Corporate Criminal Liability from a Comparative Perspective

Marc Engelhart

Abstract The recognition of legal entities has been an important step in the development of many countries and has often gone hand in hand with their industrialization. Necessary investments for projects such as railways required states to allow private entities to act legally on their own and restrict liability to the money invested, in order to attract investors. Since the middle of the nineteenth century, when economic markets and the emergence of companies had gained momentum as a result of the industrial revolution, legal systems have dealt with the problem of how these entities, with companies being the most important ones, should be treated when its members infringe legal regulations. This question becomes particularly significant for society when members commit crimes.

The effect of such "corporate wrongdoing" can be tremendous. An early example is the collapse of the *South Sea Company* from 1719 to 1721 and the financial ruin left in its wake due to widespread insider trading and corruption. The accounting scandals within *Enron* and *Worldcom* in the US, the case of financial fraud within *Parmalat* in Italy, or the corruption cases within *Siemens* in Germany are vivid examples during the last decade of the scope and severe consequences corporate wrongdoing can have on direct stakeholders and the overall market. In a liberal society, and especially in a free market economy, the freedom of conducting business without state interference is a critical element of the system. Yet the mere scope of the aforementioned cases calls for an adequate response by society and its legal systems. This chapter takes a comparative view of existing national and international solutions to corporate criminal liability (1) from prevailing models (2) over new approaches (3) to new perspectives in regulation (4).

M. Engelhart (✉)
Max Planck Institute for Foreign and International Criminal Law, Freiburg i. Br., Germany
e-mail: m.engelhart@mpicc.de

D. Brodowski et al. (eds.), *Regulating Corporate Criminal Liability*,
DOI 10.1007/978-3-319-05993-8_6,

1 Status of Corporate Criminal Liability

1.1 International Development

Today, the responsibility of companies for criminal acts of employees is generally accepted at the international level. International treaties in the field of economic criminal law regularly include a provision for corporate sanctions. This trend can only look back on a short history of about 15 years. In the 1980s, the most prominent measure in regard to corporate criminal liability was a recommendation by the Council of Europe,[1] but due to its nature it was non-binding. It took until the mid-1990s for the European Union to resume the topic and create binding obligations.

The central document is the Second Protocol of the Convention on the protection of the European Communities' financial interests from 1997.[2] Although it did not come into force until 2009, it had great influence on European legislation after 1997. Until now, three joint actions (1997–1998, now substituted by framework decisions),[3] 11 framework decisions (2000–2008),[4] seven directives (2003–2013)[5]

[1] Council of Europe, Recommendation No. R (88) 18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities, adopted on 20 October 1988.

[2] Council Act of 19 June 1997 drawing up the Second Protocol of the Convention on the protection of the European Communities' financial interests, OJ C 221 of 19.7.1997, p. 11 (Art. 3).

[3] Joint Action 97/154/JHA of 24.2.1997 on trafficking in human beings and the sexual exploitation of children, OJ L 63 of 4.3.1997, p. 2 (under II.A.c.); 98/742/JHA of 21 December 1998 on making it a criminal offense to participate in a criminal organization in the Member States of the European Union, OJ L 351 of 29.12.1998, p. 1 (Art. 3); 98/742/JHA of 22 December 1998 on corruption in the private sector, OJ L 358 of 31.12.1998, p. 2 (Art. 5).

[4] Framework Decision 2000/383/JHA of 29.5.2000 on counterfeiting of the euro, OJ L 140 of 14.6.2000, p. 1 (Art. 8); 2001/413/JHA of 28.5.2001 on fraud and counterfeiting of non-cash means of payment, OJ L 149 of 2.6.2001, p. 1 (Art. 7); 2002/475/JHA of 13.6.2002 on terrorism, OJ L 164 of 22.6.2002, p. 3 (Art. 7); 2002/629/JHA of 19.7.2002 on trafficking in human beings, OJ L 203 of 1.8.2002, p. 1 (Art. 4; replaced by directive 2011/36/EU); 2002/946/JHA of 28.11.2002 on the facilitation of unauthorized entry, transit and residence, OJ L 328 of 5.12.2002, p. 1. (Art. 2); 2003/568/JHA of 22.7.2003 on corruption in the private sector, OJ L 192 of 31.7.2003, p. 54 (Art. 5); 2004/68/JHA of 22.12.2003 on the sexual exploitation of children and child pornography, OJ L 13 of 20.1.2004, p. 44 (Art. 6; replaced by directive 2011/93/EU); 2004/757/JHA of 25.10.2004 on illicit drug trafficking, OJ L 335 of 11.11.2004, p. 8 (Art. 6); 2005/222/JHA on attacks against information systems, OJ L 69 of 24.2.2005, p. 67 (Art. 8, replaced by directive 2013/40/EU); 2008/841/JHA of 24.10.2008 on organized crime, OJ L 300 of 11.11.2008, p. 42 (Art. 5); 2008/913/JHA of 28.11.2008 on racism and xenophobia , OJ L 328 of 6.12.2008, p. 55 (Art. 5).

[5] Directive 2003/6/EC of 28.1.2003 on insider dealing and market manipulation (market abuse), OJ L 96 of 12.4.2003, p. 16 (Art. 1 Nr. 6, Art. 2); 2005/60/EC of 26.10.2005 on money laundering and terrorist financing, OJ L 309 of 25.11.2005, p. 15 (Art. 2, 39); 2008/99/EC of 19.11.2008 on the protection of the environment, OJ L 328 of 6.12.2008, p. 28 (Art. 6); 2009/123/EC of 21.10.2009 on ship-source pollution, OJ L 280 of 27.10.2009, p. 52 (Art. 8); 2011/36/EU of

as well as four new proposals for directives[6] have included provisions on corporate criminal liability, mostly based on the Second Protocol.[7]

Alike, eight international treaties by the Council of Europe from 1998 onwards have included provisions on corporate liability that are very similar to the model of the Second Protocol.[8] The development is not restricted to Europe but can also be seen worldwide. Three UN conventions on financing terrorism (1999), organized crime (2000), and corruption (2003) address companies.[9] The same applies to the influential OECD convention on corruption of 1997.[10] Besides these acts, a number of further regional agreements[11] exist as well as soft law instruments that promote corporate criminal liability.[12]

A common feature of these international measures is the open approach concerning the kind of responsibility a member state or party to the treaty should introduce for companies in the national system. Regularly, the states have the choice between criminal, administrative, or civil sanctions as long as such a

5.4.2011 on trafficking in human beings, OJ L 101 of 15.4.2011, p. 1 (Art. 5); 2011/92/EU [corrected: 2011/93/EU] of 13.12.2011 on sexual abuse and sexual exploitation of children and child pornography, OJ L 335 of 17.12.2011, p. 1 (Art. 12); 2013/40/EU of 12.8.2013 on attacks against information systems, OJ L 218 of 14.8.2013, p. 8 (Art. 10).

[6] Proposal for a directive on insider dealing and market manipulation, document COM (2012) 420 final of 25.7.2012 and COM (2011) 654 final of 20.10.2011 (Art. 7); on fraud to the Union's financial interests, document COM (2012) 363 of 11.7.2012 (Art. 6); on the protection of the euro and other currencies against counterfeiting by criminal law, council document 14085/1/13 of 3.8.2013 (Art. 6); on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, document COM (2013) 45 final of 5.2.2013 (Art. 55).

[7] For details, see Engelhart (2012b), pp. 110ff.

[8] Convention on the Protection of Environment through Criminal Law of 4.11.1998 (not yet in force), ETS No. 172 (Art. 9); Criminal Law Convention on Corruption of 27.1.1999, ETS No. 173 (Art. 18); Convention on Cybercrime of 23.11.2001, ETS No. 185 (Art. 12); Convention on the Prevention of Terrorism of 16.5.2005, ETS No. 196 (Art. 10); Convention on Action against Trafficking in Human Beings of 16.5.2005, ETS No. 197 (Art. 22); Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16.5.2005, ETS No. 198 (Art. 10); Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25.10.2007, ETS No. 201 (Art. 26); Convention on the counterfeiting of medical products and similar crimes involving threats to public health of 28.10.2011 (not yet in force), ETS No. 211 (Art. 11).

[9] See the International Convention for the Suppression of the Financing of Terrorism of 9.121999 (Art. 5); United Nations Convention against Transnational Organized Crime of 15.11.2000 (Art. 10); United Nations Convention against Corruption of 31.10.2003 (Art. 26).

[10] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17.12.1997 (Art. 2).

[11] E.g. Inter-American Convention against Corruption of 29.3.1996 (Art. 8 para. 1); Southern African Development Community (SADC) Protocol against corruption of 14.8.2001 (Art. 4 para. 2); African Union Convention on preventing and combating corruption of 11.6.2003 (Art. 11 No. 1).

[12] E.g. the FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (February 2012), p. 26, 34 (No. 7c.), 37 (No. 8).

sanction is effective and dissuasive. This reflects not only the lack of a common definition at the international level of what is criminal (or even what can be deemed a sanction) but is also symptomatic of the different national systems, that—like the German one—do not regard a "true" criminal sanction as being compatible with criminal law dogmatic.

1.2 National Developments

Traditionally, the national legal systems' answer to corporate wrongdoing has been to provide for a double sanctioning mechanism. On the one hand, the acting member of the legal entity is punished; in many cases, criminal sanctions apply. The number of such sanctions for "economic crimes"[13] has increased substantially in the last decade. On the other hand, the company itself is held responsible. The question as to whether the sanction is a criminal one differs widely among nations. Most common law countries have integrated the responsibility of companies into their criminal system for a long time. In contrast, civil law countries, especially German-speaking ones, have opposed a criminal solution for dogmatic reasons and instead referred to administrative fines for a long time. For example, in 1990, only the United Kingdom and Ireland as traditional common law countries and Denmark (since 1926), the Netherlands (since 1951), and Portugal (since 1984) provided for a corporate criminal sanctions in Europe.

Since 1990, however, the picture has changed completely. Many countries have introduced a system of corporate criminal liability, especially in Europe.[14] Even "restrictive" systems, which heavily opposed the concept of corporate criminal responsibility for decades have opened the door for the prosecution of companies: For example, since 2003 in Switzerland, companies are held responsible if no member can be prosecuted or if the company has not prevented a crime by due care. Since 2006 in Austria, companies are criminally liable if a senior manager commits a crime or if the company has not prevented the crime of a low-level employee by due care. The development has been expedited by the rise of corporate liability at the international level. Although international instruments do not require states to introduce a genuine criminal sanctioning system, the obligation to

[13] Also often called "business crime", "white collar crime", or "financial crime".

[14] E.g. Norway (1991), Iceland (1993), France (1994), Finland (1995), Slovenia (1995), Belgium (1999), Estonia (2001), Hungary (2001), Malta (2002), Croatia (2003), Lithuania (2003), Poland (2003), Switzerland (2003), Slovakia (2004), Romania (2004), Austria (2006), Luxembourg (2010), Spain (2010), Czech Republic (2011); Sweden provides for a corporate criminal sanction but nor for corporate criminal liability since 1986 (as a kind of mixed model); Italy chose a quasi-criminal approach in 2001; Bulgaria introduced a mixed administrative-criminal liability for legal persons in 2005. See Gober and Pascal (2011); Pieth and Ivory (2011); Sieber and Cornils (2008), pp. 347ff.; Vermeulen et al. (2012).

introduce effective and dissuasive sanctions can best be met if states implement a criminal regulation and not a civil or administrative equivalent.

In 2013, only Germany, Latvia, and Greece have not yet introduced some kind of corporate criminal liability in Europe. In Germany, the question of whether a true criminal sanction against companies is necessary is still being discussed intensively.[15] In 2011, the ministers of justice of the 16 German states asked the Federal Ministry of Justice to analyze whether a criminal sanction is necessary in order to fight economic crime. In 2013, the German Bundesrat, the upper house of the German parliament, started an initiative to draw up a law on corporate criminal liability. The near future might therefore bring about a change in German legislation.

2 Prevailing Models

2.1 Construction of Responsibility

The models for corporate criminal liability vary of course from country to country and even among international treaties. But apart from details, most of the countries and international instruments refer to a similar structure. The Second Protocol provides a good example of the common model for corporate liability[16]: If (1) a person, (2) being in a leading position based on the power of representation, has the authority to take decisions or the authority to exercise control (3) within an entity, which is defined as a legal person except for states, public bodies in the exercise of state authority, and public international organizations, (4a) commits an offense for the benefit of the legal person or (4b) his lack of supervision or control enables offenses of persons under his control for the benefit of the legal person, the legal person is liable. The protocol also provides that the company can be held liable besides the natural persons. The question, whether such a dual approach creates problems of "double criminality", is discussed frequently in the literature,[17] but in practice all systems take the line of the protocol.

2.1.1 Common Standard: The Individualized Model

The Second Protocol follows an "individualized" model, as the responsibility of the legal person concentrates on the offense of the natural person.[18] In its basic form,

[15] See Engelhart (2012a), pp. 322ff., 346ff., 599ff.; Mittelsdorf (2007); Ransiek (2012), p. 45.

[16] Second Protocol, supra note 3, Art. 3.

[17] For an overview and further references, see Engelhart (2012a), pp. 458f., 677ff.; von Freier (1998), pp. 230ff.

[18] For possible models, see Engelhart (2012a), pp. 350ff. See also Tiedemann (2012), pp. 9ff.

the offense of an employee is enough to hold the company liable. This construction allows criminal acts and the guilt of a natural person to be attributed to a company. Explanations for this construction vary from viewing the company as an organic being in which the employees are the company[19] to a "real" attribution approach that considers the company necessarily connected to a natural person, as only the natural person enables the company to take part in the legal system (identification approach).[20]

The acceptance of corporate criminal liability pushes the boundaries of the criminal law systems beyond the responsibility of individuals. This conflicts with classic views on individualized criminal guilt—may they be based on religious thinking such as the prohibition to excommunicate a corporation by Pope Innocent IV from 1250, which led to the frequently quoted statement that a corporation has "no soul to be damned and no body to be kicked,"[21] or on the concentration of criminal law on human behavior since the Age of Enlightenment.[22] Nonetheless, social reality in all these systems not only shows that these ideas have outlived their times but also that criminal law structures are much more flexible than the classic legal doctrine accepted in many countries.

As the Second Protocol shows, the basic form of the "individualized" model exists only in theory and is regularly modified in order to restrict an otherwise too extensive liability of the company. Common restrictions are made either by objective elements, e.g. the person must be acting within the activities of the company, or by subjective elements such as when the acting person is required to act for the benefit of the company. These requirements exclude "private" behavior not connected to the company or behavior directly damaging the company's assets (for example, in the case of theft of company property). These elements only have a small effect on limiting company liability.

The requirement of the Second Protocol, which limits liability to acts of persons in a leading position, is in contrast a substantial restriction. National approaches therefore differ substantially. Whereas the federal criminal system of the USA holds a company liable for any employee (and even third parties such as contract partners), the English common law approach and most international instruments restrict liability to high-ranking corporate officials. This point illustrates the difficult question as to which persons within a company can be regarded as "true" representatives of corporate behavior. One solution to this problem, also taken by the Second Protocol, is to include crimes of normal employees if these crimes were enabled by lack of due supervision or control. This second approach broadens

[19] This approach is based on v. Gierke and his theory of real corporate delinquency (Theorie der realen Verbandstäterschaft), see von Gierke (1887), pp. 603ff., 613.

[20] See e.g. Henkel (1960), pp. 91ff.

[21] See e.g. Coffee (1980–1981), p. 386.

[22] See e.g. von Freier (1998), pp. 55ff. who shows that no common philosophical basis for corporate and individual liability can be found. See also Paul (2011), pp. 49ff. for the important case in the 18th century of the South sea company.

liability while still linking it to management behavior that represents the "true nature" of the company.

2.1.2 Open Questions

Not only the question of whether liability is limited to high-ranking officers differs among corporate liability systems. Three other aspects have not been clarified yet: how to define the responsible organization, the exclusion of public entities, and the offenses attributed to the company.

The question of how to define the organization is one of the most difficult ones as the definition determines the scope of liability. The Second Protocol mentions "legal persons", but does not mean a certain type of organization or concept and is therefore not restricted to organizations with a formal legal status. It leaves the question open for the national legislator. To speak of legal persons as some countries like France do restricts liability to legal personhood. To speak of corporations as the term corporate criminal liability suggests would limit the scope to incorporated organizations in the economic field. But besides economic entities, the concept of corporate criminal liability can also be applied to associations such as sport clubs, political parties, trade unions, and religious organizations. Insofar, the best solution seems to be to take a legally undefined term, e.g. "undertaking"[23] or "collective",[24] give a definition, and list the main examples.

The question of whether public entities shall also be responsible is answered differently among the legal systems. Some countries exclude public entities completely. Others have not regulated the question or generally include them. The majority of the countries seem to refer to a mixed solution, which is also taken by the Second Protocol: States and public international organizations as well as public entities in the exercise of state authority are excluded. This means that public entities, especially ones taking part in the economic market, can be held responsible. Such a solution guarantees that public entities that are comparable to private ones, such as a public railroad company or a state-owned brewery, are not privileged while public actions in the exercise of the state monopoly on the use of force cannot be judged under a corporate criminal liability regime.

The last open question is the number of offenses a company can be held liable for. Some countries include all criminal offenses, some make exceptions for specific offenses closely linked to natural persons, e.g. rape and perjury, whereas others list the offenses included one by one (often concentrating on financial crimes and corruption). As business differs greatly among companies, the number of legal regulations that could be violated differs accordingly. For some companies, corruption might be the risk number one, for others it might be product safety, anti-

[23] See e.g. Art. 102 of the Swiss Criminal Codes mentions "Unternehmen".

[24] See e.g. the Austrian Verbandsverantwortlichkeitsgesetz mentions "Verband".

trust law, or environmental crimes. This means that it is almost impossible to draw up a list that covers corporate wrongdoing in all or even in the most important areas.

2.2 Sanctions

The sanctions for companies are very homogenous in the different countries. There always exists a monetary sanction (fine) that is often also the only one provided by criminal law. The Second Protocol puts a fine at the center of its sanctioning system, too. Yet it already opens the door for other measures such as exclusion from entitlement to public benefits or aid, temporary/permanent disqualification from the practice of commercial activities, judicial supervision or a judicial winding-up order. Such elements have been partly taken up as criminal sanctions by national systems. More often, such measures are still regulated in the field of national administrative or civil law, with a clear emphasis on preventive goals, such as the protection of a functioning market, and not as repressive public sanctions.

3 New Approaches

3.1 Shortcomings of the Individualized Model

The aforementioned individualized model has a long history and is widespread. Yet, within the last few years, not only the individualized model has been promoted, but there has also been a development trying to shape corporate criminal liability differently. The classic approach has not been particularly successful in preventing corporate crime if one looks at countries such as the USA that have longstanding experience with this model. One reason is that the individualized model mainly concentrates on the acting employee. The corporate setting and its (decisive) influence on the acting employee is neglected. This means that the main characteristic of actions in companies, the corporate climate and its impact on the behavior of employees, is not taken into account. Additionally, sanctions for companies are mainly monetary. These sanctions can be substantive, such as in the antitrust legislation of the European Union, or in general, e.g. crimes in the federal system in the US. But these sanctions are not aimed at eliminating the corporate failure that led to the infringement of the law and therefore have no great preventive influence.[25]

[25] On preventive effects, see in detail infra Sect. 4.1.

3.2 The New Emphasis on Prevention

Alternative models for corporate criminal liability were fostered by two developments, both starting in the 1980s: the compliance movement in the US and the effects of insufficient organization and oversight in Europe.

3.2.1 Compliance Movement

The compliance movement has been the most influential development within the past decades in the business area.[26] Compliance simply means the adherence to (legal) regulations. The relevant aspect of this development is the so-called compliance program, which comprises all the measures to secure adherence to these regulations. Its roots can be traced back to the 1930s,[27] when solutions were sought for the principal-agent problem, brought up especially by *Berle* and *Means*[28]: The separation of ownership and control means that the management does not have to fear for its personal property when making decisions in the name of the company. In the 1950s, the area of anti-trust regulation introduced the first compliance programs to fight anti-trust violations. With the business ethics movement of the 1970s and 1980s, the prevention of crime became a topic taken up by companies and regulators.

The development of federal guidelines for sentencing in the 1980s made it possible to continue the business ethics approach on a new level. It took until 1991 and the introduction of the Corporate Federal Sentencing Guidelines to go beyond a written "code of ethics", as it requires companies to set up a complete preventive corporate structure and integrates compliance into regulative concepts.[29] Since 1991, compliance has spread not only to all areas of law but also become very popular on the European continent and is on its way to being taken up in Asia and Latin America.[30]

3.2.2 Due Supervision and Control

Whereas compliance was becoming popular in the US, in Europe the legal notion of insufficient organization was taken up and developed. In Germany, Sec. 130 OWiG provides for a regulatory offense when a company owner or a manager breaches his duty of supervision. It was *Tiedemann* who built on the idea of Sec. 130 OWiG and

[26] On compliance, see e.g. Kaplan and Murphy (2013); Hauschka (2010); Moosmayer (2012); Kuhlen (2013), pp. 1ff.; Rotsch (2010), pp. 141ff.; Sieber (2008), pp. 460ff.

[27] See Engelhart (2012a), pp. 285ff.; Eufinger (2012), p. 21; Walsh and Pyrich (1995), pp. 649ff.

[28] Berle and Means (1932), pp. 44ff., 69.

[29] On the Federal Sentencing Guidelines, see infra at Sect. 3.3.2.

[30] See Arroyo Zapatero (2013).

applied it to companies, as he regarded the insufficient organization and supervision as the true basis of corporate liability.[31] Since *Tiedemann* acted as a legal expert for the preparation of the Second Protocol, these ideas were taken to the European level.[32] In the Second Protocol, the idea became law, as national regulations had to base company liability not only on the offense of a leading manager for the benefit of the legal person but also on the lack of supervision or control of a person in a leading position that enables offenses of persons under his control for the benefit of the legal person. Due supervision and control are therefore key elements in avoiding company liability. Compliance programs as preventive measures fit perfectly into this concept.

3.2.3 Opening the Discussion

The main effect of the discussion on compliance and the duty to supervise was to broaden the view on corporate criminal liability. The discussion that previously had its focus on the construction of responsibility and (especially in Germany) on dogmatic problems now took the question of sanctions and procedural aspects into account. Especially compliance can be relevant on all of these three levels. In the following national developments in regard to responsibility, sanctions and proceedings that differ from the individualized model or have contributed to its enhancement will be shortly highlighted.

3.3 Alternative Solutions

3.3.1 Responsibility

The idea of basing corporate criminal liability on the lack of due supervision or control was taken up, e.g. by the legislator in Austria. In 2005, Austria introduced a system comparable to the Second Protocol in a new act, the Corporate Liability Act.[33] Hence, a company is liable if a decision-maker commits an offense for the benefit of the company. Alternatively, the company is liable for the offense of a staff member that has been facilitated by a decision-maker neglecting the necessary diligence in supervising that staff member. This legislation still concentrates very much on the lack of due supervision in the individual case and does not refer to general measures. Also, the act does not specify which measures are necessary in order to exercise "due supervision."

[31] Tiedemann (1988), p. 1173 and Tiedemann (1989), pp. 174ff.

[32] See the final report for the European Commission by Delmas-Marty (1993), pp. 59, 60, 83.

[33] Bundesgesetz über die Verantwortlichkeit von Verbänden für Straftaten (Verbandsverantwortlichkeitsgesetz – VbVG), BGBl. I Nr. 151/2005, Revision: BGBl. I Nr. 112/2007.

In 2003, Switzerland introduced a system of corporate criminal liability,[34] which puts the emphasis more on the organizational structure than merely on the aspect of supervision. The company is responsible for the lack of due organization if this deficiency makes it impossible (for the state) to hold an individual responsible. Additionally, the company is responsible for the commission of certain offenses by employees if the company has not taken all necessary and reasonable organizational measures to prevent such offenses.

In Italy, Legislative Decree No. 231 of 8 June 2001,[35] introduced a quasi-criminal responsibility (administrative by name, but criminal by nature) for legal persons.[36] This legislation has taken up the idea of compliance programs directly. Corporate liability is based on two different forms: If a senior manager commits a crime, the company is assumed guilty unless it can prove (equal to an inversion of the burden of proof) the extraneousness of the crime by demonstrating that it had an effective (compliance) program in place to prevent crimes and that the program had also been controlled effectively. In the case of offenses of subordinate employees, the company is liable if the offense is due to the lack of supervision and control of senior managers but only if the company has no effective (compliance) program.

The Corporate Manslaughter and Corporate Homicide Act 2007, applying to the whole of the United Kingdom, takes the idea of compliance even one step further.[37] A company is liable if the way in which it manages or organizes its activities both causes a death and amounts to a gross breach of a relevant duty of care owed to the deceased by the company. Senior management must have played a substantial role in the gross breach. Yet corporate liability in this case is not dependent on the commission of an offense by any person within the company. Liability merely requires the company to fall below a required standard of due organization and supervision (for which senior management is responsible) that leads to the death of a person.

These newer examples place much more emphasis on the corporate structure established in advance of the incident in question than many regulations in the past. They recognize the influence of the corporate setting on employees and raise the expectation that the companies must provide for adequate measures to reduce the risk of lawbreaking. This requires companies to actively participate in the prevention of crime and therefore puts prevention much more at the center of criminal and corporate regulation than ever before.

[34] Art. 102 Swiss Criminal Code; for details, see Forster (2006); Geiger (2006); Perrin (2011), p. 197.

[35] D.Lgs. 8 guigno 2001, n. 231.

[36] See Castaldo (2006), p. 361, de Maglie (2011), p. 255; Javers (2008), p. 408.

[37] See Almond (2013), Matthews (2008), and Pinto and Evans (2013).

3.3.2 Sanctions

Criminal sanctions for companies are mainly monetary. Of course many national systems allow for other measures by means of civil law or administrative law. Yet such measures are not directly a result of the criminal activity and hence lack the criminal notion, i.e. the stigma. To foster criminal legislation, the Second Protocol opens the door to more creative and non-monetary criminal sanctions. The US federal criminal law system shows how such sanctions can be regulated, especially in connection with the compliance approach.

The United States Corporate Federal Sentencing Guidelines (USSG), regulated as chapter 8 of the Federal Sentencing Guidelines, fully implement the compliance approach on the sentencing stage.[38] As it was not possible to draw up a Federal Criminal Code, no "modern" regulation on the question of liability has been reached. Therefore, everything in regard to compliance was integrated into the rules for sentencing. On the one hand, the guidelines integrate compliance into the determination of a fine. They provide a general framework on how to construct an effective compliance program.[39] An effective compliance program being implemented at the time of the commission of an offense by an employee is a mitigating factor.[40] Vice versa, the lack of an effective compliance program can be an aggravating factor.[41] On the other hand, the guidelines provide for a specific compliance sentence, as the court can order the company to improve or to set up a comprehensive compliance program.[42] Such a sentence restructuring a company can be more severe than any payment. Yet the decisive aspect is that the company has to improve the corporate structures that contributed to the offense of an employee.

3.3.3 Proceedings

In many national systems, criminal proceedings no longer end with a judgment after a public trial. Instead, prosecutors and courts use procedural ways to end the proceedings speedily, especially by reaching a deal with the accused. Again, the US federal criminal system shows the possibilities for (and dangers of) dealing with corporate crime. A deal (non-prosecution agreement—NPA/deferred prosecution agreement—DPA) is commonplace in the US now, not only when individuals are

[38] The current guidelines (effective 1 November 2013) are available online: http://www.ussc.gov/Guidelines/2013_Guidelines/index.cfm (12.2.2014). For details on the system, see Engelhart (2012a), pp. 149ff.; Gruner (2013), §§ 8–11; see also Laufer (2006), pp. 99ff.

[39] § 8 B 2.1 USSG.

[40] § 8C 2.5 (f) USSG: The program reduces the so-called culpability score, which determines the minimum and maximum multiplier necessary to calculate the fine range.

[41] § 8C 2.8 (a) (11) USSG: The lack of a compliance program is a circumstance that should be considered by the court when determining the fine within the calculated fine range.

[42] § 8 D 1.4 (b) (1) USSG.

accused but also when the accused is a company.[43] Regularly, such a deal not only requires the company to "confess" certain offenses but also to accept "sanctions." In many cases, this includes a monetary payment as well as the obligation to reform or install a compliance program.[44] This again allows the stakeholders to really reform and improve the company. Such "informal" sanctions of course raise some important questions. A main problem is that of legal certainty and the balance of powers between the executive and the judiciary, as the prosecution imposes sanctions comparable to the judiciary—apart from some guidelines in the United States Attorneys' Manual (USAM)[45]—without a clear legal basis and without judicial review. This contribution is not the forum to analyze this problem; the example is just a means to show that criminal proceedings offer many possibilities besides a formal judgment in order to answer corporate crime and to promote preventive measures such as compliance programs.

Unfortunately, one particular development undermines such preventive efforts. Criminal proceedings in many countries place a very strong emphasis on the aspect of cooperation of the company in order to ease investigations. "Good" cooperation is then often rewarded with a reduction of the sanction. This approach fosters a climate whereby a company does nothing until an incident is taken up by the authorities but then puts all its efforts into a kind of "super-cooperation." Such short-term measures offer no real incentives for creating a good long-term legal climate and structure within a company.

4 Perspectives

4.1 Preventive Effects of Compliance and Corporate Criminal Liability

Corporate criminal liability and compliance fit together perfectly as they both have preventive effects. A deterrent and preventive effect of corporate criminal liability, although often disputed,[46] has already been proven empirically in the 1970s by *Breland* and *Tiedemann*.[47] New research by the Max Planck Institute for Foreign

[43] See the high numbers of guilty pleas in federal court proceedings that are regularly based on a deal and that reached an all-time high in 2010 at 96 %, see United States Sentencing Commission, 2010 Sourcebook of Federal Sentencing Statistics, Table 53, Engelhart (2012a), pp. 276, 746.

[44] See Markoff (2012–2013), McConnell et al. (2010–2011), and Ramirez (2009–2010) as well as Engelhart (2012a), pp. 739ff.

[45] Title 9, Chapter 28 USAM.

[46] See e.g. Hefendehl (2007), pp. 826ff., more positively Roxin (2006), § 3 para. 25; see also Engelhart (2012a), pp. 277ff., 661f.

[47] See Breland (1975); Tiedemann (1976), p. 249, see also Tiedemann, in this volume, pp. 11ff.

and International Criminal Law confirms that criminal measures are more effective than imposing administrative or in many cases civil sanctions.[48]

Similarly, empirical evidence indicates that a comprehensive and systematic compliance program is an effective tool to prevent and detect legal infringements within companies.[49] The main reason for such an effect is the influence of the corporate climate on the company. This has particularly come to light in the last two decades and is also the result of the business ethic development that paid attention to the attitudes of employees and the influences on their behavior. Social sciences, especially the works by *Luhmann*,[50] have shown that a company is a system of its own.[51] It exists alongside other systems and, most relevant in this context, the legal system. Companies have their own rules and procedures. *Teubner* calls it "law without state."

The existence of a separate system has the consequence that group dynamic processes can develop independently from other systems. Group dynamics are the result of the interaction of several people and result in the creation of a certain group will, which leads to a specific corporate climate. Organizational psychology[52] and criminological research[53] show that such a climate can be maintained for a long period of time, is experienced by the individual members of the organization, and can greatly influence personal behavior. The climate can have a positive as well as a negative influence on the members of the organization. If the values and rules are the same as those in the legal system, the corporate climate supports members acting legally. If not, if making a profit explicitly—or more commonly unspoken and subtle—is seen as the main (and maybe only) value, the climate erodes the legal thinking and actions of the members. If such an erosion of values goes hand in hand with corporate powers, the risk of breaking the law with severe consequences is high.

If a company is structured from top to bottom in accordance with effective compliance measures, this minimizes the opportunities to commit crimes and maximizes incentives to follow legal rules. This contribution cannot examine the necessary components for a "perfect" compliance program in detail and will only highlight some of the important elements. It is not merely a paper program with a written code of conduct etc. that is the main difference to the business ethics movements of the 1980s. Instead it is a companywide system that influences the entire operational and organizational structure. It is still closely connected to ethical thinking, which is integrated into the compliance concept as a vital element, is

[48] See Sieber and Engelhart (2014).

[49] See for more details Engelhart (2012a), pp. 515ff., 768ff.; Kölbel (2008), pp. 22ff.; Krause (2011), p. 439; Pape (2011), pp. 154ff.; Theile (2008), p. 406.

[50] See Luhmann (1994), pp. 43ff. and Luhmann (1995), pp. 38ff.

[51] See Boers (2001), p. 353; Gómez-Jara Díez (2007), pp. 302ff.; Heine (1995), pp. 79ff.; Sieber (2008), p. 475.

[52] See e.g. von Rosenstiel (2007), pp. 387ff.; Spieß and Winterstein (1999), pp. 121ff.

[53] See supra footnote 50.

implemented into everyday work, and must be lived out especially by the management. The control and supervision of top managers is a crucial part of the program, as they not only make far-reaching decisions for the company but influence lower level employees substantively.

4.2 Regulated Self-Regulation

When corporate criminal liability and compliance work together so well, the question is: what form should they have within a legal system? The development of alternatives to the "individualized" model also opens the door for a new perspective on corporate regulation and the prevention of crime in the form of regulated self-regulation. Such a system is preferable to self-regulation and "classic" regulation, as these two forms have clear limits.

4.2.1 Self-Regulation and Regulation

In a free-market society based on individual rights, self-regulation is the starting point if one asks who should regulate corporate conduct. This includes the freedom from state regulation. Yet self-regulation has its clear limits. Although business ethics are widely promoted and one can assume that many managers are willing to act ethically, such efforts are often not effective. Ethics are not only made for fine weather days but must particularly be applied and enforced in times of conflict (hence in difficult business environments). And in such cases, monetary interests of the company often prevail; the good will, legal and ethical rules are then set aside.

Besides these factual limits, there are two important differences compared to individuals that speak against too much self-regulation: power and corporate climate. Companies are an agglomerate of goods and people. This gives them not only monetary power but, especially because of their often specialized and highly qualified personnel, far-reaching possibilities to influence the markets, the media, public discussion, and often even politics and law-making. The corporate climate and its (potential negative) impact on individual behavior have already been mentioned and constitute a second argument against self-regulation. These risks justify state intervention and state regulation. Yet, as companies are separate systems of their own,[54] the legal system cannot easily influence internal behavior, which makes the concept of classic criminal regulation too short-sighted. The approach "do that/do not do that or you will be punished" does not reach the internal level and the corporate climate of the company. As it is often stated, these types of regulations do not "pierce the corporate veil".[55]

[54] See supra footnote 51 and surrounding text.

[55] See e.g. Alting (1994–1995).

4.2.2 Regulated Self-Regulation

A solution to this problem would be to combine classic regulation and self-regulation, which will be referred to here as "regulated self-regulation." It assimilates ideas discussed earlier as "responsive regulation"[56] or "interactive compliance"[57] and has become a special field of research, especially in German administrative law[58] and more in criminal law.[59] This approach does not refrain from state regulation. It includes self-regulatory measures into an overall regulative concept of steering and stimulating corporate behavior while still leaving companies the flexibility to implement and individually adjust measures. According to this concept, the state imposes the fundamental framework whereas the companies are responsible for regulating the details. It requires companies to actively contribute to the prevention of legal infringements—especially crimes—but does not go into detail on how to go about it, in order not to impair their business dealings.

The objective of the approach is the creation or maintenance of a good corporate climate. It aims to make use of the "good" dynamics within the closed social system of a company. This requires determining how such a good corporate climate can be achieved. At this point, compliance programs as an effective tool in preventing and detecting legal infringements within companies is of great importance. The compliance approach is a suitable means of regulated self-regulation, as it allows the state to set a framework for company structures, which is deemed necessary for a good corporate climate but need not necessarily prescribe the measures in detail for the companies. This makes it manageable (and cost-efficient) for the state while at the same time leaving room for companies and their individual business, risks, size, and corporate structure.

Basically, the legislator has the possibility to implement the approach of regulated self-regulation in private law, administrative law, and the law of public sanctions.[60] Yet not all of these areas of law are equally suitable. Private law offers only a low level of possibilities to steer company behavior. It leaves too many aspects to the discretion of the parties and is, in general, money-oriented, especially the law of torts. However, an implementation in administrative law leads to strong state influence, as such rules would be directly addressed to all companies and a state authority would have to be responsible for controlling these companies. Therefore, private and administrative law can have only a supporting function in an overall approach of regulated self-regulation.

---

[56] Ayres and Braithwaite (1995), pp. 101ff.

[57] Sigler and Murphy (1988), pp. 169ff.

[58] Eifert (2012), pp. 1345ff.; Hoffmann-Riem (2006), pp. 447ff.; Voßkuhle (2001), p. 213.

[59] See Engelhart (2012a), pp. 645ff.; Sieber (2000), p. 326.

[60] The advantages and disadvantages of such a legislative choice have rarely been discussed, as the main focus is on the distinction between public and private law and on the (constitutional) limits of such measures and therefore only addresses a small aspect of the subject, especially in regard to criminal law. For a basic analysis of the different legal regimes, see Burgi (2012); Hoffmann-Riem (2007); Waldhoff (2009), pp. 381ff.

The best place to regulate is the law of sanctions as an indirect implementation system: although it addresses all companies, its rules only become relevant if there is suspicion of an infringement. The allocation of public resources is more efficient, and state interference with companies' rights is lower than in the case of administrative regulations. Moreover, it offers the possibility to steer company behavior by motivation, if incentives for implementing measures are included into the concept. The question as to how exactly the state could implement such an approach is laid out in the section below.[61]

4.2.3 Levels of Regulated Self-Regulation

Five levels of state action may be distinguished, which vary in the influence of the state on companies and in the degree of regulative action:

- Informal support by the state
- Rewarding compliance
- Sanctioning the lack of compliance
- Excluding responsibility
- General obligation to implement compliance programs

Informal Support by the State

The first level of regulated self-regulation is informal support of the state for a good corporate climate. This includes motivating the self-regulation of companies and, more importantly, of company associations for setting up best practice standards, e.g. in the banking sector.[62] It also includes motivating private institutions to make a good corporate structure a precondition for business. The requirements of some stock markets for being a publicly listed company are an example of such a measure.[63] Yet state authorities can be of an even greater help. They can advise companies on programs or set up model compliance programs. Such compliance assistance is, for example, provided by the US Environmental Protection Agency (EPA).[64] In this case, the specific knowledge of administrative authorities is used without making them a formal and binding instrument in law enforcement as normally the case in administrative law. Such advice should not be underestimated,

[61] For the emergence of global corporate norms from the interplay of public and private actors, see Dilling (2012), pp. 388ff.

[62] See e.g. Bundesverband deutscher Banken, Best-Practice-Leitlinien für Wertpapier-Compliance (June 2011); see also Basel Committee on Banking Supervision, Compliance and the Compliance Function in Banks (April 2005).

[63] See e.g. NYSE, NASDAQ, or AmEx.

[64] See the Website of the EPA: http://www.epa.gov/compliance/assistance/index.html (12.2.2014).

as many companies are willing to take steps to improve their regulation but do not know how to go about it.

Rewarding Compliance

At a second level, the state could reward good compliance and thereby motivate companies to implement measures. This is the best possibility in the law of sanctions. A main incentive could be for authorities to retain from initiating proceedings or to close proceedings if compliance measures show that the company had done what it possibly could to prevent the illegal act of a member of the company. As it is never possible to completely avoid any illegal acts within a company, one has to evaluate whether the company had taken reasonable steps before the act was committed (ex ante approach). In the US, the United States Attorneys' Manual offers federal prosecutors such a possibility for the dismissal of charges (although the company almost always has to accept some conditions of probation).[65] However, it is important that, unlike in the US, the cooperation policy of public authorities, (which expects companies to "willingly" cooperate to a large extent and gives great credit for doing so) does not undermine long-term compliance efforts, because compliance is valued and credited much less than cooperation.

Additionally, compliance can be important at the sentencing stage such as within the Federal Sentencing Guidelines in the US.[66] An effective compliance program can reduce a fine. If a sanction requires looking at the corporate climate in which the act of a member took place, it is possible to take into account how much the climate contributed to the act and how strong the measures to prevent such an act were. The sanctioning authority should have sufficient discretion to take the scope and the effectiveness of the measures into account. The US sentencing guidelines only grant a reduction if a comprehensive and effective program exists. This is too inflexible and reduces the incentive for companies substantially to implement at least some measures. Besides the law of sanctions, an implementation in administrative law is also possible, especially by reducing public supervision. One way could be to extend the cycle of public controls from 2 to 4 years if an effective compliance program exists. Such measures not only integrate preventive efforts into a public sanction and supervision system but can offer real incentives for implementing adequate measures.

Sanctioning the Lack of Compliance

On the third level, the state can sanction the lack of compliance. When determining a sanction, the lack of compliance measures can be regarded as an aggravating

[65] See supra Sect. 3.3.3.

[66] See supra Sect. 3.3.2.

factor under certain circumstances. This should be the case if compliance measures are merely undertaken to give the company the appearance of a being a good corporate citizen but are, in practice, ineffective and merely window dressing. It could also be taken into account when the company does not take concrete action, though obvious risks of lawbreaking exist. Such rules would clearly send the message that neither misleading measures nor the acceptance of too risky business is tolerated.

The lack of compliance can also be sanctioned by a specific compliance sentence. Such a sentence would comprise the obligation to implement certain compliance measures or a comprehensive compliance program. The US Federal Sentencing Guidelines and the practice of the federal prosecution in the US often serve as examples for such an approach.[67] This allows the sanctioning authority to directly influence the corporate structure and address the deficiencies that led to the illegal act of the member of the company. It would also enable a genuine resocialization of the company, something that is much more difficult to achieve when the accused is an individual (and where the "nothing works" attitude is much more prevalent). The threat of such a sanction for structural reforms would be a great incentive for companies to take up efficient compliance measures. It offers a much greater incentive than existing monetary sanctions and gives the state great power to do something effectively against corporate crime.

Excluding Responsibility

On a fourth level, the state can provide for rules, which exclude corporate responsibility if efficient compliance measures are taken. The exclusion of liability is the ultimate incentive for companies. Such regulations have become increasingly popular in recent years. The UK Corporate Manslaughter and Corporate Homicide Act 2007 or the Italian legislation on corporate criminal liability of 2001 demonstrate how such an approach can be implemented.

This kind of regulation is not only a strong incentive, but it is also a just and fair solution, as it only holds the company responsible if the corporate climate has contributed to the offense (the entity can be literally called "guilty"). If the company is not liable, an individual might still be responsible, and the company might even be held responsible under a strict liability regime for civil damages: Rules for damages are based on a different rationale (especially risk distribution) than sanctioning systems with their emphasis on social blame. Such a compliance approach is of course not necessarily limited to the law of public sanctions but can also be implemented in private law (e.g. the law of torts) or in administrative law (especially in cases in which the company has to supervise certain acts). Of course the exclusion of liability is only possible where the compliance measures meet maximum standards. Insofar, this kind of regulation can only be taken up in

[67] See supra Sects. 3.3.2 and 3.3.3.

addition to the previously mentioned steps in order to also offer incentives for measures beneath this high standard.

General Obligation to Implement Compliance Programs

The fifth level would be to provide for a general (enforceable) obligation to implement compliance programs. The strongest influence could be achieved if such a rule is accompanied by a sanction in case of insufficient implementation. This would be a very strict approach but would also be at the upper margin of regulated self-regulation and closely approximate classic "regulation." Whereas such a broad general obligation does not seem to exist at present, sector obligations are already common. For example, the German securities trading act requires financial institutions to set up compliance measures for the prevention of insider trading and punishes non-implementation with an administrative fine.[68]

Currently, however, a general obligation does not seem warranted, as it would substantially interfere with the companies' right of freedom of business beyond a reasonable level. Such measures should only be taken in specific areas in which the legislator deems it absolutely necessary to effectively regulate the sector. This could be the case when the aforementioned measures do not provide enough incentives for legal behavior or when the protected legal goods in question make special measures necessary.

5 Conclusion

The above analysis shows that the state can rely on a variety of mechanisms to influence corporate behavior by using the public sanction system. These measures (except the introduction of a general obligation to implement compliance programs) can be merged into a comprehensive and coherent corporate criminal liability system.[69] Such a system would be just, as it addresses the corporate defects that lead to the commission of crimes and would shift the emphasis in criminal law from a repressive sanctioning approach to a new preventive crime strategy. Corporate criminal liability can then be established beside individual liability as a second track, or in systems that recognize criminal and quasi-criminal sanctions—such as the German "Strafrecht" and "Ordnungswidrigkeitenrecht"—as a third track, and as

[68] See Sec. 33 para. 1s. 2 No. 2, Sec. 39 para. 2 Nr. 17b securities trading act (Wertpapierhandelsgesetz—WpHG).

[69] See Engelhart (2012a), pp. 720ff. with a preformulated proposal for a Corporate Sanctions Act ("Unternehmenssanktionsgesetz") comprising criminal and quasi-criminal ("ordnungswidrigkeitenrechtliche") regulations for substantive and procedural law.

corporate quasi-criminal liability as a fourth track.[70] Under such a system, companies are responsible if their corporate climate has contributed to the commission of offenses of their employees. However, if the company has taken adequate preventive measures, there is no basis for a public sanction, although such incidents may be the basis for granting damages—based on a risk distribution between the damaged party and the company—or for taking up administrative measures.

References

Almond P (2013) Corporate manslaughter and regulatory reform. Palgrave Macmillan, Houndsmills

Alting C (1994–1995) Piercing the corporate veil in German and American law – liability of individuals and entities: a comparative view. Tulsa J Comp Int Law 2:187–252

Arroyo Zapatero L (ed) (2013) El derecho penal económico en la era compliance. Tirant lo Blanch, Valencia

Ayres I, Braithwaite J (1995) Responsive regulation: transcending the deregulation debate. Oxford University Press, New York et al

Berle A, Means G (1932) The modern corporation and private property. Harcourt, Brace & World, New York

Boers K (2001) Wirtschaftskriminologie. Vom Versuch, mit einem blinden Fleck umzugehen. Monatsschrift für Kriminologie und Strafrechtsreform (MschrKrim):335–356

Breland M (1975) Lernen und Verlernen von Kriminalität. Westdeutscher Verlag, Opladen

Burgi M (2012) Rechtsregime. In: Hoffmann-Riem W, Schmidt-Aßmann E, Voßkuhle A (eds) Grundlagen des Verwaltungsrecht, vol I, 2nd edn. C.H. Beck, Munich, pp 1257–1318

Castaldo A (2006) Die aus Straftaten entstehende verwaltungsrecthliche Haftung der Unternehmen nach der italienischen Rechtsreform vom Juni 2006. Zeitschrift für das Wirtschafts- und Steuerstrafrecht (wistra):361–365

Coffee J Jr (1980–1981) "No Soul to Damn: No Body to Kick": an unscandalized inquiry into the problem of corporate punishment. Mich Law Rev 79:386–459

de Maglie C (2011) Societas Delinquere Potest? The Italian solution. In: Pieth M, Ivory R (eds) Corporate criminal liability. Emergence, convergence, and risk. Springer, Dordrecht, pp 255–270

Delmas-Marty M (1993) Incompatibilites between legal systems and harmonisation measures: final report to the working party on a comparative study on the protection of the financial interests of the community. In: Commission of the European Communities, the legal protection of the financial interests of the community: progress and prospects since the Brussels seminal of 1989, Oak Tree Press, Dublin, pp 59–93

Dilling O (2012) From compliance to rulemaking: how global corporate norms emerge from interplay with states and stakeholders. German Law J 13:381–418

Eifert M (2012) Regulierungsstrategien. In: Hoffmann-Riem W, Schmidt-Aßmann E, Voßkuhle A (eds) Grundlagen des Verwaltungsrecht, vol I, 2nd edn. C.H. Beck, Munich, pp 1318–1394

[70] Systems such as the German one have the great advantage of differentiating between different levels of protection for legal goods: The most important legal goods are protected by criminal law, less important ones by quasi-criminal law regulations. This differentiation fosters legal clarity and legal certainty and should also be used in a corporate sanction system.

Engelhart M (2012a) Sanktionierung von Unternehmen und Compliance. Eine rechtsvergleichende Analyse des Straf- und Ordnungswidrigkeitenrechts in Deutschland und den USA, 2nd edn. Duncker & Humblot, Berlin
Engelhart M (2012b) Unternehmensstrafbarkeit im europäischen und internationalen Recht. eucrim 3:110–123
Eufinger A (2012) Zu den historischen Ursprüngen der Compliance. Corporate Compliance Zeitschrift (CCZ):21–22
Forster M (2006) Die strafrechtliche Verantwortlichkeit des Unternehmens nach Art. 102 StGB. Stämpfli, Bern
Geiger R (2006) Organisationsmängel als Anknüpfungspunkt im Unternehmensstrafrecht. Dike, Zürich
Gober J, Pascal A-M (eds) (2011) European developments in corporate criminal liability. Routledge, Milton Park et al
Gómez-Jara Díez C (2007) Grundlagen des konstruktivistischen Unternehmensschuldbegriffes. Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 119:290–333
Gruner R (2013) Corporate criminal liability and prevention, Loose leaf edition. Law Journal Press, New York (Release 17 2013)
Hauschka C (ed) (2010) Corporate compliance, 2nd edn. C.H. Beck, Munich
Hefendehl R (2007) Außerstrafrechtliche und strafrechtliche Instrumentarien zu Eindämmung der Wirtschaftskriminalität. Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 119:816–847
Heine G (1995) Die strafrechtliche Verantwortlichkeit von Unternehmen. Von individuellem Fehlverhalten zu kollektiven Fehlentwicklungen, insbesondere bei Großrisiken. Nomos, Baden-Baden
Henkel A (1960) Die strafrechtliche Verantwortlichkeit von Verbänden im Steuer- und Wirtschaftsstrafrecht. Rechts- und Staatswissenschaftliche Fakultät, Dissertation, Bonn
Hoffmann-Riem W (2006) Gewährleistungsrecht und Gewährleistungsrechtsprechung – am Beispiel regulierter Selbstregulierung. In: Bauer H et al (eds) Wirtschaft im offenen Verfassungsstaat. Festschrift für Reiner Schmidt zum 70. Geburtstag. C.H. Beck, Munich, pp 447–466
Hoffmann-Riem W (2007) Administrativ induzierte Pönalisierung. In: Müller-Dietz H et al (eds) Festschrift für Heike Jung. Nomos, Baden-Baden, pp 299–312
Javers K (2008) Verantwortlichkeit für Straftaten in Unternehmen, Verbänden und andere Kollektiven in Italien. In: Sieber U, Cornils K (eds) Nationales Strafrecht in rechtsvergleichender Darstellung. Allgemeiner Teil, vol 4. Duncker & Humblot, Berlin, pp 408–423
Kaplan J, Murphy J (2013) Compliance programs and the corporate sentencing guidelines. Preventing criminal and civil liability. 2013–2014 update. Thomson Reuter, sine loco
Kölbel R (2008) Wirtschaftskriminalität und unternehmensinterne Strafrechtsdurchsetzung. Monatsschrift für Kriminologie und Strafrechtsreform (MschrKrim):22–37
Krause D (2011) Was bewirkt Compliance? Strafverteidiger Forum (StraFo):437–446
Kuhlen L (2013) Grundfragen von Compliance und Strafrecht. In: Kuhlen L, Kudlich H, Ortiz de Urbina Í (eds) Compliance und Strafrecht. C.F. Müller, Heidelberg et al, pp 1–25
Laufer W (2006) Corporate bodies and guilty minds: the failure of corporate criminal liability. University of Chicago Press, Chicago et al.
Luhmann N (1994) Die Wirtschaft der Gesellschaft. Suhrkamp, Frankfurt a. M.
Luhmann N (1995) Das Recht der Gesellschaft. Suhrkamp, Frankfurt a. M.
Markoff G (2012–2013) Arthur Andersen and the Myth of the corporate death penalty: corporate criminal convictions in the twenty-first century. Univ Pa J Bus Law 15:797–842
Matthews R (2008) Blackstone's guide to the Corporate Manslaughter and Corporate Homicide Act 2007. Oxford University Press, Oxford
McConnell RD, Martin J, Simon C (2010–2011) Plan now or pay later: the role of compliance in criminal cases. Houst J Int Law 33:509–587
Mittelsdorf K (2007) Unternehmensstrafrecht im Kontext. Müller, Heidelberg

Moosmayer K (2012) Compliance. Praxisleitfaden für Unternehmen, 2nd edn. C.H. Beck, Munich
Pape J (2011) Corporate Compliance – Rechtspflichten zur Verhaltenssteuerung von Unternehmensangehörigen in Deutschland und den USA. Berliner Wissenschafts-Verlag, Berlin
Paul HJ (2011) The South Sea Bubble: an economic history of its origins and consequences. Routledge, London
Perrin B (2011) La responsabilité pénale de l'entreprise en droit Suisse. In: Pieth M, Ivory R (eds) Corporate criminal liability. Emergence, convergence, and risk. Springer, Dordrecht, pp 193–225
Pieth M, Ivory R (eds) (2011) Corporate criminal liability. Emergence, convergence, and risk. Springer, Dordrecht
Pinto A, Evans M (2013) Corporate criminal liability, 3rd edn. Sweet & Maxwell, London
Ramirez MK (2009–2010) Prioritizing justice: combating corporate crime from task force to top priority. Marquette Law Rev 93:971–1019
Ransiek A (2012) Zur strafrechtlichen Verantwortung von Unternehmen. Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht (NZWiSt):45–51
Rotsch T (2010) Compliance und Strafrecht – Konsequenzen einer Neuentdeckung. In: Joecks W, Ostendorf H, Rönnau T, Rotsch T, Schmitz R (eds) Recht – Wirtschaft – Strafe. Festschrift für Erich Samson. C.F. Müller, Heidelberg et al, pp 141–160
Roxin C (2006) Strafrecht. Grundlagen, der Aufbau der Verbrechenslehre, 4th edn. Beck, Munich
Sieber U (2000) Legal regulation, law enforcement and self-regulation – a new alliance for preventing illegal and harmful contents in the internet. In: Waltermann J, Machill W (eds) Protecting our children on the internet – towards a new culture of responsibility. Bertelsmann Stiftung, Gütersloh, pp 319–399
Sieber U (2008) Compliance-Programme im Unternehmensstrafrecht. Ein neues Konzept zur Kontrolle von Wirtschaftskriminalität. In: Sieber U, Dannecker G, Kindhäuser U, Vogel J, Walter T (eds) Strafrecht und Wirtschaftsstrafrecht – Dogmatik, Rechtsvergleich, Rechtstatsachen. Festschrift für Klaus Tiedemann zum 70. Geburtstag. Heymann, Cologne/Munich, pp 449–484
Sieber U, Cornils K (eds) (2008) Nationales Strafrecht in rechtsvergleichender Darstellung. Allgemeiner Teil, vol 4. Duncker & Humblot, Berlin
Sieber U, Engelhart M (2014) Compliance programs for the prevention of economic crimes in Germany – an empirical survey. Duncker & Humblot, Berlin (forthcoming)
Sigler U, Murphy J (1988) Interactive corporate compliance: an alternative to regulatory compulsion. Quorum, New York et al
Spieß E, Winterstein H (1999) Verhalten in Organisationen: eine Einführung. Kohlhammer, Stuttgart et al
Theile H (2008) Unternehmensrichtlinien – ein Beitrag zur Prävention von Wirtschaftskriminalität? Zeitschrift für Internationale Strafrechtsdogmatik (ZIS):406–418
Tiedemann K (1976) Wirtschaftsstrafrecht und Wirtschaftskriminalität. Volume 1: Allgemeiner Teil. Rowohlt, Reinbek bei Hamburg
Tiedemann K (1988) Die "Bebußung" von Unternehmen nach dem 2. Gesetz zur Bekämpfung der Wirtschaftskriminalität. Neue Juristische Wochenschrift (NJW):1169–1174
Tiedemann K (1989) Strafbarkeit und Bußgeldhaftung von Juristischen Personen und ihren Organen. In: Eser A, Thormundsson J (eds) Old ways and new needs in criminal legislation. Edition Iuscrim, Freiburg im Breisgau, pp 157–185
Tiedemann K (2012) Verbandsverantwortung in Europa: Referenzmodelle für die Gesetzgebung und Aussichten für eine Harmonisierung. Rivista trimestrale di diritto penale dell'economia 1–2:9–13
Vermeulen G, De Bondt W, Ryckman C (eds) (2012) Liability of legal persons for offences in the EU. Maklu, Antwerpen et al
von Freier F (1998) Kritik der Verbandsstrafe. Duncker & Humblot, Berlin
von Gierke O (1887) Die Genossenschaftstheorie und die deutsche Rechtsprechung. Weidmann, Berlin

von Rosenstiel L (2007) Grundlagen der Organisationspsychologie: Basiswissen und Anwendungshinweise, 6th edn. Schäffer-Poeschel, Stuttgart

Voßkuhle A (2001) "Schlüsselbegriffe" der Verwaltungsrechtsreform – eine kritische Bestandsaufnahme. Verwaltungsarchive 92:184–215

Waldhoff C (2009) Vollstreckung und Sanktionen. In: Hoffmann-Riem W, Schmidt-Aßmann E, Voßkuhle A (eds) Grundlagen des Verwaltungsrecht, vol III. C.H. Beck, Munich, pp 269–423

Walsh C, Pyrich A (1995) Corporate compliance programs as a defense to criminal liability: can a corporation save its soul? Rutgers Law Rev 47:605–691