

## Foreword

»If you think compliance is expensive, try non-compliance.«  
Former U.S. Deputy Attorney General Paul McNulty

Our technologized, i.e. industrialized and digitalized society is increasingly confronted with forms of white-collar crime that were unknown to 19<sup>th</sup> century society, for example, when the most important modern codifications took place and thus most criminal law systems were developed. Exciting developments in the field of white-collar criminal law can also be observed when compared to the 20<sup>th</sup> century: Contemporary criminal defense lawyers, prosecutors and courts often have to deal with white-collar crime phenomena that were previously only known in other, »well-known« contexts (cum-ex transactions as punishable tax evasion; violation of due diligence obligations to combat money laundering, organized crime and terrorist financing as upstream criminal liability vis-à-vis said offences) or that had not been heard of at all (criminally relevant conduct concerning cryptocurrencies).

Considering the fact that nowadays the majority of economic activities are carried out through companies, the role of companies takes on a new dimension within the discourse on economic criminal law. It seems to be the *pragmatic* result of necessity that not only common law countries but also several continental European, Latin American and Asian jurisdictions have abandoned the once unquestionably dominant principle of *societas delinquere non potest* and have recognized corporate criminal liability, i.e. introduced it domestically. Even in countries where guilt and punishment are conceptually perceived as purely individual-related (and in my opinion, this is correct), reality confirms the desideratum of corporate criminal law\* (based on a *pragmatic* or *criminal policy line of argument*). In Germany, for example, the VW emissions scandal (with several million deceived VW car customers and billions in compensation) has been seen as proof of the need for modern corporate criminal law.

At the same time, the concept of compliance has developed in recent decades to such an extent that the discourse on corporate criminal

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\* For the basics and the framework of the debate on corporate sanctioning or criminal liability, see the introductory article by Wittig (p. 3 et seq.).

law cannot be conducted without reference to compliance: Criminal compliance is about taking internal corporate measures precisely to avoid or combat any risks of criminal liability. Countries with corporate criminal law have at the same time increasingly concrete compliance regulations; countries without corporate criminal law partly do not (yet) conduct compliance discussions. A corporate criminal law could not completely prevent economic crimes in the company (this could never be the case); but it does create a sensitivity and a different awareness for possible legal violations. As a rule, so-called organizational culpability does not come into consideration if a company can demonstrate concrete compliance measures. In addition, because international business relations may involve immense legal risks (from the costs of internal investigations to fines or genuine association penalties – not to mention the damage to reputation), knowledge of country-specific compliance requirements is an absolute must.

This volume provides insights into the positive law of a total of 30 countries: 30 country reports from Europe, Asia and Latin America describe the legal situation regarding the liability of legal persons as well as the existence of criminal compliance regulations. In detail, the countries concerned are\*: Argentina, Austria, Brazil, China, Colombia, Costa Rica, Croatia, Czech Republic, El Salvador, Estonia, France, Georgia, Germany, Great Britain, Greece, India, Italy, Japan, Liechtenstein, Montenegro, Peru, Poland, Portugal, Russia, Serbia, Spain, Sweden, Switzerland, Turkey, Uruguay. The country reports are the result of a call for papers. I am very pleased that all submissions could be considered for this volume.

The country reports are basically the authors' answers to these two questions posed at the beginning of the project:

- 1) *How is the liability of legal persons regulated in criminal law in your legal system? Are the provisions in the penal code or in other laws?*
- 2) *Are there compliance regulations relevant to criminal law? If so, do they, for example, only concern the conduct of internal investiga-*

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\* The order in which the countries are listed in the table of contents and thus also the country reports is based on the ISO rule (see <https://www.oenb.at/Statistik/Klassifikationen/ISO-Codes/ISO-Code-Verzeichnis-fuer-Laender--und-Waehrungs-codes.html>) (accessed on June 6 2023).

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*tions or do they still complement the framework of corporate responsibility?*

The authors were free to write their own country report in German, English or French. At the same time, they were free to decide how detailed the presentation of their own legal system should be. As it happens, half of the contributions are in German, the other half in English. Only the text for France is in French. Because the country report for France was not delivered for health reasons, but the French regulation on the criminal liability of legal persons was important to me, a current, already published contribution could be obtained as a substitute shortly before the finalization of the proofs, but for time reasons it was not possible to add Criminal Compliance references. I would like to take this opportunity to thank all the authors for their great cooperation. Despite the many and varied mother tongues, despite the geographical distance, despite the otherwise ongoing professional obligations – the communication and coordination always ran incredibly smoothly.

The idea for this collective volume arose within the framework of the project »Das Strafanwendungsrecht liechtensteinischer juristischen Personen« (The international Criminal Law of Liechtenstein Legal Entities), financed by the FFF (Research Promotion Fund), which I was allowed to carry out at the University of Liechtenstein in 2022. I am very grateful for the approval of the project. To conclude the project, an international symposium on corporate criminal law was held at the University of Liechtenstein on 9 and 10 December 2022, to which all authors were invited. Almost half were able to physically attend the symposium and present their own country reports with comparative law papers.\*

Finally, I would like to express a big thank you to my chair team for their support during the project in all its phases as well as their valuable help in preparing this volume. The thanks go namely to Dr. Peter Pfisterer, Dr. Günther Schaunig, Mag. phil. Christoph Osztovcics, Marina Altenöder, Samuel Main and Markus Meserth.

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\* For the programme of the conference see <[https://www.uni.li/de/alle-veranstaltung-en/@@event\\_detail/66940.67](https://www.uni.li/de/alle-veranstaltung-en/@@event_detail/66940.67)>; for the report see <<https://www.uni.li/de/thema/wirtschaftsrecht/neuigkeiten/nachbericht-zum-internationalen-symposium-zum-unternehmensstrafrecht>> (both accessed on June 6 2023).

