



The Evolution of Corporate Criminal Liability in Romanian and European Criminal Law: A Comparative Study on the Effectiveness of Sanctions

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Abstract

This paper examines the evolution of corporate criminal liability in Romanian and European criminal law, highlighting the shift from the traditional principle *societas delinquere non potest* to the contemporary recognition of corporate criminal responsibility. The primary aim of the study is to assess the effectiveness of the current sanctioning mechanisms applicable to legal persons, through a comparative analysis of Romanian and selected European legal systems. The research traces the normative development of corporate liability in Romania, especially following the 2004 Criminal Code, and analyzes its alignment with European Union directives and Council of Europe standards. Through comparative examination of jurisdictions such as France, Germany, and the Netherlands, the study evaluates the structure, proportionality, and practical enforcement of sanctions imposed on corporate entities. It also explores doctrinal and jurisprudential debates on the attribution of criminal liability to legal persons, evidentiary challenges, and the impact of corporate compliance programs in mitigating responsibility. Special emphasis is placed on the interpretative role of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU), whose rulings increasingly shape national approaches. By integrating legal theory with case law analysis, the paper aims to determine whether current mechanisms serve their preventive and deterrent functions effectively, and to identify areas where further harmonization or reform is necessary. The findings contribute to the ongoing European discourse on corporate accountability and the need for coherent, functional, and just responses to corporate crime.

keywords: deterrence, compliance, attribution, harmonization, liability mechanisms

1. Introduction

The development of corporate criminal liability (CCL) represents a fundamental transformation in the architecture of modern criminal law, signifying a paradigmatic shift from the classical individualist paradigm of penal responsibility to one that acknowledges the systemic capacity of legal persons to inflict social harm. Traditionally, under the maxim *societas delinquere non potest*, the criminal law of continental Europe, rooted in Roman-Germanic tradition, categorically rejected the possibility that a legal entity—lacking a physical body, a conscience, or moral agency—could be held liable for criminal conduct (Gobert, 2008). This principle was premised on the anthropocentric nature of culpability and punishment, which presupposed the presence of intent (*mens rea*) and physical commission (*actus reus*)—both attributes difficult to ascribe to a juridical person.

However, the 20th and especially 21st centuries have witnessed an unprecedented rise in large-scale organizational misconduct: corporate environmental disasters, systemic tax fraud, banking crises triggered by fraudulent misreporting, human rights violations by multinational corporations, and widespread corruption involving legal persons acting through their representatives. The globalization of economic activities, the diffusion of complex corporate structures, and the anonymity of decision-making chains have exposed the limitations of traditional criminal justice tools when dealing with collective actors. In response, many jurisdictions have reconsidered their normative positions and begun to construct legal mechanisms through which corporations can be subjected to criminal prosecution, not merely civil or administrative sanctions (Coffee, 1981; Pieth & Ivory, 2011).

At the supranational level, particularly within the framework of the European Union, the necessity for effective, proportionate, and dissuasive sanctions against legal persons has become a cornerstone of legislative policy in areas such as environmental protection, corruption, competition law, and financial integrity. Although criminal law remains largely within the competence of Member States, EU legal instruments such as Directive (EU) 2017/1371 on the protection of the Union's financial interests and Directive 2008/99/EC on environmental crime have mandated the establishment of legal person liability, urging national legislators to move beyond symbolic or purely administrative responses. (Weiß, 2011)

Romania's alignment with this European trajectory has been gradual but marked by key legislative reforms. The explicit recognition of corporate criminal liability was introduced with Law no. 278/2006, later consolidated through Article 135 of the new Romanian Criminal Code (Law no. 286/2009). This legislative evolution reflects Romania's dual imperative: to fulfill its obligations as a Member State of the European Union and to modernize its internal criminal policy instruments to address new forms of social danger stemming from organizational behavior.

Despite these reforms, questions remain regarding the effectiveness, coherence, and proportionality of the Romanian model of CCL. Empirical data suggest that the application of corporate sanctions is still sporadic, often limited to low-visibility cases, and rarely results in severe punitive measures such as judicial dissolution or long-term disqualifications. In contrast, countries such as France, the United Kingdom, and the Netherlands have not only broadened the material scope of CCL but have also operationalized innovative tools such as deferred prosecution agreements (DPAs), compliance obligations, and plea bargaining to ensure both accountability and future compliance.

This article seeks to explore the evolution of corporate criminal liability in Romania in light of these broader European developments. It adopts a comparative and critical perspective, aiming to evaluate the extent to which Romanian criminal law aligns with European standards, both in

form and in substance. Particular attention is given to the effectiveness of sanctions, the interpretative practices of national courts, and the influence of EU law and CJEU jurisprudence on the shaping of this legal institution.

By analyzing the legislative frameworks, doctrinal interpretations, and case law across multiple jurisdictions, this study intends to contribute to a deeper understanding of the role of CCL in advancing the objectives of criminal justice: prevention, retribution, reparation, and restoration of public trust in legal institutions.

2. Historical Background and Legal Recognition

The historical trajectory of corporate criminal liability (CCL) in Romania and across Europe reveals a progressive transition from traditional resistance to modern recognition, driven by both internal and external legal, economic, and political pressures. Initially rooted in a penal tradition deeply influenced by continental doctrines, Romanian criminal law adhered to the classical conception that criminal liability could only be attributed to natural persons. The maxim *societas delinquere non potest*—according to which legal persons are incapable of committing crimes—dominated doctrinal thought and jurisprudential practice well into the late 20th century.

However, this view became increasingly untenable with the emergence of large-scale corporate misconduct and the realization that administrative and civil sanctions were often insufficient to deter systemic corporate illegality. In this context, Law no. 278/2006 marked a pivotal moment in Romanian criminal legislation, as it amended the former Criminal Code to introduce the principle of criminal liability for legal persons. This reform aligned with a broader European and international trend of modernizing criminal justice systems to reflect the realities of corporate power and influence (Pieth & Ivory, 2011).

The current normative framework is enshrined in Article 135 of the Romanian Criminal Code (Law no. 286/2009), which states: “A legal person, except for the state and public authorities, is criminally liable for offenses committed in the realization of its object of activity or in its interest or name.”

This provision establishes three cumulative criteria for liability:

- The offense must be committed in connection with the legal person’s object of activity;
- It must be committed *in the interest* of the legal person;
- Or *in its name*, by a natural person acting as an agent or representative.

This structure reflects an indirect attribution model of liability, whereby the actions of individuals (such as directors, employees, or agents) can trigger the responsibility of the corporate entity, provided the acts were committed within the institutional and functional framework of the organization. The Romanian model is thus functional in nature, emphasizing the nexus between individual conduct and organizational benefit.

It is important to underline that Romanian law excludes the state and public authorities from the scope of corporate liability, a distinction consistent with most European systems, where state immunity is generally preserved in the criminal domain (except in cases of functional privatization or mixed entities).

At the European Union level, there is no single codified act governing corporate criminal liability in a harmonized manner across member states. Criminal law remains, as a rule, within the national competence of the Member States, according to the principle of subsidiarity. Nonetheless, the EU has increasingly used criminal law instruments to safeguard its financial

interests, internal market, and core values. Key directives—such as Directive (EU) 2017/1371 on the protection of the Union’s financial interests through criminal law (PIF Directive) and Directive 2008/99/EC on environmental crime—mandate the criminal liability of legal persons for a series of serious offenses, including fraud, corruption, money laundering, and environmental violations.

These instruments do not impose a uniform model for liability attribution, but require that Member States ensure that legal persons can be held liable, either under criminal law proper or under functional equivalents, such as quasi-criminal administrative sanctions. Furthermore, EU institutions, particularly the Court of Justice of the European Union (CJEU), have reinforced the obligation that sanctions imposed on legal persons must be effective, proportionate, and dissuasive, in line with the principles of European criminal policy (Engelhart, 2014); Case C-68/88 *Commission v. Greece*).

Romania’s legislative evolution and adoption of corporate criminal liability thus reflect both an internal acknowledgment of the insufficiency of traditional models in addressing corporate misconduct and an external impetus stemming from its obligations as a Member State of the European Union. Nevertheless, while the legal architecture is now in place, as will be shown in subsequent sections, practical challenges persist in the consistent application, proportional enforcement, and judicial interpretation of CCL provisions.

3. Comparative Legal Framework

The legal landscape of corporate criminal liability (CCL) across Europe is marked by considerable diversity, shaped by each country’s historical, doctrinal, and institutional evolution. While convergence is increasingly evident due to supranational influences—particularly those stemming from European Union directives—the substantive and procedural models vary significantly. This section provides a comparative overview, focusing on prominent Western European systems such as France and the Netherlands, contrasted with the Romanian model, which remains in a phase of transition and consolidation.

3.1 The French Model: A Broad and Structured Approach

France was among the first civil law countries to formally incorporate corporate criminal liability into its penal code. The reform was introduced through Law no. 92-684/1992, and is now codified in Article 121-2 of the French Penal Code, which states *"Les personnes morales, à l'exclusion de l'État, sont responsables pénalement des infractions commises, pour leur compte, par leurs organes ou représentants."*

This provision establishes general criminal liability for all legal persons, with very few exceptions, and applies to all offenses unless expressly excluded by law. A key feature of the French model is its dual attribution mechanism, allowing liability to be triggered not only when a legal representative commits an offense in the interest of the corporation, but also when the act is committed *on behalf* of the entity. This construction provides prosecutors with a flexible tool to respond to various forms of corporate misconduct.

In practice, French courts have not hesitated to impose significant sanctions on corporate entities, including substantial fines, dissolution, publication of the judgment, or exclusion from public contracts. Moreover, France has pioneered the use of compliance programs and negotiated justice instruments, such as the Convention Judiciaire d’Intérêt Public (CJIP), which allows companies to avoid prosecution in exchange for fines and compliance commitments—analogueous to deferred prosecution agreements (DPAs) in the Anglo-American tradition.

3.2 The Dutch Model: Functional and Pragmatic

The Netherlands introduced corporate criminal liability as early as 1976, via Article 51 of the Dutch Criminal Code, which provides that: “*Criminal offenses may be committed by natural persons and legal persons. Where a criminal offense is committed by a legal person, criminal proceedings may be instituted against the legal person, and/or against those who have ordered the offense or who were actually in charge of it.*”

The Dutch approach is functional and broad in scope, allowing for both simultaneous and alternative liability of individuals and corporations. The Dutch judiciary has developed the so-called “Slavenburg doctrine”, named after a landmark case, which permits attribution of criminal acts to legal persons based on criteria such as the factual benefit obtained, the degree of control, and the organizational culture Haijer (2021).

Additionally, the Netherlands is known for its hybrid sanctioning model, which allows for administrative penalties in regulatory domains (e.g., environmental law, financial markets), functioning alongside criminal sanctions. This enhances the state’s capacity to enforce norms efficiently without overburdening the criminal justice system.

3.3 The Romanian Model: Between Formal Adoption and Substantive Hesitation

Romania’s introduction of corporate criminal liability—through Law no. 278/2006 and later consolidated in Article 135 of the 2009 Criminal Code—represents a reactive and externally driven reform, rather than one grounded in doctrinal or institutional pressure for modernization. The provision excludes the state and public authorities, aligning with the European tendency, but includes broad attribution criteria: “*in the realization of the object of activity, in the interest, or in the name of the legal person.*”

Despite this apparent alignment with Western models, the practical application of corporate liability in Romania remains inconsistent, limited, and often symbolic. Courts tend to prioritize individual over collective responsibility, reflecting both a cultural-legal inertia and a lack of institutional specialization (Trandafir ,2023). The number of convictions involving legal persons remains low, and sanctions are frequently modest—predominantly fines at the lower end of the available range. Rarely are severe penalties such as judicial dissolution or prohibitions on public procurement imposed.

A further challenge lies in the judicial interpretation of the legal criteria for attribution. Romanian jurisprudence often hesitates to distinguish clearly between the conduct of the individual perpetrator and the interests of the legal entity, creating ambiguity around the threshold of liability. Unlike in France or the Netherlands, where judicial doctrines have evolved to clarify and expand the scope of corporate liability, Romania lacks settled case law and methodological guidelines for prosecutors and judges.

3.4 Convergence Trends and Divergences

There is growing convergence among EU Member States regarding the recognition of corporate criminal liability, largely due to harmonization obligations imposed by EU law. However, the modes of attribution, types of sanctions, enforcement practices, and procedural guarantees remain divergent. While Western jurisdictions like France and the Netherlands demonstrate mature and functional models, Romania continues to struggle with effective implementation, reflecting a broader gap between legislative norms and enforcement realities.

Moreover, countries such as the UK and Italy have introduced sectoral innovations—e.g., the UK’s *Corporate Manslaughter and Corporate Homicide Act 2007* or Italy’s *231/2001 Legislative Decree*—which link corporate liability directly to compliance programs and

internal control mechanisms. Romania has not yet developed a compliance-based liability model, nor has it institutionalized prosecutorial discretion tools such as deferred prosecution, plea bargaining, or negotiated settlements.

4. The Effectiveness of Sanctions

The effectiveness of corporate criminal liability (CCL) mechanisms cannot be assessed solely by their formal legal recognition; it must also be evaluated in terms of the actual implementation, proportionality, and deterrent value of the sanctions applied. In this regard, European jurisdictions display substantial variance in how penalties against corporate offenders are conceptualized and enforced. While some countries, such as France and the United Kingdom, demonstrate dynamic and context-sensitive sanctioning systems, others—including Romania—continue to struggle with limited judicial engagement and underutilization of available legal instruments.

4.1 The Romanian Framework: Formal Tools, Limited Application

Romania's Criminal Code provides for a range of sanctions applicable to legal persons under Articles 136–137, including:

- Main sanctions: criminal fines and judicial dissolution;
- Complementary sanctions: suspension of activity, closure of establishments, prohibition from participating in public procurement, and publication of the conviction judgment.

Despite this comprehensive legal architecture, empirical data indicate a pattern of leniency and symbolic enforcement. According to national case law studies, criminal fines are the most frequently applied sanction, yet they often remain modest in value, failing to reflect the gravity of the offense or the economic capacity of the corporate entity. More severe measures—such as judicial dissolution or public procurement bans—are rarely imposed, even in cases involving serious financial crimes, fraud, or corruption.

Moreover, the lack of tailored sentencing guidelines, coupled with an insufficient specialization of courts and prosecutors in handling corporate defendants, contributes to the incoherent and inconsistent application of CCL. This undermines not only the deterrent effect but also public confidence in the ability of the criminal justice system to hold powerful economic actors accountable.

4.2 The French Experience: Structured and Symbolic Sanctions

In France, the Penal Code provides a wide array of criminal sanctions for legal persons (Art. 131-37 to 131-49), including fines (which can be multiplied by five compared to individuals), dissolution, compliance obligations, confiscation, exclusion from public tenders, and public display of convictions. Importantly, France has operationalized flexible tools such as the Convention Judiciaire d'Intérêt Public (CJIP), which allows prosecutors to enter into negotiated agreements with companies in exchange for payment of fines and implementation of compliance programs. These instruments have enhanced both punitive and restorative functions of sanctions, offering the state leverage in reforming corporate governance while avoiding lengthy trials.

This model has proven to be not only efficient, but also symbolically powerful, as high-profile cases—such as those involving Airbus, Société Générale, or Lafarge—have attracted media scrutiny and reaffirmed the state's resolve in combating corporate criminality.

4.3 The UK and the Compliance Turn

The United Kingdom has also developed a sophisticated sanctioning system that emphasizes organizational reform and future compliance. Under the Crime and Courts Act 2013, Deferred Prosecution Agreements (DPAs) were introduced, allowing corporate entities to avoid prosecution by admitting wrongdoing, paying substantial financial penalties, and committing to internal reforms. The Serious Fraud Office (SFO) has increasingly used DPAs in complex transnational cases involving corruption and fraud.

In addition, the UK Bribery Act 2010 holds corporations liable for failing to prevent bribery, unless they can demonstrate that adequate procedures were in place—creating a compliance-based defense model. This mechanism has encouraged companies to adopt rigorous internal controls and training programs, thus internalizing preventive measures as a legal obligation.

4.4 Comparative Insights and Romanian Challenges

Comparatively, while France and the UK focus on tailored sanctions and negotiated accountability, Romania still adheres to a punitive yet rigid model, with limited avenues for prosecutorial discretion or restorative justice. Romanian law does not provide for deferred prosecution, negotiated settlements, or compliance-based mitigation, which limits its capacity to both punish and reform corporate offenders.

Furthermore, Romania lacks a coherent policy framework for calculating fines based on turnover, assets, or severity of harm. The absence of such proportionality criteria increases the risk of either under-deterrence (sanctions that are too lenient to matter) or arbitrariness (unpredictable judicial practice).

Additionally, the enforcement infrastructure remains underdeveloped. Specialized prosecutorial units or judicial panels for economic crime involving corporations are rare, and many judges lack the training to handle the complexity of CCL cases involving transnational evidence, financial audits, or organizational culpability.

4.5 Toward a More Effective Sanctioning System

To enhance the effectiveness of corporate sanctions in Romania, several reforms should be considered:

- Introduction of compliance incentives, whereby companies demonstrating internal preventive mechanisms or cooperation with authorities benefit from mitigation.
- Development of sentencing guidelines, linking fines to company size, offense gravity, and profit obtained.
- Institutional specialization, with dedicated units for investigating and adjudicating corporate offenses.
- Legal tools for negotiated justice, such as plea bargains or deferred prosecution, following the French and UK models.
- Mandatory publication of final convictions to reinforce reputational consequences.

5. The Influence of EU Law and Jurisprudence

Although criminal law has traditionally been regarded as a bastion of national sovereignty, the growing need to combat transnational corporate crime has led the European Union to expand its role in shaping national approaches to corporate criminal liability (CCL). While the EU does not impose a uniform model of liability, its legislative instruments and judicial practice increasingly condition the structure and effectiveness of Member States' legal frameworks, including that of Romania.

5.1 The Legislative Influence of EU Directives

Several EU directives—adopted under the Area of Freedom, Security and Justice—have played a central role in requiring Member States to establish legal person liability for specific categories of serious offenses. Among the most influential are:

- Directive (EU) 2017/1371 (*PIF Directive*) on the protection of the Union’s financial interests, which mandates Member States to criminalize fraud, corruption, and money laundering involving EU funds, and explicitly requires that legal persons be held liable and subject to effective, proportionate and dissuasive sanctions.
- Directive 2008/99/EC on the protection of the environment through criminal law, which obliges Member States to ensure that legal entities can be held liable for environmental offenses, whether committed intentionally or through serious negligence.
- Directive 2011/93/EU on combating the sexual exploitation of children, which, despite targeting a different area, also includes provisions requiring the establishment of corporate liability, showing the transversal character of the EU’s expectations in this regard.

These directives typically allow flexibility in implementation, meaning that Member States may choose between criminal, administrative, or hybrid models. However, the obligation to ensure corporate accountability is mandatory, and is accompanied by enforcement requirements concerning sanctions, investigatory tools, and procedural safeguards.

In implementing such directives, Romania has transposed the formal elements—recognizing legal person liability for the targeted offenses—but has often fallen short in ensuring that the resulting sanctions are effectively applied in practice, as discussed in the previous section. Moreover, the absence of a dedicated compliance and enforcement culture places Romania at odds with the more functional models seen in jurisdictions like France, Germany, or the UK. (Milford, 2022)

5.2 The Jurisprudence of the Court of Justice of the European Union (CJEU)

While the CJEU has not explicitly developed a doctrine on corporate criminal liability, its jurisprudence exerts indirect influence by interpreting the principle of effectiveness, the obligation of equivalence, and the requirement of proportionality in sanctioning.

One of the landmark rulings in this context is Case C-68/88 *Commission v. Greece* (1989), where the Court held that Member States must ensure that sanctions—whether criminal or administrative—are sufficiently effective and dissuasive to achieve the objectives of EU law. This principle has since been reiterated in multiple decisions involving environmental law, financial interests, and data protection.

Moreover, the CJEU has repeatedly emphasized that national courts must interpret national law in conformity with EU directives, even in the absence of direct effect (see Case C-105/03 *Pupino*). This obligation of conforming interpretation (*interpretatio conformis*) requires Romanian courts to harmonize the application of Article 135 of the Criminal Code with the spirit and purpose of EU directives requiring corporate accountability.

In effect, Romanian judges are under an obligation to ensure that legal persons can be held criminally liable in practice—not merely in theory—for offenses that fall under EU competence. However, studies show that Romanian jurisprudence still displays hesitation or formalism in engaging with EU interpretative standards, due in part to limited training in EU criminal law and the lack of structured dialogue between national courts and the CJEU (Trandafir, 2023).

5.3 Institutional Developments: EPPO and Cross-Border Enforcement

The European Public Prosecutor's Office (EPPO), operational since 2021, represents another major step toward the Europeanization of criminal enforcement, particularly with regard to crimes affecting the EU's financial interests. As Romania is a participating country, the EPPO can investigate and prosecute corporate entities involved in fraud, embezzlement, and VAT-related offenses with a transnational dimension.

This supranational enforcement mechanism requires Romania to adapt not only its procedural cooperation but also its substantive liability framework, ensuring that corporate defendants can be effectively prosecuted in line with EPPO investigations. The collaboration between national prosecutors and EPPO delegations may also act as a catalyst for more rigorous application of CCL in high-value economic crimes.

5.4 The Path Toward Harmonization

The growing impact of EU legislation and jurisprudence suggests that Member States are moving—albeit unevenly—toward convergence in the core principles of corporate liability. This includes:

- Recognition of organizational culpability beyond individual fault;
- Emphasis on deterrent and proportional sanctions;
- Integration of compliance and internal control mechanisms;
- Development of negotiated procedures (e.g., DPAs or CJIPs);
- Judicial interpretation aligned with EU objectives.

For Romania, this convergence remains a work in progress. The transposition of EU directives has created a formal basis for corporate criminal liability, but the substantive harmonization—in terms of judicial reasoning, prosecutorial strategies, and sanctioning policy—requires sustained efforts. These include capacity building, doctrinal clarification, and greater use of EU interpretive tools by domestic courts.

6. Methodology of research

6.1 Aim and Objectives

The **aim** of this study is to conduct a comparative legal analysis of the evolution and effectiveness of corporate criminal liability in Romanian and European criminal law.

The **objectives** of the study are:

1. To trace the historical development of corporate criminal liability in Romania and the EU.
2. To compare substantive legal provisions and institutional mechanisms in Romania and selected EU member states.
3. To evaluate the proportionality and deterrent capacity of sanctions applied to corporate entities.
4. To identify convergence trends between national and European norms and their practical implications.
5. To assess whether corporate liability regimes meet the objectives of criminal law: prevention, retribution, and reparation.

6.2 Research Questions

1. How has the concept of corporate criminal liability evolved in Romanian criminal law compared to European systems?
2. What are the similarities and differences in the legal frameworks governing CCL in Romania and other EU states?
3. How effective are the sanctions imposed on corporations in deterring corporate crime?
4. To what extent have EU directives and the jurisprudence of the Court of Justice of the European Union influenced national legislation?
5. Does the current Romanian framework comply with European standards on proportionality and legal certainty in corporate liability?

7. Challenges and Outlook

Despite formal alignment with European legal standards, the Romanian model of corporate criminal liability (CCL) continues to face substantial practical and conceptual challenges. These challenges concern not only legislative clarity and institutional capacity, but also the broader legal culture and the mechanisms for judicial and prosecutorial accountability.

7.1 Structural and Institutional Obstacles

One of the primary obstacles in the Romanian context is the limited institutional specialization in investigating and adjudicating offenses committed by legal persons. Prosecutorial bodies often lack both the human resources and the technical expertise to pursue complex economic cases involving corporate structures, particularly when such cases require forensic accounting, cross-border cooperation, or analysis of compliance failures. Similarly, courts are rarely staffed with judges trained in the intricacies of corporate governance, internal control failures, or transnational liability attribution.

Moreover, coordination between administrative, civil, and criminal enforcement authorities remains weak, which results in fragmented accountability and frequent overlap or confusion between sanctioning regimes. The absence of an integrated enforcement strategy weakens the deterrent effect and delays access to justice for victims of corporate harm.

7.2 Doctrinal Ambiguity and Judicial Formalism

At the doctrinal level, the Romanian model is plagued by uncertainties in the attribution mechanisms. Although Article 135 of the Criminal Code provides broad criteria (commission in the name, interest, or within the scope of a legal entity's activity), Romanian courts often apply these provisions restrictively, demanding a direct and manifest benefit for the legal person or treating corporate liability as conditional on prior individual conviction. This narrow interpretation undermines the functional autonomy of corporate criminal liability, which should allow for independent attribution of fault to the legal entity based on organizational failures or structural deficits in governance. (Zazzaro, 2025)

Furthermore, judicial reasoning in CCL cases is often terse and formalistic, with limited reference to European jurisprudence or comparative models. This not only impairs legal predictability but also discourages the development of a coherent and principled body of case law.

7.3 Absence of a Compliance-Based Liability Model

Unlike more mature jurisdictions such as the UK or Italy, Romania has yet to adopt a compliance-centered model of corporate liability, where legal entities are incentivized to

implement internal controls, ethics training, and monitoring systems. The current framework focuses predominantly on punitive sanctions, without offering mitigation for corporate self-reporting, cooperation with authorities, or ex-ante preventive mechanisms.

As a result, companies have little incentive to invest in compliance infrastructure, since the law does not recognize or reward such efforts in prosecutorial or sentencing decisions. This limits both the preventive and restorative dimensions of corporate accountability and sustains a reactive enforcement culture.

7.4 Toward a Functional and Coherent Model: Policy Recommendations

For Romania to transition toward a functional, effective, and EU-aligned corporate liability regime, a series of institutional, legislative, and jurisprudential reforms are necessary:

1. Establish specialized prosecutorial and judicial units for corporate crime, equipped with multidisciplinary teams (e.g., legal, financial, forensic experts).
2. Clarify the attribution doctrine, through legislative commentary or judicial guidelines, distinguishing between the liability of natural and legal persons and allowing for autonomous prosecution of corporate actors.
3. Introduce compliance incentives, such as reduced sanctions or deferred prosecution options for corporations that demonstrate proactive internal controls and cooperate fully with investigations.
4. Develop sentencing guidelines for legal persons, using transparent and proportional criteria (e.g., turnover, damage caused, recidivism, and level of organizational culpability).
5. Enhance judicial training on European standards, corporate structures, and economic crime typologies, including through cooperation with EU agencies and professional associations.
6. Encourage public reporting and transparency, by making final decisions publicly accessible and fostering media engagement in high-profile corporate cases.

7.5 Final Remarks

The evolution of corporate criminal liability in Romania reflects a broader continental transition from formal denial to conditional recognition and now, increasingly, to demands for functional effectiveness. However, this transition remains incomplete. While Romania has succeeded in constructing a legal scaffold for corporate liability under the influence of EU law, it has yet to fill it with institutional practice, doctrinal depth, and societal trust.

The way forward requires not just technical adjustments, but a reconfiguration of the legal and prosecutorial culture—toward one that acknowledges the systemic risks posed by corporate actors and treats legal persons not as abstract fictions, but as organizational structures capable of rational planning, economic benefit, and social harm. In the absence of such a shift, the promise of corporate criminal liability will remain largely symbolic—a formal institution without transformative force.

8. Conclusion and Discussion

The study of corporate criminal liability (CCL) in Romanian and European criminal law reveals a dynamic but uneven legal landscape—one in which formal recognition does not always translate into effective implementation. Romania's adoption of corporate liability provisions through Article 135 of the Criminal Code marked a significant step in aligning with modern penal philosophies and fulfilling European integration requirements. However, the persistent

gaps between law in books and law in action raise serious concerns about the actual deterrent and normative functions of the current framework.

The comparative analysis with countries such as France and the Netherlands shows that Romania has yet to develop the institutional, procedural, and doctrinal infrastructure necessary to support a robust system of corporate accountability. In Western Europe, CCL has evolved into a multidimensional legal tool—serving not only punitive but also preventive and restorative goals, often through compliance incentives, negotiated justice mechanisms, and specialized enforcement strategies.

In contrast, the Romanian system remains punitive in form but symbolic in application, with courts applying minimal sanctions, avoiding structural penalties, and failing to articulate coherent attribution doctrines. Judicial practice continues to focus primarily on individual liability, and rarely ventures into the complexities of organizational fault, culture of compliance, or risk governance.

From a normative perspective, the European Union's influence—through directives and the interpretative authority of the CJEU—has been instrumental in shaping the contours of national CCL regimes. Yet, Romania's implementation of these obligations remains formalistic, with limited impact on prosecutorial strategies, sentencing practices, or corporate behavior. The absence of case law referencing EU standards and the limited engagement with comparative jurisprudence hinder Romania's progression toward a harmonized and functional model.

The discussion emerging from these findings suggests that an effective CCL regime must meet several interdependent criteria:

- **Legal clarity**, ensuring that corporations understand the circumstances under which they can be held liable;
- **Institutional capacity**, allowing prosecutors and judges to investigate, interpret, and adjudicate CCL cases with rigor and consistency;
- **Procedural flexibility**, through mechanisms such as deferred prosecution agreements or compliance-based mitigation;
- **Doctrinal coherence**, with attribution models reflecting the organizational realities of modern corporate structures;
- **Policy integration**, aligning CCL with civil, administrative, and regulatory sanctions to avoid overlap or impunity.

In the Romanian context, the road toward such a system requires both legal reform and a cultural transformation within legal institutions. Prosecutors, judges, and legal practitioners must be encouraged and equipped to treat corporate defendants as active subjects of criminal liability, not as procedural anomalies or symbolic targets. At the same time, corporations must be incentivized to adopt compliance programs, internal audits, and ethical codes—not merely as corporate social responsibility, but as strategic legal safeguards.

Looking ahead, the development of corporate criminal liability in Romania will depend on its capacity to internalize European principles, learn from comparative models, and foster a jurisprudence of accountability that transcends formalism. In doing so, Romania can move beyond a reactive and punitive conception of corporate crime toward a forward-looking model that prevents harm, rewards integrity, and restores trust in the criminal justice system.

8.1. Theoretical Implications

From a theoretical perspective, this study contributes to the ongoing debate on the foundations and justification of corporate criminal liability in both national and European contexts. The comparative approach highlights how different legal traditions conceptualize the attribution of

criminal responsibility to collective entities—whether through the identification doctrine, vicarious liability, or autonomous organizational fault. By doing so, the research enriches the theoretical understanding of how criminal law evolves to address the structural and functional realities of modern corporations.

The analysis also underscores the doctrinal tension between the principles of individual culpability, deeply rooted in classical criminal law, and the necessity of adapting liability frameworks to entities whose decision-making processes are collective and diffused. This tension raises important questions about the legitimacy of sanctioning corporations and the extent to which corporate liability can coexist with the protection of fundamental criminal law guarantees.

At the European level, the findings provide valuable insights into the harmonizing role of EU legislation and CJEU jurisprudence in shaping a coherent model of corporate liability across Member States. This fosters a theoretical reflection on the gradual emergence of a *European penal policy* toward corporations, characterized by an emphasis on proportionality, effectiveness, and preventive compliance.

Finally, by comparing the effectiveness of different sanctioning regimes, the study advances the theoretical discourse on the purpose of corporate punishment: whether its primary function is retributive, deterrent, rehabilitative, or a combination thereof. This debate informs broader criminological and legal scholarship on the evolving balance between punitive and preventive rationales in contemporary criminal law.

8.2 Practical Implications

The findings of this study underline the need for legislators and judicial authorities to further refine the mechanisms of corporate criminal liability so as to ensure both deterrence and proportionality. In practice, the comparative analysis demonstrates that sanctions against legal entities are most effective when they are not limited to pecuniary penalties but are complemented by measures such as corporate probation, compliance obligations, exclusion from public procurement, or dissolution in cases of severe misconduct.

For Romania, the implications are particularly relevant given the still-limited jurisprudence on the liability of legal persons. Courts and prosecutors must consistently apply the existing legal provisions, ensuring that sanctions are not symbolic but tailored to the gravity of the offense, the size of the corporation, and the degree of organizational fault. Judicial practice should also prioritize non-monetary corrective measures that stimulate internal reforms, such as the implementation of compliance programs, rather than relying exclusively on fines.

At the European level, the study highlights the importance of harmonization through EU directives and the jurisprudence of the Court of Justice of the European Union, which encourage convergence in sanctioning practices across Member States. In this respect, Romanian courts and legislators can benefit from comparative insights by aligning national practice with European standards of proportionality, effectiveness, and preventive function.

Practically, the research suggests that law-makers, policy-makers, and enforcement agencies should strengthen cooperation at the transnational level, including through mutual recognition of sanctions against corporations and coordinated investigative strategies in cross-border cases. Finally, the results stress the necessity of balancing punitive measures with incentives for corporations to adopt compliance and ethics programs, ensuring that sanctions contribute not only to punishment but also to genuine organizational transformation.

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