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Necessity of considering compliance measures before and after the act in Germany and Hungary**

ABSTRACT: This article provides a conceptual and legal overview of the term compliance, with a particular focus on its distinctions between soft compliance and hard compliance. In addition, compliance measures taken both before and after a criminal offence has been committed are examined, highlighting their preventive and remedial functions within corporate and legal frameworks. Particular attention is given to the legal situation in Germany and Hungary, offering a comparative analysis of the regulation and enforcement of compliance in these two jurisdictions.

KEYWORDS: compliance, criminal compliance, soft compliance, hard compliance.

1. Introduction

The term compliance means conformity, observance, obedience, agreement and following rules. However, the concept of compliance remains unclear. There is consent that it includes the obligation to comply with applicable law and to follow corporate self-regulation.¹ In addition to the *legal requirements*, *internal company guidelines* are also included in the obligation to ensure legality and monitor compliance. The legal concept of compliance emerged in Anglo-American law during the 1930s with the development of *regulated self-regulation* – the idea that companies should establish their own internal rules for their specific areas of operation, as existing legal provisions were considered insufficiently preventive. Self-regulation (internal rules) often based on „*good practices*”, is subject to the

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¹ See more: Dannecker, 2022, p. 196.

company's self-regulation. *Dannecker* emphasized that in order to minimize the risk of liability and sanctions and avoid negative publicity, companies should go beyond compliance with legally binding rules and follow 'domestic and international best practices'.²

Originally, this concept was only used in financial and economic legal practice and has also become part of European corporate practice, but later it also became increasingly widespread in (economic) criminal law. A functioning compliance structure enables companies to protect themselves against criminal offenses and the associated penalties, fines, etc. Compliance rules can go far beyond the general obligation to comply with the law and include stricter requirements through self-regulation.

From an *organizational perspective*, compliance is a collective term for measures aimed at ensuring lawful conduct and compliance with legal requirements, internal rules and other recommendations. Based on the narrower definition used by *Bock*, compliance is a collective term for supervisory measures that serve to ensure that all employees of a company behave lawfully. In this sense, criminal compliance is the obligation of company management to prevent criminal offences by employees within the company.³ It must be emphasized that compliance must be organized by the *company's management* in every company, as compliance with laws and regulations is a specific task of the management.

Kocziszky/Kardkovács defined the purpose of compliance for the managing body as follows:

Monitoring and enforcing compliance with laws, regulations, professional standards, internal rules and expectations relating to the company's business activities, as well as avoiding any negative consequences that may arise and managing the associated risks; ensuring transparency and regulation of business processes, the economic and efficient use of resources; creating the conditions for ethical corporate operations and preventing corruption risks.⁴

From the perspective of ethical corporate governance, according to István Ambrus and Ádám Farkas, compliance is

² Dannecker, 2022, pp. 196-209.

³ Bock, 2009, p. 293.

⁴ Kocziszky and Kardkovács, 2020, p. 20.

the set of rules established by various laws (legal norms) and internal rules created by the company itself for its owners, employees and contractual partners, based partly on laws and partly on moral and ethical principles (e.g. as laid down in codes of ethics in certain cases).⁵

The term '*Tone from the top*' is used in auditing to describe the leadership of the company's management and board of directors and their commitment to honesty and ethical behaviour. The 'tone from the top' establishes the cultural environment and corporate values of a company. A *compliance culture* is a workplace environment where every employee, from the leadership to the frontline staff, is committed to following laws, regulations, and ethical standards, also not just the legal requirements. The 'tone from the top' shapes the cultural environment and corporate values of a company. A compliance culture is a working environment in which all employees, from senior management to front-line staff, are committed to complying with laws, regulations and ethical standards, not just legal requirements.

There is also an approach from *Soyer/Pollak* that distinguishes between *hard compliance* and *soft compliance*.⁶ *Soft compliance* aims to achieve rule-compliant behavior within a company through the use of organizational self-regulatory measures, the sources of which may include internal regulations, guidelines, codes of conduct or codes of ethics⁷ that primarily relate compliance with moral, ethical or economic aspects. The most characteristic feature of criminal compliance is *hard compliance*, which refers to legally binding requirements to prevent rule violations. According to literature sources, the term *criminal compliance*⁸ first appeared in 2008 in the title of a document published by Microsoft.⁹ These are of central importance for companies in order to prevent criminal offenses and other legally relevant rule violations within the company:

⁵ Ambrus and Farkas, 2019, p. 19.

⁶ Soyer and Pollak, 2023, pp. 210–240, Soyer and Pollak, 2021.

⁷ Codes of conduct contain not only ethical principles, but also procedures to be applied in the event of violations and the expected consequences. See: Benedek, 2014, p. 51.

⁸ Rotsch, 2015, pp. 41–42, Rotsch, 2010, p. 614.

⁹ Dannecker and Bülte, 2020, p. 133.

punishment of managers, employees or the legal entity itself, as well as administrative sanctions.

2. Anti-Money Laundering Compliance (AML)

The term „money laundering compliance” is used as a collective term for international, EU-wide and national regulations for the prevention of money laundering. In the relevant literature, the area of money laundering compliance is treated separately, partly because it is an area that is well-regulated and harmonized by EU law. Measures related to money laundering compliance can basically be classified as preventive compliance tools. The following section presents the compliance measures set out in the money laundering directives adopted by the European Union¹⁰ will be introduced, followed by an overview of the most important elements of domestic regulations.

3. Consideration of compliance measures

Compliance measures can be introduced or implemented before the violation (ex ante) or after the offence (ex post). In connection to the compliance with money laundering regulations, the company must be organized in such a way that violations of applicable law are avoided. It is the responsibility of the management to ensure the operation of the AML Compliance Management System, which includes, for example, the fulfilment of due diligence obligations such as verifying customer identity.¹¹ There are regulations that require companies to train their employees according to appropriate standards.

What are the risks of violating money laundering regulations? On the one hand, this can have legal consequences (criminal liability of natural persons or the company), fines (against natural and legal persons), sanctions by supervisory authorities (against natural and legal persons), damage to reputation or financial risks. Violations can also lead to a competitive disadvantage for the company.

In the United States, the Department of Justice (DOJ) has published detailed guidance entitled '*Evaluation of Corporate Compliance Programs*',

¹⁰ See: Udvarhelyi, 2013, pp. 455-471; Jacsó-Udvarhelyi, 2024, pp. 687-729.

¹¹ Jacsó, 2023, 905-920; Jacsó, 2024, pp.111-131.

which was first published in February 2017 and updated in June 2024.¹² The 'Principles of Federal Prosecution of Business Organizations' in the Justice Manual describe specific factors that prosecutors should consider when conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. These factors include 'the adequacy and effectiveness of the corporation's compliance program at the time of the offense and at the time of a charging decision' and the corporation's remedial efforts 'to implement an adequate and effective corporate compliance program or to improve an existing one'.¹³ The guidance is intended for U.S. prosecutors assess the effectiveness of corporate compliance programmes when making decisions about charges and penalties. While the guidance does not set binding standards, it provides a useful framework for evaluating and improving compliance efforts. The guide focuses on three key questions: 1. Is the compliance program well designed? 2. Is it implemented in good faith and with adequate resources? 3. Does it actually work in practice? Due to its level of detail, the guide also serves as a valuable reference for companies seeking to structure or enhance their own compliance programs.¹⁴

Compliance measures taken prior to the offense may be considered as a mitigating factor in cases of criminal or administrative misconduct. In this context, the *decision of the German Federal Court of Justice of May 9, 2017*¹⁵ on consideration of a compliance management system when assessing fines is particularly noteworthy.¹⁶ According to this ruling, the extent to which a legal entity has fulfilled its obligation to prevent legal violations within the company and has implemented an efficient compliance management system aimed at preventing legal violations is relevant for the assessment of the fine. When assessing the fine, consideration must be given to the extent to which a legal entity has fulfilled its obligation to prevent legal violations within the company and has implemented an efficient compliance management system to prevent legal violations. In cases of criminal or administrative offenses, certain compliance measures undertaken *after the offense* can be considered mitigating factors. These efforts demonstrate a commitment to rectifying past misconduct and

¹² Evaluation of Corporate Compliance Programs.

¹³ Ibid.

¹⁴ Dannecker, 2021.

¹⁵ BGH 1 StR 265/16, 2017.

¹⁶ Dannecker, 2021.

preventing future violations. Examples of such measures include: compensation for damages caused by the offense; improvement of internal compliance structures, policies and procedures; expansion of the compliance department to enhance oversight and internal controls; engaging external consultants, particularly in specialist areas such as tax compliance; improved training programs for employees to raise awareness and ensure adherence to relevant laws and regulations; increased monitoring and auditing of internal processes to detect and prevent future irregularities. All measures aimed at compensating for damages or improvement future compliance.¹⁷

The following section examines whether *compliance measures taken before or after the offense* may also be taken into consideration in criminal proceedings in Hungary. Under the Hungarian legal framework, only *natural persons* can be held criminally liable; *legal entities* can only be subject to criminal sanctions, namely ‘*measures*’ (dissolution of the legal entity, restriction of activities, fines).¹⁸ The Hungarian Criminal Code regulates the basic principles of sentencing,

*the Punishment shall be imposed within the limits specified in this Act, bearing in mind its purpose, in such a way that it is proportionate to the gravity of the offense, the degree of guilt, the danger posed by the offender to society, and other mitigating and aggravating circumstances.*¹⁹

The qualifying circumstances of the punish are listed in detail in the 56th Opinion of the Criminal Division on the circumstances (BKv Nr. 56) to be taken into account when imposing a sanction.²⁰ It generally states that the perpetrator's actions to avert the outcome are mitigating circumstances. This mitigating circumstance has the greatest weight if the compensation was paid as a result of the perpetrator's intention to make amends and his active conduct.²¹ This means that the perpetrator's self-reporting is a mitigating circumstance. It is particularly significant if this action enables the defence

¹⁷ BGH 1 StR 265/16, 2017, p. 46.

¹⁸ Act CIV of 2001 on criminal measures that may be imposed on legal entities.

¹⁹ Article 80(1) Act C of 2012 on the Criminal Code. See more: Pápai-Tarr, 2024.

²⁰ BKv Nr. 56., 11, [Online]. Available at: <https://kuria-birosag.hu/hu/kollvel/56-bk-velemeney> (Accessed: 3 February 2024).

²¹ See more Pápai-Tarr, 2023, p. 83.

to be detected or has contributed significantly to this. It is also a mitigating factor if the perpetrator cooperated in the detection of the offense and has contributed to the success of the investigation.²² There are *specific regulations* for *measures* against *legal entities*, but their practical application in Hungary is generally very limited.²³

It is also worth mentioning the rule of *active repentance* in the Hungarian Criminal Code, according to which, in the case of effective mediation procedure, if the perpetrator has compensated the victim for the damage caused, this may lead either to the cessation of criminal liability or to an unlimited reduction of the penalty.²⁴

Active Repentance (1) Any person who has committed any misdemeanor offense against life, physical integrity or health, against personal freedom, against human dignity and fundamental rights, any traffic offense, offenses against property or against intellectual property rights, or any crime punishable by imprisonment not exceeding three years, shall not be prosecuted if he has admitted his guilt before being indicted, and has provided restitution by way of the means and to the extent accepted by the injured party within the framework of a meditation process, or previously if approved in the meditation process. This provision shall also apply in connection with multiple counts of offenses, where the criminal offense against life, physical integrity or health, against personal freedom, against human dignity and fundamental rights, traffic offense, offense against property or against intellectual property rights is considered decisive.

(1a)²⁵ The penalty may be reduced without limitation if the conditions specified in Subsection (1) are met, however, in order to achieve the purpose of the penalty, the prohibition of practicing a profession, suspension of driving privileges, exclusion or a ban from visiting sport events may not be omitted. In that case, following the successful completion of the mediation procedure, only the prohibition of practicing a profession, suspension of driving privileges, exclusion or ban from visiting sport events may be imposed.

(2) The penalty may be reduced without limitation if the perpetrator has admitted his guilt of having committed either of the crimes specified in

²² BKv Nr. 56., 11. [Online]. Available at: <https://kuria-birosag.hu/hu/kollvel/56-bk-velemeney> (Accessed: 3 February 2024).

²³ Sántha, 2000, pp 230-240; Sántha, 2011 and Sántha, 2016.

²⁴ Article 29 Act C of 2012 on the Criminal Code.

²⁵ Enacted by Section 19 of Act LXIV of 2024, effective as of 1 July 2025.

Subsection (1), punishable by imprisonment not exceeding five years, before being indicted, and has provided restitution by way of the means and to the extent accepted by the injured party within the framework of a meditation process, or previously if approved in the meditation process. This provision shall also apply in connection with multiple counts of offenses, where the criminal offense against life, physical integrity or health, against personal freedom, against human dignity and fundamental rights, traffic offense, offense against property or against intellectual property rights is considered decisive.

(3) Subsections (1)-(2) shall not apply if the perpetrator:

a) is a repeat offender or a habitual recidivist;

b) committed the crime in the framework of a criminal organization;

c) committed a crime resulting in death;

d) committed a criminal offense intentionally while on probation as a result of suspension of a prison sentence or, in consequence of the commission of an intentional criminal offense, after being sentenced to serve a prison term and before he has finished serving his sentence, or while released on probation or during the period of conditional prosecutorial suspension; or

e) has been a party to a meditation process on account of a previous criminal act of intent, and in consequence Subsection (1) or (2) hereof had been applied, if another criminal act had been committed within two years from the date of the decision that is not subject to further remedy.²⁶

Under the new *Code of Criminal Procedure*,²⁷ the applicability of mediation could be separated from the conditions for active repentance as a ground for eliminating criminal liability under substantive law. The latter means that mediation is no longer applicable only in connection with active repentance as a reason for the removal of criminal liability under substantive law or for the granting other advantages, but independently of this, as long as the objectives of the mediation procedure can be achieved.²⁸

In the case of *money laundering* it should be noted that the Hungarian Criminal Code also criminalizes negligent money laundering: *'(1) Any person who is involved in concealing, converting, transferring assets derived from the criminal offences of others, or who participates in the alienation or transfer of assets, performs any financial transaction or*

²⁶ See the translation in: <https://uj.jogtar.hu/>.

²⁷ Act XC of 2017 on the Code of Criminal Procedure.

²⁸ Kiss, 2018.

receives any financial service in connection with those assets, or makes the necessary arrangements to that effect, and is negligently unaware of the true origin of the asset is guilty of misdemeanor punishable by imprisonment not exceeding two years.’ (2) The penalty shall be imprisonment for misdemeanor for up to three years if the criminal offense defined in Subsection (1): a) involves a particularly considerable or greater value; b) is committed by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or employee of such service provider in connection with the service provider’s activities; or c) is committed by a public official. (3) Any person who voluntarily reports to the authorities and unveils the circumstances of commission shall not be prosecuted for money laundering as specified under Subsections (1) and (2), provided that the act has not yet been revealed, or it has only been partially revealed.’²⁹

Compliance measures can be taken into account when assessing due diligence obligations. Furthermore, it is punishable under the section entitled „*Failure to Comply with the Reporting Obligation Related to Money Laundering*” (Art 401 Penal Code):

Any person who fails to comply with the reporting obligation prescribed by law in connection with the prevention and combating of money laundering and terrorist financing is guilty of misdemeanour punishable by imprisonment not exceeding two years.

4. Fazit

It is important to note that the Act CIV of 2001 on criminal measures that may be imposed on legal entities was amended by the legislator in 2025. The amendment to the Act, which will come into force on January 1, 2026³⁰, contains detailed regulations on the imposition of measures applicable to legal entities, according to which the following must be taken into account in particular: whether the legal entity a) intended to gain or did gain an advantage by committing the offense, b) compensated for the damage caused by the offense, c) paid the advantage gained from the offense to the authorities, d) remedied the harmful consequences of the

²⁹ Article 400(1)-(3) Penal Code.

³⁰ Act XLIX of 2025 on the amendment of laws relating to justice.

offense, and e) taken measures to ensure that the legal entity will not be involved in the future in the commission of the offense that is the subject of the criminal proceedings. According to the explanatory memorandum to this amendment

the new regulation may bring about a change of era in the field of law by introducing the principle of officiality into proceedings involving legal entities, while at the same time creating a system of procedural cooperation (settlement) and, by modifying the available measures, providing appropriate incentives for cooperation.’³¹

Compliance measures may also be taken into account in the future by the measures that may be imposed on legal entities.

In summary, the following conclusions can be drawn:

1. Sentencing is determined by the offense, the offender's attitude towards the offense and their willingness to provide information and cooperate.

2. Measures that go beyond the specific offense under assessment – such as training or regular monitoring – which are generally aimed at preventing violations before they occur, must also be taken into account as mitigating circumstances.

3. Post-offense behaviour must generally be taken into account, in particular the compensation for damages and any measures aimed at preventing future offenses. This reduces the special preventive necessity of punishment that the penalty serves.

³¹ Explanatory memorandum to the Act XLIX of 2025 on the amendment of laws relating to justice, p. 6.

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