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**Research perspectives and approaches of the third and fourth conference of the Humboldt Research Group ‘On the systematisation of criminal responsibility by and in enterprises’\*\*\***

**1. ‘Corporate compliance as a challenge for the design of legal consequences – towards a coherent system of sanctions in commercial criminal law’**

On the conference “Corporate compliance as a challenge for the design of legal consequences – towards a coherent system of sanctions in commercial criminal law’, the presentations of scientists and practitioners from three member states of the European Union: Austria, Germany, Hungary were followed by a panel discussion about the areas in which further research projects are necessary.

The following research perspectives and approaches were developed:

**Compliance as regulated self-regulation**

(1) The legal development of compliance began in Anglo-American law in the 1930s as the idea of regulated self-regulation: companies should develop their own rules for their area of activity because the legal regulations were not sufficiently preventive.

(2) Regulated self-regulation requires the integration of non-codified rules into the legal system and has led to the juridification of ethical and internal company rules.

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(3) This process of juridification is indispensable in continental European legal systems, which are subject to the principle of legality within the framework of the rule of law (Rechtsstaatsprinzip).

#### **Compliance as a legal response to corporate deviance**

(4) Compliance serves to prevent unlawful or dangerous behaviour.

(5) Compliance primarily focuses on the company as a whole, as an abstract actor. It is based on corporate deviance and not primarily on the deviance of individuals.

(6) Antitrust violations, corruption and embargo violations, environmental crimes, tax offences and subsidy fraud harbour considerable potential for damage. These forms of deviant behaviour can be understood as deviance for which companies are responsible and which must be countered by compliance backed by sanctions.

(7) However, sanction-based compliance can only be enforced if legalisation has taken place.

#### **Compliance as a functional control system with preventive structures**

(8) Compliance is about creating the framework conditions for a modern, functional control system with preventive structures. This involves a shift in perspective from the backward-looking approach of traditional, reactive criminal and sanction law to a forward-looking control system with a modern, preventive focus.

(9) An essential feature of compliance is the need to anticipate liability under sanctions law. On this basis, strategies must be developed to avoid criminal, administrative and civil sanctions against the management of a company and against the company itself.

(10) Management responsibility has been extended to group companies (enterprises), thereby partially overriding the principle of separation under company law, particularly in the area of EU fine regulations, which are addressed not to individual legal entities but to companies as economic entities, for example in the area of EU antitrust law, the General Data Protection Regulation and banking supervisory law.

(11) In addition, the supply chain responsibility of large companies provides for responsibility for certain human rights and environmental violations, a responsibility that even extends to the upstream and downstream supply chain.

**Law, economics and behavioural psychology as complementary elements of compliance**

(12) In addition to the legal approach, compliance is also based on business management, behavioural psychology and organisational approaches that focus on the framework conditions for effective compliance.

(13) Law, economics and behavioural psychology must interact as complementary elements: 'each supplies what the other cannot' in order to establish an effective compliance system.

(14) This requires a comprehensive and systematic identification and assessment of compliance risks within the company. Based on this, a compliance programme must be developed and an adequate compliance organisation created.

**Process-oriented compliance in the corporate reality**

(15) In the everyday preventive corporate reality of large companies, the goal of avoiding legal violations is often implemented in a 'process-oriented' manner in the business sense. To this end, 'guidelines,' application forms, approval processes and justification requirements are introduced that are highly formalised and fragmented. Such standardisations are largely detached from the decisive legal categories, the legal elements of the offence.

(16) Indications and questions that point to delinquent behaviour in international business transactions are often difficult to map in formalised processes and operationalisable criteria. The FATF's lists of 'high-risk countries' are excellent as checklist criteria, but they are of little practical use because they are at best an indication of marginal significance. Know-your-customer processes, which serve to identify and verify new and existing customers on the basis of money laundering requirements, are important, but ultimately do not enable effective verification of the integrity of business partners abroad.

(17) Even if compliance standardisation lags significantly behind a classic retrospective legal review of a matter, it can raise awareness and sensitivity within a company, enabling management to assess and decide on individual cases. The following applies here: compliance raises awareness simply by its existence and thus contributes to lawful corporate behaviour, even if it cannot guarantee it.

**Criminal consequences of compliance violations**

(18) Violations of compliance obligations can lead to fines for natural persons as well as legal entities.

(19) Such sanctions require integration into the respective national sanctioning system. Member States can incorporate criminal sanctions into their respective national sanctioning systems, which are generally largely consistent and coherent.

(20) Insofar as the sanctioning of compliance violations involves the enforcement of European Union law, and this is largely the case with compliance, the requirements of EU law must also be taken into account, in particular the constitutional guarantees of fundamental rights enshrined in the Charter of Fundamental Rights.

**2. ‘Green Criminology and Green Deal: Environmental and Climate Protection – An Urgent Task for Criminal Law’**

On the conference ‘Green Criminology and Green Deal: Environmental and Climate Protection – An Urgent Task for Criminal Law’, the presentations of scientists and practitioners from three member states of the European Union: Austria, Germany, Hungary, as well as from Liechtenstein and Turkey were followed by a panel discussion about the areas in which further research projects are necessary.

The following research perspectives and approaches were developed:

- 1) The recognition of subjective, enforceable rights of citizens by constitutional jurisprudence and the Human Rights Court in Strasbourg with regard to environmental protection measures affects criminal law and raises the question of the extent to which the distinction between supra-individual and individual legal interests should be abandoned and further developed in the environmental field.
- 2) There is a need for cross-border solidarity in the field of environmental and climate protection, which requires a new ethical and legal foundation.
- 3) The issue of resilience, which is becoming increasingly important in the European Union, must also be included in considerations and studies on environmental protection.

- 4) With regard to climate protection, it is clear that the need for climate protection is much more difficult to communicate than the need for environmental protection, and therefore measures to promote acceptance of climate protection are indispensable. In this regard, a special area of law should be created for the economic sector – with the consequence that, in addition to intentional behaviour, negligent behaviour should also be subject to criminal penalties or fines, and emphasis should be placed on the criminal and financial liability of legal entities, as well as on confiscation and compensation for damages – generally not in the form of restoration to the previous state, but in the form of the most environmentally compatible state.
- 5) Environmentally destructive practices that have no practical significance in the Member States of the European Union (e.g. rainforest deforestation) should nevertheless be made punishable by law so that companies from the European Union that instigate criminal offences in non-European countries can be prosecuted. It is not sufficient to extend national criminal law provisions, as double criminality – criminal liability at home and abroad – is often a prerequisite for the application of criminal law (criminal law provisions with international implications).
- 6) There are considerable shortcomings in the field of environmental criminology, both in terms of quantitative and qualitative surveys. However, the lack of quantitative data is less significant than is often claimed in the literature, because it is often sufficient for legal policy measures if qualitative studies – such as those frequently carried out by and in the EU – can prove the existence of criminal behaviour, even if the frequency remains unknown or the manner in which it is carried out often cannot be clarified, e.g. whether and to what extent organised crime is involved.
- 7) From a legal policy perspective, it has proven particularly relevant that the protection of natural resources cannot be reduced to a national issue, meaning that environmental law issues are subject to conflicts between international law, EU law and national law.
- 8) The administrative law accessory nature of environmental criminal law requires administrative law provisions that exclude gaps in punishment. This requires specific regulations for illegally obtained permits, for the recording of circumvention activities and for the cross-border effect of environmental permits and their limits.
- 9) The question of human rights protection beyond humanity should be pursued further and made fruitful for criminal law.

10) Consideration should also be given to introducing the offence of ecocide under international law.

11) The establishment of a duty of care for companies by the UN and the OECD should be made fruitful for environmental compliance and resilience.

12) The requirements for supply chain responsibility are strongly based on the provisions of French law, which was favoured by NGOs and therefore needs to be revised from a legal perspective.

13) Member States of the European Union which, like Poland and Hungary, tend to take a different path within the European Union and refer to their own legal culture, do not question the need for joint protection of natural resources, especially water. This makes it easier to achieve a uniform and coordinated approach by the European Union in such areas than in other policy areas where different speeds can be observed. This opportunity should be used to achieve a common and uniform approach in the field of climate and environmental protection.

14) The international dimension of the issue, which is particularly evident in the discussion on the creation of an international legal offence of ecocide, should be taken into account by making greater use of experience and expertise in the field of international negotiations in order to implement an international environmental and climate protection policy that transcends the borders of the European Union.