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The criminal liability of legal persons under Ukrainian and German criminal law: history, regulation, reform

Die strafrechtliche Verantwortlichkeit juristischer Personen im ukrainischen und deutschen Strafrecht: Geschichte, Regelung und Reform

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I. Introduction and Methodological Framework

The question of whether corporate entities should be held criminally responsible for illicit acts committed within their operational spheres remains one of the most conceptually polarizing debates in continental European legal scholarship. For centuries, Western jurisprudence constructed its criminal justice systems around the central archetype of the natural person - a biological individual possessing a conscience, a free will, and the capacity for moral guilt. However, the contemporary globalized economy is dominated not by isolated individuals, but by highly complex corporate structures capable of generating systemic societal and financial harm.

This seminar paper provides a rigorous comparative legal analysis (*Rechtsvergleichung*) of the legal frameworks governing corporate liability in Germany and Ukraine as of 2026. This assessment is highly relevant as both jurisdictions face significant institutional pressures to modernize their punitive mechanisms. Germany continues to refine its unique administrative-regulatory framework to bypass traditional dogmatic obstacles regarding corporate guilt. Meanwhile, Ukraine operates within an evolving transitional regime heavily influenced by Euro-Atlantic integration requirements and strict anti-corruption benchmarks.

1. Statistical Foundations of Corporate and Economic Crime

To understand the empirical necessity of robust corporate sanctions, one must analyze the macroeconomic scale of corporate and economic offenses (*Wirtschaftskriminalität*). While white-collar crime typically accounts for a minor percentage of total registered criminal incidents, it consistently causes the vast majority of aggregate financial damages.

According to the German Police Crime Statistics (*Polizeiliche Kriminalstatistik* – PKS 2024), economic offenses historically comprise less than 1.5% to 2% of all recorded criminal acts nationwide. However, they routinely account for over 50% to 60% of the total financial damages generated by all crimes combined. Corporate entities are frequently used as instruments for sophisticated tax evasion, market manipulation, environmental degradation, and industrial scale corruption. Data from the German Federal Statistical Office (*Statistisches Bundesamt* – Destatis) regarding criminal prosecution statistics (*Strafverfolgungsstatistik*, to be separated from the PKS of the BKA) indicates an increasing trend in investigations involving multiple corporate actors, particularly in cross-border logistical and financial sectors.

In Ukraine, the empirical reality of corporate malfeasance is deeply tied to the historical challenges of institutional corruption, asset diversion, and the shadow economy. Since the events of Revolution of Dignity in 2014 and accelerating through the mid-2020s, data from the National Anti-Corruption Bureau of Ukraine (*Національне антикорупційне бюро України* – NABU) demonstrates that large-scale ensure effective and proportionate accountability mechanisms for corporate entities. The implementation of functional corporate sanctions is therefore not merely an academic exercise, but an absolute necessity for economic stabilization and the preservation of foreign investments.

2. Historical Evolution of Corporate Liability

a) Germany: The Dogmatic Adherence to Societas Delinquere Non Potest

German legal history is deeply anchored in the classical civil law doctrine formulated in the 19th century under

the dominant influence of Friedrich Carl von Savigny. Savigny's "Fiction Theory" (*Fiktionstheorie*) asserted that a corporate entity is a mere legal fiction devoid of physical reality, lacking a biological body to execute physical acts (*Handlungsfähigkeit*) and a soul or mind to experience moral culpability (*Schuldfähigkeit*). Consequently, German criminal law adopted the strict Roman law maxim *societas delinquere non potest* (a corporate body cannot commit a crime).

The post-World War II reconstruction of German criminal dogmatics reaffirmed this view. The Federal Constitutional Court (*Bundesverfassungsgericht* - BVerfG) and the Federal Court of Justice (*Bundesgerichtshof* - BGH) established that the concept of punishment (*Strafe*) is fundamentally tied to the principle of individual human guilt (*Schuldprinzip*), which carries a socio-ethical reproach (*sozialethischer Tadel*).[1] Because a corporation cannot experience moral remorse or exercise free will, it cannot be a direct subject of the German Criminal Code (*Strafgesetzbuch* – StGB).

In addition to the lack of capacity to act, a key obstacle to the implementation of corporate criminal law in Germany is the constitutional principle of individual guilt (*Schuldprinzip*), which derives from human dignity and the rule of law. According to the Court, punishment requires individual culpability and may not be imposed without establishing personal blameworthiness[2]. The maxim *nulla poena sine culpa* (no punishment without guilt) requires a personal moral reproach addressed to the offender, who intentionally or negligently chose the path of violating the law when having the opportunity to act lawfully. Since a company does not possess an individual conscience, it is impossible to address such a moral blame to it.[3] Furthermore, German doctrine rejects corporate punishments due to the legal entity's lack of capacity to experience the distress of punishment (*Straffähigkeit*) for the purpose of subsequent atonement, as well as due to the risk of controversial collective punishment of shareholders who did not personally commit the crime.[4]

To overcome these legal limitations without dismantling classical criminal law institutions, the German legislator in 1968 relegated the liability of associations to the realm of administrative-regulatory law through the Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG).[5] Pursuant to Section 30 of the OWiG, a significant corporate fine (*Verbandsgeldbuße*) can be imposed on a legal entity, which for intentional acts of the management (*Leitungsperson*) amounts to up to 10 million euros, excluding the mechanisms of unlimited skimming of the obtained illicit profits (*Einziehung / Verfall*) under the provisions of the GCC .[6] This model allows Germany to effectively penalize corporations and counter economic crimes while completely preserving its traditional human-centric doctrine of guilt in its criminal law intact – different as its neighbour Austria.[7]

b) Ukraine: The Transition from the Soviet system

Ukraine's legal system belongs to the continental civil law family and was heavily shaped by Soviet legal doctrine during the 20th century.[8] During the Soviet period, criminal law was strictly anthropocentric. The classical Soviet legal doctrine recognized only natural persons as subjects of an offense, firmly rejecting the concept of corporate criminal liability. Criminal responsibility was built entirely upon the concept of personal fault, defined through

1 BGHSt 2, 194 (200); BVerfGE 20, 323 (331). See also: A. J. Mayr, *Die Strafbarkeit juristischer Personen als Strafe für fremde Schuld*, Schriften zum Strafrechtsvergleich, Band 15, Duncker & Humblot, Berlin, 2023, p. 83.
2 Decisions of the Federal Constitutional Court of Germany (BVerfG NJW 2009, 2267; NJW 2016, 1149)
3 Krimphove, D., Unternehmensstrafrecht in der Europäischen Union, Wirtschaftsstrafrecht und Haftung im Unternehmen (ZWH), No. 11, 2023, p. 307
4 Ibid., p. 307
5 German Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG), §§ 30, 130
6 German Criminal Code (*Strafgesetzbuch* StGB), §§ 73b, 73c, 75. See also: Krimphove, D., *op. cit.*, p. 307.
7 Krimphove, D., *op. cit.*, pp. 307-308
8 Streltsov, 6. Part. Ukraine Criminal Law, Strafrecht, in: Wieser/Lazur/Bilaš (Hrsg.), Einführung in das ukrainische Recht, C.H. Beck 2020, pp. 247 et seq.

the psychological prism of intent or negligence. The legal person was viewed exclusively as an instrument of socialist economic planning and an object of administrative control, never as a subject capable of committing a crime.[9] Despite this theoretical stance, the Soviet government in the early stages of the Soviet Union frequently applied severe administrative and quasi-criminal repressive measures, such as total asset confiscation, against collective entities and commercial enterprises for political and economic reasons. [10]Despite strictly rejecting corporate liability domestically, a historical paradox arose during the Nuremberg Tribunal. The Soviet Union supported imposing collective criminal liability on specific Third Reich organizations, such as the SS and Gestapo, and even protested when the Tribunal refused to criminalize other state apparatuses, exposing a sharp contradiction between Soviet legal theory and international practice.[11]

Following its independence, Ukraine inherited this strict anthropocentric paradigm. Although early drafts of the new Ukrainian Criminal Code in 1998 proposed introducing corporate criminal liability, the idea was ultimately rejected, and the 2001 Criminal Code maintained the traditional approach. (*Кримінальний кодекс України* – CCU).[12] However, as Ukraine sought integration into the Euro-Atlantic economic and political architecture, this absolute rejection of corporate liability became a major obstacle. International monitoring bodies, specifically the Council of Europe's Group of States against Corruption (GRECO) and the Organisation for Economic Co-operation and Development (OECD), repeatedly criticized Ukraine for its inability to effectively penalize corporate entities involved in transnational bribery.[13]

To satisfy the prerequisites of the EU Visa Liberalization Action Plan and international anti-corruption conventions, the Ukrainian parliament enacted a major statutory reform on May 23, 2013. This reform introduced Section XIV-1 into the CCU, creating a unique framework of "measures of a criminal-law nature" (*заходи кримінально-правового характеру*) applicable to legal entities, bypassing the dogmatic requirement of traditional corporate "guilt."[14]

3. Current Substantive and Procedural Frameworks

a) The German Model: Administrative Fines under the OWiG

Modern German substantive law maintains a rigorous dogmatic separation between classical criminal punishments (*Strafe*), which are fundamentally predicated on individual moral blameworthiness, and objective measures of correction and safety (*Maßnahmen / Maßregeln*), which aim at crime prevention and regulatory rectification.[15] Because a criminal penalty inherently requires the imputation of personal guilt, German jurisprudence restricts its application exclusively to natural persons. Consequently, the financial and structural liability of corporate associations and commercial entities is relegated to an autonomous system of administrative-delict (regulatory) law,

[9] Pavlova, T. O., Administrative and Criminal Responsibility of Juridical Persons in Ukraine: Historical Aspect, *Herald of Odessa I. I. Mechnikov National University. Jurisprudence*, Vol. 20, Issue 2 (27), 2015, p. 9.
[10] Ibid., pp. 9-10.
[11] Ibid., pp. 12
[12] Ibid., p. 12
[13] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment, *State and Law*, 2018, p. 52
[14] Ibid., pp. 51-52. See also: Law of Ukraine No. 314-VII of May 23, 2013
[15] Alexander Johann Mayr, *Die Strafbarkeit juristischer Personen als Strafe für fremde Schuld*, Schriften zum Strafrechtsvergleich, Band 15, Duncker & Humblot, Berlin, 2023, pp. 92, 119; G. Dannecker, Strafrecht der juristischen Personen, in: U. Sieber et al. (eds.), *Europäisches Strafrecht*, 2nd ed., Nomos, Baden-Baden, 2014, pp. 480-485.

codified within the Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG).[16]

The primary substantive anchor of this regulatory regime is Section 30 of the OWiG, which governs the imposition of a corporate fine (*Verbandsgeldbuße*). This framework functions on the doctrine of derivative attribution: to trigger corporate exposure, a management-level individual (*Leitungsperson* such as a board member, director, or designated statutory representative) must commit an underlying criminal or regulatory offense (*Anknüpfungstat*). Crucially, this triggering infraction must either violate specific institutional duties directly incumbent upon the legal entity or result in its direct, unjust enrichment.[17]

To catch corporate wrongdoing where the specific individual perpetrator cannot be easily identified, the legislature utilizes § 130 OWiG. This provision establishes that a corporation can be fined if the management intentionally or negligently fails to implement proper supervisory measures (*Aufsichtspflichtverletzung*) necessary to prevent the commission of offenses within the enterprise. This establishes a powerful statutory incentive for the implementation of Compliance Management Systems (CMS), a mechanism explicitly endorsed by the German Federal Court of Justice (*Bundesgerichtshof*), which established that robust pre-existing compliance systems significantly mitigate corporate fines [18]

The punitive reach of the German model is significantly amplified by substantive criminal law mechanisms,specifically Sections 73b and 73c of the German Criminal Code (*Strafgesetzbuch* StGB),which govern the asset recovery and forfeiture regime (*Einziehung*).[19]Within German legal dogmatics, this instrument is categorized not as a criminal penalty, but as an objective measure of a criminal-law nature under Section 11, Paragraph 1, Number 8 of the StGB. Because asset forfeiture is an objective mechanism rather than a guilt-based punishment, it does not require proving subjective culpability on the part of the corporation itself, thereby seamlessly avoiding any constitutional conflict with the individual guilt principle (*nulla poena sine culpa*). The overarching objective of *Einziehung* is the total skimming (*Abschöpfung*) of all economic advantages derived from the illicit conduct, and the amount of such recovery is entirely unrestricted by statutory caps.

Proceduralllly, corporate offenses under the OWiG are governed by the principle of discretionary prosecution (*Opportunitätsprinzip*) set out in § 47 OWiG. It grants prosecutors wide discretion to pursue or settle corporate infractions based on public interest. Procedurally, the 2021 “all-crimes approach” radically eased the standard of proof (*Beweiserleichterung*), letting authorities confiscate corporate assets by demonstrating a general illicit origin rather than proving a specific predicate offense. This shift vastly expanded corporate compliance duties, mandating immediate reporting to the Financial Intelligence Unit (FIU) under Section 43 of the Money Laundering Act (*GwG*) to avoid structural turnover-based fines.[20] Ultimately, corporate trials are funneled to specialized commercial criminal chambers (*Wirtschaftsstrafkammern*) of Regional Courts pursuant to Section 74c of the GVG, where the corporate entity participates in the proceedings as an associated third party (*Nebenbeteiligte*) with a full suite of defense rights[21].

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16 T. Gürtler in: *Göhler, Ordnungswidrigkeitengesetz (OWiG)*, 18th ed., C.H. Beck, München, 2021, § 30 Rn. 10-15, § 47 Rn. 1-4, § 130 Rn. 5-8.

17 Dieter Krimphove, Unternehmensstrafrecht in der Europäischen Union, *Wirtschaftsstrafrecht und Haftung im Unternehmen (ZWH)*, No. 11, 2023, pp. 306–307.

18 *Bundesgerichtshof* (BGH), Judgment of May 9, 2017 – 1 StR 265/16 (BGHSt 62, 1). *(Landmark decision acknowledging that functional Compliance Management Systems reduce the Verbandsgeldbuße)*

19 W. Joecks and K. Miebach (eds.), *Münchener Kommentar zum Strafgesetzbuch*, Vol. 2, 4th ed., C.H. Beck, München, 2020, § 73b Rn. 15-20.

20 D. Travers and M. Michaelis, Der neue § 261 StGB – die deutsche Umsetzung der EU-Richtlinie über die strafrechtliche Bekämpfung der Geldwäsche, *Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht (NZWiSt)*, No. 4, 2021, pp. 125-128.

21 K. Tiedemann, *Wirtschaftsstrafrecht: Einführung und Allgemeiner Teil*, 5th ed., Vahlen, München, 2017, pp. 150-155.

b) The Ukrainian Model: Measures of a Criminal-Law Nature under the CCU

Ukraine's current regulatory framework is codified within Section XIV-1 of the CCU (Articles 96-3 to 96-10).[22] In accordance with the General Part of the Criminal Code, it is established that a legal entity is not a subject of a crime; therefore, if any of the crimes provided for in Article 96-3 of the Criminal Code is committed by an authorized individual acting on behalf of and in the interests of the legal entity, the court may impose on the legal entity not a punishment, but measures of a criminal-law nature.[23]

Although there is ongoing doctrinal debate regarding their exact legal nature, these measures of a criminal-law nature against legal entities are considered a specific form of the implementation of criminal responsibility. Unlike other alternative measures that serve purely medical or educational purposes, the application of measures against legal entities is fundamentally punitive and aimed at preventing the commission of new crimes. Furthermore, these measures are realized strictly through criminal-law methods and can only be imposed on the basis of a court's guilty verdict. Consequently, the Ukrainian legislator has created a novel and specific form of criminal liability exclusively for legal entities, which allows for the imposition of punitive measures even without the presence of the full constituent elements of a crime. [24]

Unlike the universal applicability of the German OWiG regime, which triggers corporate fines for any criminal or regulatory offense, the Ukrainian system operates under a strict principle of specific enumeration. Pursuant to Article 96-3 of the CCU, measures can only be initiated against a legal entity if its authorized representative commits specific, explicitly listed offenses on behalf of and in the interest of the entity. These offenses are categorized into three main blocks:

1. **Corruption and Economic Crimes:** Bribery of public officials, commercial bribery, money laundering, and other offences expressly listed in Article 96-3 CCU.
2. **Security and Public Order:** Terrorism financing, human trafficking, and illegal proliferation of weapons.
3. **International and State Security:** War propaganda, genocide, and aggressive military actions (provisions significantly expanded due to geopolitical realities up to 2026).

The attribution mechanic requires that the authorized representative acts within their institutional mandate, binding the legal entity through their conduct. Procedurally, corporate measures are completely integrated into the criminal process against the natural person. There are no separate administrative tribunals; proceedings concerning the application of criminal-law measures to a legal entity are conducted within the same criminal proceedings, and the measures are issued by a criminal court judge in a unified final verdict.

Procedurally, corporate measures in Ukraine are completely integrated into the criminal process against the natural person, creating a system of total dependent co-prosecution. There are no separate administrative tribunals or distinct corporate trials. According to the Ukrainian Criminal Procedural Code (CPC), the proceeding against a legal entity is conducted simultaneously within the exact same criminal framework where the physical person is notified of suspicion.[25]

This procedural symbiosis means the fate of the corporation is traditionally tied to the fate of the individual. Under

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[22] Criminal Code of Ukraine, Law No. 2341-III of April 5, 2001, Article 18 (defining the subject of a crime exclusively as a natural person) and Section XIV-1, Articles 96-3 to 96-10.

[23] For a doctrinal analysis of this legislative compromise, see also: Павлова Т. О. До питання про кримінально-правовий статус юридичної особи в Україні [Текст] / Т. О. Павлова // Правова держава. 2015. No 20. С. 157–161.

[24] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment [*Заходи кримінально-правового характеру щодо юридичних осіб, як альтернатива покаранню*], *State and Law*, 2018, pp. 51-52, 57.

[25] Ibid. p. 57

Article 284 of the CPC, if the court establishes an absence of grounds, closes the criminal proceeding, or issues an acquittal verdict regarding the authorized physical person, the proceedings against the legal entity must be automatically closed. Conversely, if a guilty verdict is reached, the measures of a criminal-law nature (such as a fine or forced liquidation) are issued by the criminal court judge and explicitly codified within the resolutive part of the unified final verdict against the individual.[26]

Pursuant to Article 96-6 of the Criminal Code of Ukraine, provided procedural requirements are met and the court issues a guilty verdict against the authorized individual, an exhaustive list of three measures of a criminal-law nature may be imposed on the legal entity: a fine, confiscation of property, and liquidation [27]. The **fine** serves as the primary financial measure, and its magnitude must correspond directly to the harm inflicted; it is typically calculated as double the amount of the illegally obtained improper advantage. In instances where no such advantage was obtained or its value cannot be quantified, the court imposes fixed statutory fines based on the gravity of the committed offense. **Liquidation** constitutes the most severe sanction, functionally equated by domestic legal scholars to the "death penalty" for a corporate entity.[28] This measure is reserved as an extreme recourse for grave or particularly grave crimes, entailing the compulsory termination of the enterprise without any succession of its rights and obligations. A critical procedural nuance is that the **confiscation of property**, can only be applied in direct conjunction with the entity's liquidation. Collectively, these mechanisms serve a distinctly punitive function, rendering illicit conduct economically unviable and ensuring robust deterrence against future corporate offenses.

4. Comparative Dogmatic Analysis and Visual Structural Comparison

a) Comparative Structural Analysis: Corporate Fraud Triggers

To demonstrate the practical intersection of these regimes, it is useful to analyze the structure of a foundational economic offense: Fraud (*Шахрайство* under Article 190 CCU vs. *Betrug* under § 263 StGB). When a corporate representative engages in deceptive schemes to enrich the company, the structural composition of the underlying offense dictates how corporate liability attaches.

In the German system, for § 263 StGB to trigger a corporate fine under § 30 OWiG, the prosecutor must prove that a leader (*Leitungsperson*) intentionally deceived a victim (*Täuschung*), causing an error (*Irrtum*), which led to a disposition of assets (*Vermögensverfügung*) resulting in pecuniary damage (*Vermögensschaden*), alongside an intent of unlawful enrichment (*Bereicherungsabsicht*). If these elements are met, the corporate fine attaches automatically.

Under Ukrainian law, ordinary fraud under Article 190 of the Criminal Code does not constitute an independent ground for the application of criminal-law measures to legal entities. Such measures may be imposed only in relation to offences expressly listed in Article 96-3 of the Criminal Code. Therefore, fraudulent conduct may become relevant only where it forms part of, or is connected with, one of the predicate offences specified by that provision.

The following structural table contrasts the elements of fraud as an operational offense across both legal frameworks:

[26] Ibid. p 57
[27] Criminal Code of Ukraine, Law No. 2341-III of April 5, 2001, Article 96-6
[28] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment, *State and Law*, 2018, p. 56.

Structural Element	Ukrainian Criminal Code (Art. 190 CCU)	German Criminal Code (§ 263 StGB)
Objective Act (*Actus Reus*)	Acquisition of property or property rights via deception (*обман*) or breach of trust (*зловживання довірою*).	Deception (*Täuschung*) regarding facts, which causes or maintains an error (*Irrtum*).
Intermediate Causation	Direct link between the deceptive conduct and the voluntary transfer of property by the victim.	The error must induce an act of asset disposition (*Vermögensverfügung*).
Resulting Economic Harm	Direct loss of physical property or actionable legal rights by the victim.	Financial damage to assets (*Vermögensschaden*) calculated by economic market values.
Subjective Mind (*Mens Rea*)	Direct intent (*прямий умисел*) paired with a specific mercenary or possessory motive.	Intent (*Vorsatz*) regarding all objective elements, plus specific intent of unlawful enrichment (*Bereicherungsabsicht*).
Corporate Trigger Link	Only triggers corporate measures if connected to specific economic sabotage or public procurement corruption.	Directly triggers § 30 OWiG corporate fines if committed by any authorized manager or leader.

Source: Own Compilation, Makedon.

b) Comparative Summary Table

Expanding beyond fraud, the global systematic differences between the German administrative fine model and the Ukrainian criminal-procedural measures framework are summarized below:

Comparative Dimension	Ukrainian Law (CCU Regime)	German Law (OWiG Regime)
Primary Statutory Basis	Section XIV-1, Articles 96-3 to 96-10 CCU	§ 30 and § 130 Gesetz über Ordnungswidrigkeiten (OWiG)

Dogmatic Classification	Measures of a criminal-law nature (*заходи кримінально-правового характеру*).	Regulatory / Administrative Offense (*Ordnungswidrigkeit*).
Triggering Actors	Authorized representatives (*уповноважена особа*) acting within corporate scope.	High-level management, board members, or authorized directors (*Leitungspersonen*).
Scope of Predicate Crimes	Limited, strictly enumerated list of statutory crimes (Art. 96-3 CCU).	Broad, universal application to any criminal or regulatory offense.
Standard Sanctions	Fine (*штраф*), confiscation of property, or compulsory liquidation (*ліквідація*).	Corporate fine (*Verbandgeldbuße*) and skimming of economic benefits (*Verfall / Einziehung*).
Maximum Financial Penalty	Scaled to the severity of the predicate crime (up to specific statutory limits).	Statutory limit of €10 million for intentional acts, plus unlimited skimming of profits.
Prosecutorial Discretion	Mandatory prosecution linked to the primary individual criminal case.	Discretionary enforcement (*Opportunitätsprinzip*) under § 47 OWiG.

Source: Own Compilation, Makedon.

5. Recent Legislative Reforms and Future Outlooks

a) Germany: The Verbandssanktionengesetz Debate and Modern Compliance

The structural limitation of the German OWiG model specifically the €10 million statutory maximum cap for corporate fines and the high levels of prosecutorial discretion prompted an intense legislative effort to overhaul the system. This culminated in the draft Corporate Sanctions Act (*Verbandssanktionengesetz* – VerSanG).
The proposed *VerSanG* aimed to fundamentally reform corporate enforcement by introducing:

- The principle of mandatory prosecution (*Legalitätsprinzip*) for corporate misconduct, eliminating arbitrary regional prosecutorial passivity.
- Severe financial penalties scaled directly to corporate scale, allowing fines up to 10% of the total global annual turnover for large companies with annual revenues exceeding €100 million.

- Detailed statutory frameworks to incentivize internal compliance investigations (*interne Untersuchungen*), offering significant reductions in penalties if companies voluntarily cooperated and disclosed compliance breaches.

Although intense political lobbying and dogmatic disagreements regarding the definition of corporate "guilt" (*Schuldtheorie* in the German legal system) prevented the *VerSanG* from passing in its full original format, the structural elements of this reform debate continue to shape German judicial practice up to 2026. German criminal courts routinely utilize the BGH's landmark jurisprudence to reduce or increase corporate fines under § 30 OWiG depending on the verified quality of the company's Compliance Management System (CMS) at the time of the offense.[29]

b) Ukraine: EU Integration, Post-Conflict Reconstruction, and Anti-Corruption Pressures

Looking toward the future, criminal liability for legal entities is undergoing a profound conceptual transformation, driven by the operational practice of anti-corruption agencies and the necessity to align with OECD and EU standards. A critical impending reform involves separation of the corporate measures from the absolute prerequisite of a finalized criminal conviction of a natural person. Under evolving procedural mechanisms, recent legislative proposals seek to facilitate the application of measures even where proceedings against the natural person cannot be completed, particularly when the individual perpetrator evades justice, flees the jurisdiction, or when proceedings are closed on non-rehabilitating grounds.[30] This shift eliminates a major loophole that historically allowed companies to escape liability by hiding complicit directors.

Furthermore, the legislative horizon indicates a significant expansion of corporate sanctions. Recognizing that financial fines and total liquidation are often too rigid, proposed legislative amendments aim to introduce additional non-financial measures.[31] These flexible tools include the temporary prohibition of specific business activities, the revocation of operational licenses, and mandatory debarment from public and defense procurement. Concurrently, to combat transnational economic crime, Ukraine is actively expanding its jurisdiction to strictly penalize domestic legal entities involved in the bribery of foreign public officials, thereby satisfying rigorous OECD anti-bribery benchmarks.[32]

Ultimately, the future efficacy of Section XIV-1 of the Criminal Code relies heavily on the evolving jurisprudence of the High Anti-Corruption Court (HACC). Legal practitioners and scholars anticipate a structural shift in the standards of proof, closely mirroring the German compliance defense model.[33] Some scholars argue that a corporation can mitigate or avoid severe criminal measures if it can irrefutably demonstrate the implementation of a robust, independent Anti-Corruption Compliance Management System (CMS) prior to the offense. Thus, corporate liability in Ukraine is transitioning from a purely theoretical punitive concept into a dynamic regulatory mechanism that forces businesses to proactively self-regulate.

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29 Most notable BGH, Urteil vom 09.05.2017 - 1 StR 265/16; BGH, 27.04.2022 - 5 StR 278/21 (not available in Ukraine, but here https://dejure.org/dienste/vernetzung/rechtsprechung?Text=5%20StR%20278/21); https://www.ccompliance.de/runder-tisch-unternehmenssanktionenrecht-eckpunkte/.

30 Golaw, Corporate 'Criminal Liability' Without a Suspect: Key Business Risks [*Кримінальна відповідальність юридичної особи без підозрюваного: ключові бізнес-ризики*], Legal Insight, October 2025

31 Transparency International Ukraine, Criminal Liability of Legal Entities for Corruption: Legislative Proposals [*Кримінальна відповідальність юридичних осіб за корупцію: що пропонують нардепи*], Policy Brief, 2024

32 Durova, O., The New Law on Criminal Liability of Legal Entities: Implications for Transnational Bribery [*Новий закон про кримінальну відповідальність юридичних осіб: що за ним стоїть*], *Yurydychna Hazeta*, December 2024

33 Benchers Law Firm, Measures of a Criminal-Law Nature Against Legal Entities: The Problem of Efficiency in Corruption Cases [*Заходи кримінально-правового характеру щодо юридичних осіб: проблема ефективності в корупційних справах*], Analytical Report, Kyiv, 2025.

II. Relevance to the Protection of the European Union's Financial Interests

Under Article 325 of the Treaty on the Functioning of the European Union (TFEU), member states must take proactive, equivalent measures to counter fraud affecting the financial interests of the Union. This mandate is legally defined by the PIF Directive (Directive (EU) 2017/1371), which explicitly commands member states to establish robust systems ensuring that legal persons can be held liable for fraud, misappropriation, money laundering, and corruption affecting EU budget resources.

Germany fulfills these European obligations through a combination of traditional StGB individual prosecution and corporate fine applications via § 30 OWiG. However, European institutions frequently criticize the German reliance on the discretionary (*Opportunitätsprinzip*) model, arguing it can lead to under-enforcement in complex transnational subsidy fraud cases.

For Ukraine, as an official candidate country integrating deeply into EU financial networks and managing substantial macro-financial assistance packages, establishing a functional corporate liability regime is a strict prerequisites for accession. Transnational fraud and the misuse of EU humanitarian or developmental funds are rarely executed by isolated individuals; they almost universally involve networks of legal entities operating across international borders.

If a corporate vehicle is used to falsify tender applications, embezzle infrastructure subsidies, or launder illicit funds, the state must have the immediate capacity to freeze corporate assets, apply severe financial sanctions, and execute mandatory liquidation (*ліквідація*) under Article 96-3 of the CCU. Ensuring that both German and Ukrainian legal frameworks can swiftly pierce the corporate shield to eliminate the economic profitability of organizational fraud is essential to maintaining a transparent, secure, and resilient European financial space.

III. Conclusion

The comparative analysis of German and Ukrainian law demonstrates that while both nations – whilst Ukraine not yet being EU member- proceed from different dogmatic traditions, they face identical socio-economic threats from corporate wrongdoing. Germany continues to successfully protect its traditional, human-centric criminal guilt principle (*Schuldprinzip*) by relegating corporate sanctions to the highly organized and sophisticated realm of administrative regulatory law under the OWiG.[34] Conversely, Ukraine chose to integrate corporate sanctions directly into its Criminal Code as "measures of a criminal-law nature", driven by international anti-corruption mandates and urgent EU integration requirements.

As economic crimes become increasingly transnational, the operational differences between the German discretionary enforcement model and the Ukrainian specific-enumeration model must be harmonized, particularly to satisfy the strict requirements of the PIF Directive. Ultimately, the effective containment of economic crime and the protection of European public resources depend on the capacity of both legal systems to look past individual human actors and ensure effective and proportionate accountability mechanisms for corporate entities.

[34] *Groß* and *Krause-Ablaß,* in: Chapter 2, A.; *Kruse*, in: Chapter 4, B.; *Henn and Sperber*, in: Chapter 10 on special things for corruption; Jürss and *Schwerdtfeger,* in: Chapter 11 on fraud and subsidy fraud; for the complete view *Allahverdiyev* and *Othman* 2022'"Verbandssanktionengesetz" Corporate Liability for Germany?', German Law Journal, 23(4), pp. 637–649. doi:10.1017/glj.2022.37.

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