30.

24. ISO. (2018). *ISO 31000:2018 — Risk management – Guidelines* (2nd ed.). Geneva: International Organization for Standardization. https://cdn.standards.iteh.ai/samples/65694/46da001516374e08b20b2b2e7a8bddd9/ISO-31000-2018.pdf

25. OECD. (2023). *G20/OECD Principles of Corporate Governance*. https://www.oecd.org/fr/gouvernance/principes-de-gouvernance-des-entreprises.htm

Web Sources

26. Fadheli, H. (2023, April 12). La révision du Code de commerce sur la table du Gouvernement : Dépénalisation de l'acte de gestion : le processus enfin lancé ? *La Sentinelle*. https://lasentinelle.dz

27. Wikipedia. (n.d.). Falso in bilancio. https://it.wikipedia.org/wiki/Falso_in_bilancio