

Synopsis (David Zogg)

Jurisdictional overlap between regulatory authorities and criminal investigative authorities has the potential for systemic friction in numerous areas due to diverging enforcement methods and goals.

While regulatory authorities will typically be forward-looking and thus focused on exploring and especially rectifying an irregular situation, criminal investigations will be focused on proving and punishing wrongdoing and be more historical in their viewpoint.

The legal framework of regulatory investigations will often be structured accordingly and contain instruments and obligations that may be at odds with laws and tactics of criminal investigations. Most notably:

- Lack of 'Miranda'-warnings may void interrogations and anything based upon them
- Obligation to participate actively in investigations is at odds with non-self-incrimination
- administrative law 'due process' allows for few or no tactical considerations

In criminal investigations with regulatory jurisdictional overlap it is crucial to identify these potential areas of friction early on, plan accordingly and coordinate with the regulatory authorities. These areas of friction bear significant disruptive potential for both criminal and regulatory proceedings, but especially for the latter.

The workshop contribution aims to explore and discuss these issues and possible approaches to avoid, mitigate or resolve them.

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