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LIABILITY OF LEGAL ENTITIES FOR THE ABUSE OF EU FUNDS IN BULGARIA: A COMPARISON WITH OTHER EU MEMBER STATES
The opinions and views expressed in this study reflect solely the author's views and the Commission is not responsible for the way in which the information in the study could be used.

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<tr>
<td>AdmC</td>
<td>Administrative Court</td>
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<tr>
<td>AAAVSA</td>
<td>Act to Amend the Administrative Violations and Sanctions Act</td>
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<td>AVSA</td>
<td>Administrative Violations and Sanctions Act</td>
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<tr>
<td>CC</td>
<td>Criminal Code</td>
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<td>CPC</td>
<td>Criminal Procedure Code</td>
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<td>EU</td>
<td>European Union</td>
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<td>IAFA</td>
<td>Illegal Assets Forfeiture Act</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>OLAF</td>
<td>European Anti-Fraud Office</td>
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<td>SG</td>
<td>State Gazette</td>
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<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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According to the 2015 Report of the European Anti-Fraud Office (OLAF)\(^1\), Bulgaria ranks second in the European Union (EU) in terms of the number of investigations into the use of EU Funds for the same year. Romania tops the ranking; Hungary comes in third.

The detected fraudulent and non-fraudulent irregularities in Bulgaria for the period 2013 – 2015 total 513 which impacted on 1.5% of the budget of the programmes. In 34 of these cases, OLAF issued recommendations. Two times more irregularities were detected in larger Member States, for example Germany and France, but their financial impact was smaller – less than 0.5 – 1% of the programmes.

According to the same report for 2016\(^2\), Bulgaria was fourth in the European Union (after Romania, Poland and Hungary) in terms of the number of OLAF investigations into the use of EU funds for the same year.

The detected fraudulent and non-fraudulent irregularities related to the Structural Funds and agriculture in Bulgaria for the period 2013 – 2016 total 720 which impacted on 1.74% of the budget of the programmes. In 38 cases of them, OLAF issued recommendations. There was a higher percentage of irregularities found in Slovakia (13.14%), Romania (5.65%) and the Czech Republic (5.49%). The state with the lowest financial impact of irregularities in the use of EU funds was Finland. Bulgaria’s comparative ranking in the 2016 report is better than the 2015 result but, still, there is a lot to be done.

In response to those findings, a large number of inspections of the abuse of EU funds were initiated and some of them evolved into pre-trial proceedings against the responsible individuals. The summarised data for all types of crimes affecting the financial interests of the EU in which the Bulgarian Prosecutor's Office exercises guidance and supervision for the period 2010 – 2015 are as follows\(^3\):

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Are these measures sufficient as an adequate response to the offences? Indisputably, the answer to the question should be “no” because the legal entities which benefited remain outside the scope of the sanctions imposed in the criminal cases. Sentencing the responsible individual is also not a guarantee that the embezzled amounts would be returned.

Therefore, it is critical to take measures against the legal entities which have gained a benefit since the abuse of EU funds is a specific instance of corporate crime.

Guided by that understanding as well as by the commitments under a number of international treaties, as early as 2005 the Bulgarian legislator took steps to adopt provisions to impose liability of legal entities for crimes, including where the object is EU funds, in the Administrative Violations and Sanctions Act (AVSA). However, for almost a decade the concept has not yielded results. Next came criticism levelled by the Organisation for Economic Cooperation and Development (OECD) and the parties to the United Nations Convention against Corruption (UNCAC) and the concept was significantly boosted with large-scale legislative amendments at the end of 2015.

Still, there is just a relatively small number of prosecution actions to initiate proceedings against legal entities which have gained or would stand to gain a

4 The review of the case-law under the project shows that a total of 62 cases were initiated upon motivated proposals of the Prosecutor’s Office for the entire period of study. No case of a granted request for a crime related to the abuse of EU funds was found.
benefit from fraudulent irregularities\textsuperscript{4}. The concept continues to be neglected by the Prosecutor’s Office in Bulgaria.

For the sake of comparison, according to the OECD, in the period 2010 – 2013 in Estonia (where the concept was introduced as early as 2002), 239 convictions were issued for legal entities out of a total of 246 court acts; in Lithuania (where the concept was also introduced in 2002) – 157 convictions out of a total of 178 sentences; and, in Slovenia (where the concept was introduced in 2008) – 63 out of a total of 82 sentences\textsuperscript{5}.

Why is this so? Are the mechanisms laid down in the Bulgarian legislation to prevent and combat the abuse of EU funds by corporations adequate? Where do the deficiencies hampering the application of the law and the work of the institutions lie – in the regulatory framework or in law enforcement? How does the regulatory framework for corporate liability in Bulgaria compare to that in other EU Member States, especially those with the lowest financial impact of the irregularities found in the use of EU funds? And, of course, what measures should be taken to improve the regulatory framework in that category of cases?

These are the questions posed in the study conducted by experts with the Association Program for the Development of the Judicial System (PDJS) on the topic of “Liability of Legal Entities for the Abuse of EU Funds in Bulgaria: A Comparison with Other EU Member States”. The project is implemented by the Association Program for the Development of the Judicial System (PDJS) with the financial support of the Hercule III Programme of the European Anti-Fraud Office (OLAF).

ABOUT THE STUDY

I. Subject matter of the study

The institutional response to abuse of any kind, including of EU funds, may be advance (prevention of violations), ongoing (control of violations) and follow-up (sanctions when violations have already been committed). The subject matter of this study is the sanction mechanisms set out in the existing legislation of the country to combat the abuse of EU funds. On their part, the sanction mechanisms to combat the abuse of EU funds laid down in Bulgaria may be divided into two large subgroups in view of the nature of the statutory act where they are provided for and the content of the sanctions envisaged, namely:

• Criminal mechanisms and
• Non-criminal mechanisms.

The criminal mechanisms are the most serious sanction for undue infringements on EU funds. They are only used in the event of crimes which could be classified into several groups depending on different criteria.

“Thus, depending on whether the incriminated act impacts directly on the public relations enjoying criminal legal protection or it is only conducive to another infringement on the object of protection, in which sense any infringement on the financial interests of the Community is indirect, they may be:

Strict crimes against EU funds, including qualified embezzlement (under Article 202, para 2, item 3 CC), qualified documentary fraud (under Article 212, para 3 CC), provision of untrue information in order to procure means from funds belonging to the EU (under Article 248a, para 2 and 3 CC), undue allocation of means from funds belonging to the EU (under Article 248a, para 4 CC) and non-compliant use of means received from funds belonging to the EU (under Article 254b CC).

• Non-strict crimes against EU funds, including certain documentary crimes (under Article 308 – 319 CC), certain crimes in office (under Article 282 – 285 CC), certain other crimes against the financial and tax system (under Article 253 CC, under Article 255 – 256 CC) and others where the perpetration does not depend so much on the subject of the crime
(which, in the case of true crime, is always means belonging to the EU or provided by the EU to the Bulgarian State) but on the method chosen by the perpetrator to carry out their criminal intention.

- Depending on whether infringements are committed by persons engaged in the authorities tasked with the function to allocate and control the use of EU funds or by beneficiaries or third parties, the infringements may be divided into:
  - Crimes against EU funds affecting the social relations from the inside, including those under Article 202, para 2, item 3 CC, under Article 248a, para 4 CC, under Article 254b, para 2 CC, under Article 282 – 285 CC, under Article 310 CC, under Article 311 CC and certain others, and
  - Crimes against EU funds affecting the social relations from the outside, including those under Article 212, para 3 CC, Article 248a, para 2 and para 3 CC, under Article 254b, para 1 CC, under Article 308 – 309 CC and certain others.

Depending on whether they affect the social relations within which the accurate allocation of EU funds is guaranteed or the accurate use of such funds, the criminal infringements may be:

- Crimes against the accurate allocation of EU funds, including those under Article 212, para 3 CC, under Article 248a, para 3 CC, under Article 282 – 285 CC and others, and
- Crimes against the accurate use of EU funds, including those under Article 202, para 3 CC, under Article 254b CC and others”6.

However, the said provisions only apply to individuals. As already pointed out, other non-criminal measures are as equally important to countering the abuse of EU funds as the criminal legal means:

- Forfeiture of the object of crime under Article 53, para 1, letter b and para 2, letter a CC;
- Forfeiture of what has been gained as a result of the crime or award of its cash equivalent under Article 53, para 2, letter b CC;
- Forfeiture of illegal assets (under the IAFA);

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• Forfeiture of a benefit or its cash equivalent from a legal entity which has gained or would gain a benefit as a result of certain forms of criminal activities under Article 83a, para 4 AVSA (new);
• Imposing a property sanction on a legal entity which has gained or would gain a benefit as a result of certain forms of criminal activities under Article 83a, para 1 AVSA (new).

The subject matter of the analysis in this project covers the last two groups of measures applicable solely to legal entities. They are the essence of the legal concept of corporate liability for crimes in Bulgaria. Subject of analysis are also similar legal concepts in other EU Member States.

II. Methodology

To implement the project, the PDJS team has performed the following:
1. Analysis of the existing Bulgarian legislation in the area of abuse of EU funds – Criminal Code, Administrative Violations and Sanctions Act, Illegal Assets Forfeiture Act;
2. Analysis of the complete case-law issued in Bulgaria since 2005 in relation to the application of the legal concept of the liability of legal entities for crimes;
3. Study of the legislation of Romania, Slovenia, the United Kingdom and Ireland in the area of corporate liability for crimes;
4. Study of the theoretical research in the area of corporate liability for crimes in Bulgaria and other EU Member States;
5. Familiarisation with analyses, research and papers of OL AF and OECD in the area of corporate criminal liability and abuse of EU funds;
6. Twenty in-depth interviews with lawyers in different areas of work in the country and an online survey with Bulgarian and European experts. The respondents for the in-depth interviews were asked two main groups of questions: about the knowledge and application of the AVSA provisions and about the concept of the liability of legal entities for crimes.

7 The APIS information system was used for the study of the case-law. If certain cases have not been included in the system, it is possible that they may have been left outside the scope of the study.
CHAPTER ONE.
LIABILITY OF LEGAL ENTITIES IN THE EVENT OF ABUSE OF EU FUNDS IN BULGARIA – LEGISLATIVE FRAMEWORK AND LAW ENFORCEMENT

Bulgaria provided for liability of legal entities for crimes for the first time in 2005– with the entry into force of the Act to Amend the Administrative Violations and Sanctions Act (AAAVSA), promulgated, SG, issue 79 of 2005 which set out the provisions of Article 83a et seq.

The legislative initiative was taken in performance of our country’s commitments to introduce corporate liability for crimes in view of Article 3 of the Second Protocol of the EU Convention on the Protection of the European Communities’ Financial Interests (of 1997), Article 2 and 3 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (of 1997) and Article 26 of the UN Convention against Corruption (of 2003).

Bulgaria did not adopt the doctrine of criminal liability of legal entities and other citizens’ associations, as the case is in many countries, because, under the Bulgarian legal theory, criminal liability shall be borne solely for a crime, or, in other words, for an unlawful and punishable act posing a public threat and carried out with guilt; such an act may only be carried out by an individual. This has led to the approach that the liability of the legal entities which have gained or stand to gain a benefit as a result of a crime be laid down as administrative. Criticism is levelled at this situation to this day. The results of the survey are also indicative of this.
Along with the criticism of the concept to introduce administrative criminal rather than criminal liability for the legal entities which have gained a benefit as a result of crime, criticism is also levelled with respect to the systemic place in the present provisions (in the AVSA along with the liability of individuals and legal entities for administrative violations). Arguments are expounded that it is a law providing for the administrative violations and the sanctions for them, together with the related procedural rules, and it is not appropriate for it to contain provisions setting out liability for crimes. Indeed, the AVSA only provides for the liability of legal entities in the event of non-performance of their obligations to the state or a municipality in the performance of their activities which, in its essence, is also administrative criminal liability but this is insufficient to entail the need to provide for each type of liability of legal entities in one statutory act. Other options are under discussion too, namely provisions for the liability of legal entities in the criminal law (as is the case in Romania) or in a separate statutory act (as is the case in Slovenia, for example). The respondents in the survey are divided in their opinions about where the provisions in this area should lie.
The subject of analysis in this study is the current content of the legal concept following the reform with the AAVSA, promulgated, SG, issue 81 of 2015, in force as of 21 November 2015, undertaken to facilitate its practical application and respond to the recommendations made for the Republic of Bulgaria in the report under Phase 3 of the OECD Working Group on Combating Bribery of Foreign Public Officials and as a result of the review of the Bulgarian legislation for compliance with UNCAC⁸.

⁸ The recommendations in the OECD report are to: set clear rules for the competent court in the cases against legal entities; allow for the initiation of proceedings against a legal entity, regardless of the grounds on which the proceedings against an individual perpetrator were terminated or may not be initiated, or may not proceed; increase the maximum sanction applicable to the liability of legal entities in the cases where the benefit obtained by the legal entity is non-property in nature or when the value of the benefit may not be established; provide for an option of forfeiture not only of the direct but also of the indirect benefits as a result of crime.

In relation to the UNCAC requirements in the area of law enforcement, a recommendation is made that our country examine the possibility to increase the amount of cash sanctions against legal entities with benefits as a result of bribery of foreign public officials of non-property nature or when it cannot be established.
I. Prerequisites for the liability of legal entities for a crime

The entry into force of the 2015 AVSA amendments expanded significantly the scope of persons subject to a property sanction under that Act. Currently, these are all legal entities with a registered office on the territory of Bulgaria regardless of the place of the crime they gained or could gain a benefit from as well as those which do not have a registered office on the territory of the country if they gained or could gain a benefit from a crime committed in the country. The perpetrator's nationality is irrelevant.

Figure 3: Legal entities subject to sanctions

![Diagram showing legal entities subject to sanctions](image)

The scope of the provision excludes the state, government and local self-government authorities as well as the international organisations (as is the case in most EU Member States). The scope of the provision also excludes sole traders who gained or could gain a benefit from crime because these are individuals accorded a special capacity to be able to take part in transactions.

The substantive legal prerequisites to impose pecuniary liability on legal entities are four, namely: a crime committed under any of the cases set out in Article 83a, para 1 AVSA; the perpetrator of the crime must be related to the legal entity in any of the ways listed in the same legislative text; the legal entity gained or could gain a direct or indirect benefit from the crime; there is a causal relation between the crime and the benefit to the legal entity.

9 If, however, an independent legal entity was set up with a capital held by the state, a municipality or an international organisation, there is no problem to seek the liability of that entity under the said provision if the entity gained or could gain a benefit from a crime.
Not every crime laid down in the Special Part of the Criminal Code entails the liability of legal entities. Such are only the crimes listed in Article 83a, para 1 AVSA and they include all strict crimes against EU funds. Such a model has been adopted in most European states.

The scope of crime entailing liability of the legal entities which gained benefits bears criticism. The respondents to interviews indicate that the catalogue of crimes under Article 83a, para 1 AVSA includes crimes which may not, even theoretically, lead to a benefit for the legal entity (for example, rape under Article 152 CC), while, at the same time, omits other crimes which could result in an undue benefit for legal entities (for example, certain documentary crimes). There is also an opinion that it might be more appropriate for legal entities to be liable if they gained a benefit from any crime.

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10 These are the crimes under Article 108a, 109, 110 (preparations for terrorism), 142 – 143a, Article 152, para 3, item 4, Article 153, 154a, 155, 155a, 156, 158a, 159 – 159d, Article 162, para 1 and 2, Article 164, para 1, Article 172a – 174, 209 – 212a, 213a, 214, 215, 225c, 227, para. 1 – 5, 242, 243, 244, 244a, 246, para 3, 248a, 250, 252, 253, 254b, 255, 255a, 255b, 256, 278c – 278f, 280, 281, 282, 283, 301 – 307, Article 307b, 307c, 307d, Article 308, para 3, Article 319a – 319e, 320 – 321a, 327, 352, 352a, 353b – 353f, 354a – 354c, 356k and 419a of the Criminal Code and all crimes committed as ordered by or in performance of a decision of an organised criminal group.
Under the current provisions, a legal entity which gained a benefit is liable only if the act is a crime under the Bulgarian CC. The pecuniary liability of a legal entity may also be sought when the act stopped at the stage of attempt but not when solely preparations were made unless the punishable preparation is among the crimes expressly listed in the provision of Article 83a, para 1 AVSA (for example, preparation for terrorism).

The possible perpetrator of a crime entailing the liability of a legal entities is made up of four categories: 1. a person empowered to form the will of the legal entity; 2. a person representing the legal entity; 3. a person elected to a control or supervisory authority of the legal entity, or 4. a worker of employee assigned by the legal entity to do a specific job when the crime was committed during or in relation to the performance of the job. These categories of persons are to bear criminal liability under the Bulgarian CC.

There is no obstacle to imposing liability on a corporation when the persons from the first three categories are only aiders and abettors in the crime. However, this is impossible when the worker or employee who was assigned a job was an aider and abettor to the crime. It should be recommended to streamline the legislation by providing for its applicability regardless of the criminal legal relevant capacity of the guilty individual in committing the crime.

The law provides for a property sanction regardless of whether criminal liability has been imposed on the participants in the criminal act. In this sense, it is possible for criminal liability to have been imposed on these individuals but this is not obligatory. A legal entity is liable if it gained a benefit or could gain
a benefit from a crime even if the identity of the responsible individual was not established or there is an obstacle to imposing criminal liability, for example if the statute of limitation expired.

The law provides for two types of sanctions for the legal entities which gained a benefit or could gain a benefit from a crime: a property sanction and forfeiture of the benefit gained from the crime.

The latest AVSA amendments increased significantly the amount of the sanction imposed on legal entities when the benefit is of non-property nature or the amount of the benefit cannot be established – up to BGN 1,000,000\(^1\). This eliminated the difference in the sanction depending on whether the benefit gained by the legal entity is of a property or non-property nature\(^2\).

The law, however, does not resolve the issue in what way to individualise the amount of the property sanction. A satisfactory answer has not been found in the case-law either, with courts most often indicating that the amount of the sanction takes into account the public danger posed by the crime\(^3\).

Such provisions are necessary to respond to the question how to individualise the sanction if the legal entity gained both a property and non-property benefit from the crime or both a direct and non-direct benefit from the crime and especially when the amount of the benefit cannot be established or when there was only a possibility for the entity to gain a benefit which was not realised. It should be recommended that the legislator fill in the legislative gap as soon as possible.

The legislations of other EU Member States provide in detail for the matter. In this regard, it is worth looking at the provisions in Slovenia; pursuant to them, the amount of the property sanction is differentiated based on the punishment laid down for the crime committed.

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\(^{1}\) Until the AAAVSA amendments, promulgated, SG, issue 81 of 2015, the amount of the sanction when the benefit was of a non-property nature or its amount could not be established was from BGN 5,000 to BGN 100,000.

\(^{2}\) This also responds to the recommendation about the application of the UNCAN provisions and the criticism of the European Commission in enquiries to Bulgaria No. 5658/13/JUST, 5626/13/JUST, and 5642/13/JUST.

\(^{3}\) See, for example, the judgment in administrative case No. 141/2011 of the Razgrad Administrative Court and the judgment in administrative case No. 955/2012 of the Pleven Administrative Court.
The study finds that a large part of the respondents consider the imposing of a property sanction on the legal entity which gained a benefit insufficiently effective, mostly due to the difficulties in the process of collecting the amounts awarded. In this regard, the introduction of alternative or alternative cumulative sanctions could be considered, as is the case in Slovenia and Romania, for example, together with the property sanction. Such could be the obligation to compensate for/reimburse damages, promulgation of the court act issued, temporary restriction of the rights of the legal entity, removal of tax relief, suspension or revocation of permits, licences or concessions related to the violation, ban on taking part in public procurement, prohibition on advertising goods and services, closing down or branches or premises, and the like. The answers of the online survey respondents are in the same vein too.

Figure 6: Setting aside the present provisions, what types of punishments should be imposed on legal entities when they gained benefits from crimes?

As per Article 83a, para 5 AVSA, the direct or indirect benefit gained by the legal entity from the crime under para 1 is forfeited if it is not subject to return or restoration, or seizing under the CC. When the object or property that is the subject of the crime is missing or alienated, its cash equivalent is awarded (Article 83a, para 5 AVSA).

A significant achievement of the legislator from 2015 is the definition of the concepts of a “direct” and “indirect” benefit from the crime. Pursuant to § 1, items 2 and 3 AVSA, a “direct benefit” is any advantageous change in the legal sphere of the legal entity coming about as an immediate consequence of the crime. An “indirect benefit” is: a) what was gained as a result of disposing of
the object of the crime; b) the item or property acquired through an operation or transaction in the direct benefit of the crime; c) the item into which the direct benefit of the crime was transformed.

Figure 7: Types of benefits from the crime

At the same time, it merits note that forfeiture of different property as a sanction for crimes is laid down on other laws as well, in particular the Criminal Code and the Illegal Assets Forfeiture Act. This makes it necessary to regulate the relationship between the legal concepts to avoid double sanctioning of a legal entity for the same violation.

A deficiency of the provisions for the corporate liability for crimes is the lack of explicit provisions for the issue whether the liability of legal entities elapses as per statute of limitation. This has led to different interpretations in the case-law. Some lawyers take that the concept of the statute of limitation is not applicable to legal entities precisely on the account of the lack of provisions for this; others take that the liability of legal entities expires upon the elapse of terms which are equal to those set out for the individuals bearing criminal liability; a third group take that the statute terms for the liability of legal entities for administrative sanctions will apply. To avoid such contradictory interpretations, it is necessary to provide for the matter in law.

Another issue identified by the study is the difficulty to collect the property sanctions imposed on legal entities. The respondents say that the representatives of legal entities brought to court often dispose of the property in such a way that, at the time of entry into force of the judgments, the companies do not
have assets subject to forced enforcement or they are “hollow” companies from the start having no property of their own. Action might be taken to strengthen the activity of state prosecution in imposing interim measures in the course of proceedings and to provide for a ban on entry of changes in the files of legal entities after a claim has been filed with the court.

In this regard, it is appropriate to provide explicitly for the legal consequences in the event of winding up, merger, acquisition, separation of a legal entity after the act but before a sanction is imposed, as is the case in Slovenia and Romania.

II. Proceedings to realise the liability of legal entities for a crime

The entry into force of AAAVSA in 2015 introduced a qualitative reform of the proceedings to realise the liability of legal entities for crimes. An effective mechanism was set for the proceedings under Article 83а et seq. AVSA regardless of the initiation, flow and completion of the criminal proceedings against the guilty individual14.

Until the entry into force of the Amendment Act, the proceedings against legal entities which gained benefits could develop and end at the trial stage only after the entry into force of a conviction or judgment under Article 124, para 5 of the Civil Procedure Code which hampered, to a great extent, the effective application of the concept since its introduction in 2005 until 2015.

The amendments to the procedural administrative criminal law are in three areas: regarding the competence of the courts tasked to hear this category of cases; regarding the prerequisites to initiate proceedings under Article 83а AVSA; and regarding the proceedings before the courts.

The amendments provide that the first instance in such cases is the district court as per the registered office of the legal entity and the appellate instance – the appellate court in the area where the district court which issued the

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14 It was in this direction that some of the recommendations in the report under Phase 3 of the OECD working group on combating bribery of foreign officials were aimed. More specifically, recommendations were made to set clear rules for the competent court in the cases against legal entities; allow for the initiation of proceedings against a legal entity, regardless of the grounds on which the proceedings against an individual perpetrator were terminated or may not be initiated, or may not proceed.
first-instance court act is located\textsuperscript{15}. For legal entities which do not have a registered office on the territory of the Republic of Bulgaria but bear administrative criminal liability under Article 83a, para 2 AVSA, competent to hear the case as a first instance is the Sofia City Court.

The amendment, as regards the competence of the general court in this category of cases is accepted with satisfaction by the practicing lawyers because it emphasises the link between the criminal proceedings against the guilty individual and the proceedings under Article 83a AVSA against the legal entity. Thus, competent to rule on whether there are prerequisites to realise the liability of the legal entity is the court which is competent to hear the case about the crime entailing the liability as a legal fact.

There are, however, diverse opinions about the territorial competence of the courts. In particular, some of the respondents are of the opinion that it is more appropriate for the case to be heard by the court as per the place of the criminal act as a first instance and not by the court as per the registered office of the legal entity because the latter may be changed, including with a view to delaying the trial. Along with this, a territorial competence as per the place of the criminal act would facilitate the process and reduce the costs for participation in the administrative criminal proceedings of the prosecutor monitoring the pre-trial proceedings for the crime. This is also the prosecutor who is competent to file a proposal with the court for a property sanction to be imposed on the legal entity.

An essential amendment to the regime of imposing liability on legal entities for crimes is the expansion of the catalogue of grounds for the respective prosecutor to prepare a proposal for a property sanction to be imposed on the legal entity which gained a benefit\textsuperscript{16}.

\textsuperscript{15} Until the entry into force of the said AAA VSA of 2015, competent to hear the cases as a first instance were the administrative courts and the appellate instance was the Supreme Administrative Court.

\textsuperscript{16} Until the entry into force of AAA VSA, promulgated, SG, issue 81 of 2015, there were provisions for the proceedings under Article 83a to be initiated upon a motivated proposal of the respective prosecutor to the district court:

1. After the submission of the indictment, or
2. When the criminal proceedings cannot be initiated or the ones initiated were terminated on the grounds that:
   a) The perpetrator does not bear criminal liability on the account of pardon;
   b) The criminal liability expired on the account of the expiration of the statute of limitation;
   c) The perpetrator is deceased;
   d) After committing the crime, the perpetrator fell into a state of permanent mental disorder making legal responsibility impossible (see wording, SG, issue 79 of 2005).
At present, prosecutors may exercise their powers both after the submission of an indictment against the respective individual and after the submission of a motivated act proposing that the perpetrator be exempted from criminal liability through the imposition of an administrative sanction under Article 375 et seq. CPC and a proposal for approval of a settlement to resolve the case under Article 381 et seq. CPC. According to the amendment, prosecutor may exercise their powers under Article 83b, para 1 CC also when, in cases of a public and private nature, there is no complaint from the victim to the prosecutor as an obligatory prerequisite to initiate the proceedings. Prosecutors may now initiate proceedings also when a minor perpetrator – worker of employee of the legal entity – is exempt from criminal liability through educational measures under Article 61 CC. There are also provisions for prosecutors to

17 Until the entry into force of the Amendment Act, the prosecutor could submit a proposal under Article 83b, para 1, item 2 AVSA when the proceedings against the respective individual could not be initiated or were terminated on the account that the perpetrator did not bear criminal liability due to pardon, their criminal liability expired due to the elapse of the statute of limitation or the perpetrator's death or their lasting mental disorder making legal responsibility impossible.
exercise their powers under Article 83b, para 1 AVSA when a transfer of the criminal proceedings to another state is allowed under Article 479 et seq. CPC.

According to the motivation of the Bill, “this, in practice, ensures the possibility to initiate proceedings under Chapter IV AVSA in all cases when the prerequisites under Article 83а, para 1 AVSA are in place, regardless of the existence of a circumstance hampering the initiation or entailing the termination of the criminal proceedings against the responsible individual.”

For the first time, AAAVSA made it possible to initiate proceedings to realise the liability of a legal entity which gained a benefit if the criminal proceedings against the individual were suspended on account of any the grounds laid down in the law. A proposal under AVSA may not be heard if it is prepared in criminal proceedings which are suspended because the perpetrator has not been found (under Article 243, para 1, item 2 CPC) and if it is impossible to question the sole eyewitness under Article 243, para 1, item 3 CPC if this is the only reason to suspend the proceedings.

There are express provisions that grounds to initiate proceedings against the legal entity may also be a judgment under Article 124, para 5 of the Civil Procedure Code which has entered into force whereby a criminal circumstance is established. This is also the only case in which the prosecutor is empowered to submit a proposal to impose property liability on the respective legal entity if the criminal proceedings are suspended under Article 244, para 1, item 2 CPC but only if the judgment of the civil court shows the relation of the particular individual with the legal entity and the causal relation between their act and the actual or potential benefit.

If the civil court to which a claim under Article 124, para 5 CPC was filed rules by a judgment which has entered into force rejecting the claim to establish a criminal circumstance, the prosecutor is empowered to check the circumstances based on which the claim was made and, if the prosecutor finds indications of a crime in the course of the check, to file a proposal under

18 See the motivation to the Bill to Amend the AVSA.
19 According to the said provision, “A claim to establish a criminal act of importance to a civil relation or revoke a judgment which has entered into force shall be allowed in the cases where the criminal prosecution may not be started or terminated on any of the grounds under Article 24, para 1, items 2 – 5 or suspended on any of the grounds under Article 25, item 2 or Article 26 of the Criminal Procedure Code and in the cases where the perpetrator has not been found.”
Article 83b, para 1, item 2 AVSA and not Article 83b, para 1, item 4 AVSA.

This reform has not been accepted unambiguously. There is still a high percentage of practicing lawyers who are pessimistic about the application of the concept under Article 83а AVSA in pending criminal proceedings. Some prefer the model of liability of legal entities before the changes. There is also a view that the liability of the responsible individual and of the legal entity which gained a benefit should be sought and realised in unified proceedings. At this stage, however, this position is not accepted by the legislator. The results of the survey are also indicative of the differences in opinion on this matter.

Figure 9: Setting aside the present provisions, in your opinion, when should the proceedings to impose liability on a legal entity start after they gained benefits from a crime?

Ambiguities in practice are also caused by the question what evidence the prosecutor should append upon submission of the motivated request to the court, i.e. is it necessary to append a copy of all materials in the criminal case or is it sufficient to present to the court only those of them which are relevant to the facts and circumstances subject to proving. At present, the case-law in this regard is diverse with some requiring the whole criminal case and others – a much smaller scope of materials.

The 2015 amendments introduced qualitative reforms in the trial in a case too.

The admissibility proceedings were provided for the first time. Pursuant to Article 83d, para 1 AVSA, the court issues a ruling in a closed hearing whereby: the court remands the proposal to the prosecutor when it is not motivated or it does not meet the requirements of the law, or terminates the case when the
legal entity was removed from the Commercial Register due to liquidation or insolvency. As per the argument to the contrary, it should be taken that if the elements under Article 83d, para 1 AVSA are not in place, the court should schedule the case for review in an open hearing. However, it is recommended that express provisions be adopted in the procedural administrative criminal law, moreover before the power of the court to remand the proposal.

The amendments expressly empower the court to gather new evidence – ex officio or upon the request of the parties (Article 83d, para 4 AVSA). In line with the effect of the restrictive reference in Article 83g AVSA about the gathering, check and assessment of the evidence, the CPC rules will apply. The following facts and circumstances are subject to proving in those proceedings: did the legal entity gain an undue benefit, respectively – was there a possibility for it to gain a benefit; is there a relation between the perpetrator of the criminal act and the legal entity; is there a relation between the criminal act and the gain for the legal entity; what type is the gain and its amount, if pecuniary. The burden of proof lies with the representative of the state prosecution.

The court has the ability to establish new facts, different from those taken in the prosecution act whereby the proceedings are initiated. This position complies to the fullest with the principle to uncover the objective truth and provides effective guarantees for the right to defence of the person proposed to be sanctioned in line with the requirements of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The court issues a judgment imposing a property sanction on the legal entity when all circumstances under Article 83d, para 5 AVSA have been proven or refusing to impose one when there is no unambiguous positive answer to at least one of the questions under para 5, items 1 – 3 of the said provision.

The respondents criticise the provision of Article 83d, para 8 AVSA which sets out that, in cases of factual or legal complexity, the motivation may be prepared after the rendering of the judgment as well but not later than 30 days given that there is no clarity about the time of rendering the judgment. The criticism is reasonable and it is appropriate for the provision to be fine-tuned obligating the court to rule on the merits of the claim by means of an operational part of a judgment in an open hearing with the participation of the parties.
The judgment of the district court issued in the proceedings under Article 83d AVSA is subject to appeal or protest before the appellate court within 14 days of its announcement to the parties\textsuperscript{20}. The appellate court may revoke the judgment of the district court and remand the case for a new hearing in the event of material violations of the procedural rules in the course of the proceedings before the first instance; revoke the judgment of the district court and impose a property sanction; revoke the judgment of the district court and refuse to impose a property sanction; amend the judgment of the district court\textsuperscript{21}; uphold the judgment of the district court. The judgment of the appellate court is final.

\textsuperscript{20} The appeal or protest is reviewed in an open court hearing to which the parties are summoned. Although not expressly provided for in the law, it should be taken here as well that the failure of the parties to appear without a good reason is not an obstacle to hearing the case. Only written evidence and evidentiary means are allowed before the appellate court.

\textsuperscript{21} The appellate court may amend both the judgment whereby a property sanction is imposed – as regards the part about the grounds to impose it, the connection between the legal entity and the perpetrator, the qualification of the criminal act, the type and amount of the benefit, the amount of the property sanction and the judgment whereby it is refused to impose a property sanction – as regards the part about the grounds to refuse the sanction requested.
An important procedural guarantee that subject to enforcement are only lawful court acts is the provision for a possibility to reopen proceedings initiated upon a motivated prosecutor’s proposal to impose a property sanction on a legal entity. The legal concept of reopening the proceedings is the only corrective of the court’s will if the respective legal entity was imposed a property sanction by means of a court act which entered into force on the basis of a prosecutor’s proposal made in pending criminal proceedings against the perpetrator individual which ended with a sentence that entered into force or made in suspended criminal proceedings terminated by the prosecutor under any of the grounds provided for in Article 243, para 1 CPC\textsuperscript{22}.

Inasmuch as the present study places a special focus on the possibility to impose liability on legal entities for crimes related to EU funds, in the course of the study the lack of communication between the Managing Authority and other persons who submitted signals of irregularities and the respective prosecutor has been identified as a weakness. More specifically, when irregularities are found in the use of EU funds, the Managing Authorities are obligated to submit reports about the development of the irregularities every quarter where the irregularities end with the imposing of a financial correction. If matters are referred to the prosecutor’s office with concerns of fraud (it should be noted that the definition of fraud in relation to EU funds is different from the definition
under the CC), it may be a long time before the Managing Authority receives information about the development of the check or the pre-trial proceedings. This poses significant difficulties for the Managing Authority in its task to prepare quarterly reports. In the end, if it is refused to initiate pre-trial proceedings or the ones initiated are terminated, the Managing Authority receives a notification about that. If, however, an indictment is filed or a possible proposal under Article 83b AVSA, the authority which referred the matter to the Prosecutor’s Office does not receive any information about it. In this regard, it would be appropriate for the Prosecutor General of the Republic of Bulgaria to issue methodological guidelines instructing the respective prosecutors to notify the persons who submitted signals about the indictments filed, the proposals under Article 83b AVSA, the refusals to submit a proposal and the results of the judicial proceedings initiated. In addition, OLAF should also provide clear guidance to the Managing Authorities in relation to whether they are obligated to include in their reports of irregularities any information about proposals and proceedings under Article 83а et seq. AVSA, especially in view of the short deadlines to report for irregularities and often the long duration of pre-trial proceedings and possible further criminal and administrative criminal proceedings.

22 Subject to reopening are administrative criminal proceedings regardless of whether they ended with a judgment to impose a sanction or one refusing to impose a sanction. Proceedings in which a judgment of a district or appellate court has entered into force is subject to reopening when: 1. a sentence or judgment establishes that any of the written evidence on whose basis the act was issued is untrue or with false content; 2. a sentence or judgment establishes that a judge, prosecutor, party or participant in the proceedings committed a crime in relation to their participation in the proceedings; 3. after the entry into force of the judgment to impose a property sanction on the legal entity, the person under Article 83а, para 1, items 1 – 4 is acquitted by a court act which entered into force or the suspended pre-trial proceedings are terminated by the prosecutor in the cases under Article 24, para 1, item CPC; 4. after the entry into force of the judgment, circumstances or evidence are uncovered which were not known to the party and the court and they are essential to the proceedings; 5. a judgment of the European Court of Human Rights establishes a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is essential to the case; 6. a material violation of the procedural rules was made in the course of the proceedings. Preclusive terms for the filing of a request are also provided for (Article 83f, para 2 AVSA).

A request for reopening may be made not only by the respective district prosecutor but also by the legal entity on which a property sanction was imposed. The request is reviewed in an open court hearing by a three-member panel of the appellate court in the judicial region where the authority which issued the effective judgment is located. When reopening of the proceedings is requested in the event of a judgment of the appellate court, the request is reviewed by another panel of the respective appellate court (Article 83f, para 5 and para 6 AVSA).

In the proceedings initiated upon a request for reopening, the court acts as a control and revoking instance. If it finds the request for reopening grounded and revokes the defective court act, the appellate court should remand the case for a new hearing by the respective district or appellate court but may not remand the case to the prosecutor (in view of the use of the concept of “procedural action” under Article 83а, para 8 AVSA).
III. Case-law

The case-law in the application of the legal concept of realising the liability of legal entities which gained a benefit or could gain a benefit from crimes is sparse. The project experts identified 38 judgments of administrative courts (competent to hear this category of cases pursuant to the 2005 version of the law) and 24 judgments of district courts (competent to hear this category of cases pursuant to the 2015 version of the law).

*Figure 12: Types of cases heard as per first-instance court*

*Figure 13: Distribution of the cases before the administrative courts per judicial regions*
The analysis of the cases shows that, at present, the legal concept is applied to a limited number of crimes. Most often, these are crimes against the financial, tax and social security system. In isolated cases, such proceedings were initiated in relation to crimes against intellectual property, ordinary or documentary fraud, and usury.

The research of the case-law shows also that, despite the expansion of the catalogue of crimes with the 2015 amendments, the nature of the crime resulting in undue benefit for which these proceedings are held before the district courts after the amendments has not changed in any way.
As seen from the research of the case-law, even though the catalogue of crimes entailing the imposing of liability on legal entities under Article 83a AVSA is broad, its practical application so far has been limited in scope. In particular, no cases completed with a court act have been identified for the specific crime against EU funds.

This makes it necessary for the state prosecution to intensify its efforts in checking the cases initiated for the other types of crime from the AVSA catalogue as regards the existence of prerequisites to impose liability on the legal entities which benefited. Worth mentioning is the circumstance that, although some of the crimes from the AVSA catalogue are within the competence of the Specialised Prosecutor’s Office, the project team has not identified any court act issued upon the proposal of that institution.

From the point of view of the individuals who committed the criminal act which is the prerequisite for the liability of the legal entity, the case-law does not show significant deviations – most of the cases are initiated for acts committed by managing directors or representatives of traders or employees; there are two judgments for acts committed by an authorised official\(^ {23}\) and a sole trader\(^ {24}\) – the latter ended with a grounded refusal to impose a property sanction.

In view of the outcome of the cases, the analysis shows the following results:

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23 See judgment No. 812 of 2014 in administrative case No. 10199/2010 of the Sofia City Administrative Court.
24 See the judgment in case No. 1215 of 2015 of the Burgas District Court.
In the majority of cases, the legal entities are sanctioned because they gained a benefit from crime. Only one judgment – No. 84 of 2012 in administrative case No. 70/2012 of the Sliven Administrative Court – imposes a property sanction because the company could have gained a benefit from a crime under Article 172b, para 1 CC committed by its managing director.

At present, the case-law shows that the cases against legal entities are initiated solely for a pecuniary benefit gained by the legal entity. There is still no case-law as regards indirect benefits or non-pecuniary benefits obtained by the legal entity which indicates that the 2015 amendments are hard to be accepted by the representatives of the state prosecution. There are also concerns about the initiation of proceedings against legal entities when the criminal proceedings against the related individuals are not completed.

As expected, in view of the lack of rules for individualisation of the property
sanction, in the majority of cases the courts impose a sanction equal to the benefit obtained or a little higher to round up the amount. There are also cases where the court found that the benefit obtained exceeded BGN 1,000,000. In these cases, the court applied, without any exception, the rule under Article 83a, para 1 AVSA imposing the maximum property sanction.

Essential to the case-law is the issue about the effect of the substantive law in time (ratione temporis). Thus, judgment No. 22 of 2017 in case No. 425/2016 of the Yambol District Court finds that, inasmuch as the crime entailing the undue benefit – under Article 255, para 3 read in combination with para 1 read in combination with Article 26, para 1 CC – was completed before its inclusion in the taxonomy of crimes under Article 83a, para 1 AVSA, the legal entity may not bear liability under the said provision. At the same time, the court acting as the appellate instance in the said case was not of the same opinion and imposed a property sanction on the trader, pointing out that “However, the understanding of the first-instance court that the said amendment to Article 38a AVSA is in effect solely forward, i.e. after its entry into force on 27 May 2011, is inaccurate” (see judgment No. 87 of 2017 in case No. 100/2017 of the Burgas Administrative Court). The existence of such diverse case-law makes it necessary to clarify the provisions regarding the effect of the law in time (ratione temporis).

Another essential problem identified in the review of the case-law concerns the expiry of the liability of the legal entity due to the statute of limitation. Thus, in its ruling in case No. 641/2014 the Sliven District Court takes that the prosecutor is to make a proposal under Article 83b within the term under Article 34, para 1 AVSA which runs as of the date of finding the perpetrator – a position which is contrary to judgment No. 8665/2017 in case No. 6405/2016 of the Supreme Administrative Court, according to which “The terms under Article 34, para 1 AVSA do not apply to the proceedings to impose the present sanction because they do not start with the act to establish the administrative violation but with the referral to the court with a motivation proposal by the prosecutor/Article 83b, para 1 AVSA,” respectively – it takes that the terms under Article 80 CC apply. Judgment No. 2059 of 2014 in case No. 535/2014 of the Burgas Administrative Court also takes that “…when considering the possibility to apply the norm of Article 80 CC, respectively Article 81, para 3 CC, the term elapsed

25 In the same vein is also judgment No. 74 of 2016 in case No. 163/2016 of the Burgas District Court, upheld by the judgment in case No. 104/2016 of the Burgas Administrative Court.
should not be considered in view of the provision of Article 80, para 1, item 5 CC but in view of the provision of Article 81, para 3 read in combination with Article 80, para 1, item 3 CC – relevant to the crime committed.” On the other hand, judgment No. 6/2017 issued in case No. 287/2016 of the Burgas Administrative Court takes that the prosecutor’s power under Article 83b, para 1 AVSA is not limited in time. The above once again leads to the conclusion that a legislative initiative is necessary as soon as possible to provide expressly for whether the liability of legal entities expires due to the statute of limitation and what the applicable term is.

The respondent judges and prosecutors are of the opinion that the legal entities against which such proceedings are held are usually “hollow”, without any property, and, in this sense, disinterested in the outcome of the case. In this regard, the data about the appeals against such judgments are interesting. Although the data come from a legal information system which reflects only completed cases and, therefore, excludes pending proceedings, they still show that there are cases when the legal entities were not disinterested in the cases and appealed the judgment. The charts below show the percentages of judgments issued by administrative and district courts which were appealed by the affected legal entities:

*Figure 19: Appeals against the judgments of administrative courts by legal entities*
In the light of the above tendencies and contradictions in the case-law, it should be emphasised that, in the event of intensifying the efforts of the prosecution and increasing the number of cases under Article 83a et seq. AVSA, it is very likely that the said tendencies and contradictions will undergo both quantitative and qualitative changes.
CHAPTER TWO.
COMPARATIVE LEGAL STUDY

The comparative legal study of the provisions for the corporate liability for the abuse of EU funds in Bulgaria and other EU Member States – Romania, Slovenia, the United Kingdom, Ireland – aims to identify essential differences between the provisions in Bulgaria and the other EU Member States and, based on that, suggest ideas about the improvement of our national legislation in the area.

The provisions for the corporate liability for crimes in the national law of EU Member States demonstrate diverse legislative solutions. The differences cover fundamental aspects such as the type of liability (criminal, administrative or legal), the act which sets out the provisions (criminal code, administrative violations act or a special law dedicated to the matter), the scope of liability in terms of which crimes give rise to it (all crimes under the criminal law or explicitly listed ones), the connection between imposing liability on an individual perpetrator and liability on the legal entity which benefited, and others. Of course, there are different legislative approaches in providing for other substantive and procedural legal aspects of the corporate liability too, for example the cases in which it arises, the types of sanctions and the ways to determine their amount, the impact of the changes in the legal status of the legal entity on the proceedings, statute of limitation and others.\(^\text{26}\)

The landscape of the different legislative solutions in the EU Member States is outlined below.

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For the purposes of the present classification, the quasi-criminal liability is defined as liability which is provided for in the criminal law without express mention that the legal entity might commit a crime.
As seen from the table and charts above, the liability of legal entities for crimes in the EU Member States is usually criminal.

The analysis below looks in depth at the legislative solutions in five EU Member States which not only show differences in the provisions for the matter but also theoretically belong to different legal systems (common and continental law) and this is why they use quite different approaches in providing for corporate liability.

I. Romania

Romania provided for corporate criminal liability in 2006. According to OECD data, in the period 2010 – 2013, a total of 463 charges against legal entities were raised in Romania but there is still no information about the results of these cases.28

The provisions for the corporate criminal liability are in the Criminal Code. Romania is the only country in Eastern Europe and Central Asia to set an

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organisational model of liability of legal entities where it is based on irregularities in corporate culture and is not related to the liability of a specific individual\textsuperscript{30}.

Pursuant to Article 135 of the Romanian Criminal Code, the legal entities with the exception of the state and public authorities bear criminal liability for crimes committed during the performance of the subject matter of activities in the interest of or on behalf of the legal entities. As the case is in Bulgaria, the public authorities do not bear liability for crimes.

The criminal liability of legal entities in Romania does not exclude the criminal liability of the individuals taking part in the crime. Such is also the approach in Bulgaria.

The punishments which may be imposed on a legal entity pursuant to the Romanian criminal law are a main one and additional ones.

The main punishment is a fine. The fine consists of a cash amount which the legal entity is sentenced to pay to the state. The amount of the fine is set on a daily basis. Thus, the daily fine, which varies from RON 100 to RON 5,000, is multiplied by a number of days which may be from 30 to 600. The court sets the number of days for which the fine is calculated in view of the general criteria for individualisation of the punishment. The amount of the fine is determined taking into account the turnover of the trader legal entity and their other obligations, respectively the value of the assets held for other types of legal entities.

The special limits of the days of fine vary from: 60 and 180 days when the law lays down only the punishment of fine for the crime; 120 and 240 days when the law lays down the punishment of deprivation of liberty for up to 5 years, in itself or as an alternative to the fine; 180 and 300 days when the law lays down the punishment of deprivation of liberty for up to 10 years; 240 and 420 days when the law lays down the punishment of deprivation of liberty for up to 20 years; 360 and 510 days when the law lays down the punishment of deprivation of liberty for more than 20 years or life imprisonment.

Pursuant to Article 137, para 5 of the Romanian Criminal Code, when the crime was committed with the main purpose to gain a cash benefit, the special limits of the fine set out in the law for the respective crime may be increased


by one-third without exceeding the maximum amount of the fine. The setting of the fine takes into account the amount of the property benefit obtained or sought.

The additional punishments which may be imposed on legal entities are: winding up of the legal entity; termination of the overall activities or some of the activities of the legal entity for a period from 3 months to 3 years; closing down of premises belonging to the legal entity for a period from 3 months to 3 years; prohibition to take part in public procurement for a period from 1 to 3 years; placement under judicial supervision; publication or announcement of the sentence.

The execution of one or more of the additional punishments is not obligatory as a rule – it is imposed when the court, taking into account the nature and the gravity of the crime as well as the circumstances in the case, decides that such punishments are necessary. The execution of one or more of the additional punishments is obligatory only when the law explicitly provides for such a punishment to be imposed\textsuperscript{31}. Some of the additional punishments may be executed cumulatively.

The additional punishment of winding up of the legal entity is imposed when the legal entity was set up to commit a crime or the core activities of the legal entity were changed to commit a crime and the punishment laid down in the law for the crime is deprivation of liberty for more than 3 years. The court may also rule that the legal entity be wound up when any of the additional punishments was nor served in good faith.

The additional punishment of termination of the activities of the legal entity presupposes a prohibition to perform activities or any of the activities of the legal entity in whose performance the crime was committed.

The additional punishments of winding up the legal entity or terminating its activities may not be imposed on public institutions, political parties, employer associations and religious organisations or organisations of national minorities set up in accordance with the law as well as legal entities working in media.

The additional punishment of closing down premises of the legal entity presupposes the closing down of one or more operational premises of the legal entity trader where the activity including the crime was carried out. This punishment is not applied to legal entities working in the media (mass media).

The additional punishment of prohibition to take part in public procurement presupposes a prohibition to participate, directly or indirectly, in procedures for the award of public procurement bids laid down in the law.

The additional punishment of placement under judicial supervision consists of carrying out, under the supervision of a judicial agent, of the activity in relation to which the crime was committed for a period from one to three years. The judicial agent is obligated to notify the court if they find that the legal entity has not taken the necessary steps to prevent any new crime. If the court finds that the notification is justified, the court rules on the replacement of this punishment with the punishment of temporary suspension of all activities or any of the activities of the legal entity. The placement under judicial supervision does not apply to legal entities working in the media.

The publication or announcement of the final convicting sentence is made at the expense of the sentenced legal entity. The identity of other persons may not be disclosed. The convicting sentence is placed as an excerpt, in the way and place set out by the court for a period from one to three months. The convicting sentence is published as an excerpt and in the way set out by the court through print or audiovisual media or through other audiovisual communications means laid down by the court.

The Romanian criminal law provides for the issues related to recidivism by legal entities. Such is in place when, after the convicting sentence has become final and before rehabilitation, the legal entity commits a new crime, with a direct or possible intention. In the cases of recidivism, the special limits of the sanctions laid down in the law for the new crime are increased by a half without exceeding the total maximum amount of the sanction of fine. If the previous fine is uncollected, full or partially, the fine imposed on account of the new crime is added to the previous punishment or its remaining part. There are special rules when the court has imposed two or more sanctions of the same type.

According to the Romanian legislation, the rehabilitation of the legal entity comes about if it has not committed another crime in 3 years as of the date on which the fine or the additional sanction was served or deemed to have been served.

In the event of loss of legal capacity due to a merger, acquisition or separation after the crime, the criminal liability and the respective consequences are borne by: a) the legal entity which came about after the merger; b) the acquiring legal
entity; c) the legal entities which came about as a result of the separation or the one which acquired parts of the property of the initial legal entity subject to the separation. In such cases, when the sanction is individualised, the turnover, respectively the value of the assets of the legal entity committing the crime, is taken into account as well as the part of the assets transferred to teach legal entity involved in such an operation.

The legal entity is summoned to take part in the proceedings. It is represented by its legal representative; if criminal proceedings were initiated against the legal representative of the legal entity for the same or related crimes, the legal representative designates a proxy; in the latter case, if the legal entity did not designate a proxy, one will be assigned by the prosecutor or the court from among persons certified in accordance with the law. The prosecutor’s participation in such cases is mandatory.

There is an interesting option for the court to rule, if there are reasonable doubts, that the legal entity committed a crime and impose any of the following measures to ensure the unhampered flow of the criminal process: a) prohibit the start or suspend a procedure to terminate the legal entity; b) prohibit the start or suspend a merger or separation of the legal entity, reduction in the nominal capital which started before or during the criminal proceedings; c) prohibit operations of disposal of assets for which it is likely that they will lead to a reduction in the assets of the legal entity or result in its insolvency; d) prohibit the signing of certain legal documents as set out by the judicial authority; e) prohibit activities of the same nature as those which prompted the crime.

The legal entity may be forced to provide a guarantee consisting of a cash amount which may not be less than RON 10,000. The guarantee is reimbursed on the date on which the judgment which lays down the postponement of the punishment, refuses execution of the punishment or terminates the criminal case becomes final if the legal entity has achieved compliance with the preventive measure or measures as well as in the case where the final judgment acquits the legal entity.

The guarantee is not reimbursed in the cases when the legal entity does not comply with the preventive measure or measures and is transferred to the state budged on the date when the judgment becomes final as well as if an order was issued to use the money from the guarantee to cover the financial compensation to reimburse loss caused by the crime, court costs or the fine.
Preventive measures may be imposed for up to 60 days and this period may be extended during the investigation and continue during the proceedings of preliminary review and the trial if the grounds to impose them are still in place; any extension may not be longer than 60 days. These measures may be lifted when it is found that the grounds to impose and maintain them are no longer existing. The imposition of the measures is subject to instance judicial review.

If between the moment when the sentence of the legal entity becomes final and the moment the sentence is enforced there comes about a merger, acquisition, separation, deregistration, liquidation or reduction in the capital of the sentenced legal entity, the authority or unit which has powers to approve or register the operation must notify the court and provide information about the legal entity which has been created as a result of the merger or acquisition or about the entity which acquired a part of the assets of the separated legal entity. The legal entity which has been created as a result of the merger or acquisition or which acquired part of the assets of the separated legal entity is responsible for the obligations and restrictions of the sentenced legal entity.

The Romanian criminal law also provides for forfeiture of the assets of the legal entity in the same way this is provided for in Bulgaria.

II. Slovenia

Slovenia provided for corporate criminal liability as early as 1999. According to OECD data, in the period 2010 – 2013, a total of 533 charges were raised against legal entities in Slovenia with 82 convicting acts and 19 acquitting acts issued\(^\text{32}\).

The provisions for corporate criminal liability are found in the Slovenian Criminal Code and the special Liability of Legal Entities for Crimes Act\(^\text{33}\) which the Criminal Code refers to\(^\text{34}\). The liability of legal entities is based on the

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\(^{33}\) Zakon o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD (Uradni list RS, št. 59/99 z dne 23. 7. 1999); Popravek zakona o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD (Uradni list RS, št. 12/00 z dne 11. 2. 2000); Zakon o spremembah zakona o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD-A (Uradni list RS, št. 50/04 z dne 6. 5. 2004); Zakon o odgovornosti pravnih oseb za kazniva dejanja – uradno prečiščeno besedilo – ZOPOKD-UPB1 (Uradni list RS, št. 98/04 z dne 9. 9. 2004); Zakon o spremembah in dopolnitvah Zakona o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD-B (Uradni list RS, št. 65/08 z dne 30. 6. 2008); Zakon o spremembah in dopolnitvah Zakona o odgovornosti pravnih oseb za kazniva dejanja – ZOPOKD-C (Uradni list RS, št. 57/12 z dne 27. 7. 2012).
principle of the expanded identification model and is premised on the lack of sufficient and efficient supervision of the management of the legal entity over its workers and employees.35

The Slovenian criminal law provides that criminal liability applies to a legal entity for a crime committed by the perpetrator in the name of, on behalf of or to the benefit of a legal entity. The criminal liability of legal entities does not exclude the liability of individuals perpetrators, aiders and abettors, or assessors to the same crime. The criminal law provides also for forfeiture of any assets which are a means of the crime.

The Liability of Legal Entities for Crimes Act sets out the terms of the criminal liability of legal entities, the sanctions and legal consequences of the sentencing of the legal entity.

Legal entities may be brought to court solely for certain crimes listed explicitly in the law, including fraud in EU funds. Slovenia and the local self-governing communities as legal entities does not bear liability for crimes.

The local and foreign legal entities bear liability of any crimes committed on the territory of Slovenia. The local and foreign legal entities also bear liability for crimes committed abroad if the legal entity has a registered office or transacts its business on the territory of Slovenia and the crime was committed against Slovenia, its citizens or a local legal entity. In certain explicitly listed cases, a local legal entity bears liability for a crime committed abroad against a foreign country, a foreign citizen or a foreign legal entity.

Legal entities are liable for crimes if: 1. the crime is an execution of an illegal decision, order or approval of a management or supervisory body of the legal entity; 2. a management or supervisory body of the legal entity influenced the perpetrator of the crime and allowed them to commit the crime; 3. the legal entity holds an illegally acquired property benefit or uses items acquired through crime; 4. a management or supervisory body of the legal entity has missed to exercise due control over the legality of the actions of the subordinate employees.

A legal entity is also liable for crimes when the perpetrator did not bear criminal liability for the crime or committed the crime under the influence of force or threat by legal entities.

The liability of legal entities does not exclude individuals’ criminal liability.

In the event of crime committed by negligence, a legal entity may be held liable only if certain explicitly listed circumstances are in place; in such a case, the sanction may be more lenient.

If the legal entity does not have another body except for the perpetrator which may manage or control it, it bears liability for the crime within the perpetrator’s guilt.

A legal entity in insolvency may be held criminally liable regardless of whether the crime was committed before the start of the insolvency proceedings or during those proceedings. In such cases, a sanction may not be imposed but solely confiscation of a property benefit or assets. If the legal entity terminated its existence before the final completion of the criminal proceedings, it may be deemed liable and a punishment and other sanctions may be imposed on the legal entity which is its successor if its management or supervisory bodies were aware of the crime before the termination of the sentenced legal entity. The legal entity which is the successor of the sentenced legal entity whose management or supervisory bodies were not aware of the crime may only be sentenced to confiscation of property benefits or assets. If the legal entity terminated its existence after the final completion of the criminal proceedings, the sanction imposed is executed in accordance with the above rules.

An entity will not bear liability if it acted as a last resort.

If the perpetrator intentionally started committing a crime but did not complete it, the legal entity will also be responsible for attempt if the law provides that attempt is punishable. The legal entity will be sanctioned for attempt as is the case with a finished crime but a reduced punishment may be imposed. If the management or supervisory body, on their initiative, prevent the perpetrator from finishing the crime, the legal entity will not be punished.

If the same grounds to impose criminal liability for several chronologically related crimes of the same type are in place with regard to the legal entity, that legal entity will be liable as if one crime had been committed.

Two or more legal entities are involved in committing a crime as accomplices if each meets at least one of the grounds to impose liability. In such cases, each legal entity bears liability as if it were the only other entity except for the
perpetrator liable for the crime.

The Slovenian law also lays down certain mechanisms to encourage legal entities to cooperate with law-enforcement authorities. Thus, if after the crime was committed a management or supervisory body voluntarily gives away the perpetrator, a reduced sanction may be imposed on the legal entity. If after the crime was committed a management or supervisory body of the legal entity voluntarily and immediately orders the restitution of an illegally acquired property benefit or provides compensation for damages caused as a result of the crime or gives information about grounds to impose liability on other legal entities, no punishment may be imposed on the legal entity.

In a similar way to Romania, Slovenia also provides for a broader scope of sanctions than those set out in the Bulgarian law. The following punishments may be imposed on legal entities for crimes: 1) fine; 2) confiscation of property; 3) termination of the legal entity; 4) prohibition to dispose of the securities held by the legal entity.

The amount of the sanction of fine may vary from EUR 10,000 to EUR 1,000,000. If the crime caused damage to another person's property or the legal entity acquired an illegal property benefit, the highest threshold of the fine may be two hundred times of the value of the damage or the benefit.

Half or more of the property of the legal entity or its entire property may be confiscated. Confiscation of property may be imposed on account of a crime for which a sanction of five years of deprivation of liberty or a graver punishment is set. In the event of insolvency proceedings as a result of the punishment of confiscation of assets, the creditors may be paid from the confiscated assets.

Termination of the legal entity may be ordered if the activity of the legal entity was fully or mostly used to commit crimes. In addition to terminating the legal entity, the court may rule on confiscation of property. When the punishment of winding up the legal entity is imposed, a liquidation procedure begins. Creditors may be paid from the property of the legal entity which was sentenced to be wound up.

Legal entities sentenced for certain types of crimes may be imposed an additional punishment prohibiting them from disposing of securities whose holder is a legal entity and which are registered in the central register of dematerialised securities for a period from one to eight years.

In setting the punishment of a legal entity, the court takes into account not only the general rules for setting the punishment but also the economic power
of the legal entity. In the cases of crime where confiscation of property is envisaged along with a fine, in setting the amount of the fine the court needs to make it such that it does not exceed half of the property of the legal entity.

Pursuant to the Slovenian legislation, the court may conditionally sentence a legal entity rather than impose a fine. In the event of conditional sentencing, the court may set a fine of up to EUR 500,000 and, at the same time, rule that the sentence will not be enforced if the legal entity does not commit a new crime within a period prescribed by the court which may not be shorter than one and longer than five years (probationary period).

In addition to the measure of forfeiture of the means of the crime laid down in the Criminal Code, the following measures may also be imposed on legal entities for crimes: 1) publication of the judgment; 2) ban on certain economic activities of legal entities.

The measure of publication of the judgment is applied if it will be useful for the public to become aware of the judgment and, more specifically, if the publication of the judgment would contribute to avoiding any danger for human life and health and protecting other values. The court makes the decision taking into account the significance of the crime and the need of the public to become familiar with the judgment, whether the judgment is to be published in the print media, broadcast over radio or television or through more than the said media at the same time and whether to publish the whole motivation of a part of it. The publication method should allow those in whose interest it is for the judgment to be published to become aware of it.

The court may prohibit the legal entity from producing certain products or performing business activities in certain factories or prohibit the legal entity from getting involved in certain transactions. The safety measure may be imposed on the legal entity if its future participation in certain commercial activities would pose a threat to human life or health or would be adverse to the business of other legal entities or the economy and if the legal entity was punished for the same or similar crime in the past two years. This measure may be imposed for a period from six months to five years as of the time the judgment became final.

The following legal consequences may come about for the legal entity from the sentencing: 1. ban on activities based on licences, permits or concessions provided by government authorities; 2. ban to obtain licences, permits or concessions provided by government authorities.
According to the Slovenian legislation, the proceedings against the legal entity begin and are held together with the proceedings against the perpetrator of the same crime. Within the unified proceedings against the charged legal entity and the person charged, one charge is raised and one judgment is issued. Proceedings solely against the legal entity may begin only in cases when criminal proceedings against the perpetrator cannot be started or held due to reasons listed in the law or when such proceedings were already held against the perpetrator. By the end of the trial, the court may decide, due to serious reasons or considering it appropriate, to terminate the proceedings against the legal entity.

The prosecutor may decide that criminal proceedings are not be initiated against the legal entity as the circumstances in the case show that this would not be appropriate due to the insignificant involvement of the legal in committing the crime or because the legal entity does not have property or it is so small that it would not cover event the costs of the proceedings or because it is to the detriment of the insolvency proceedings or because the perpetrator is the sole owner of the legal entity against which the proceedings need to start.

In the criminal proceedings, the defendant legal entity is represented by a legal representative. The representative of the charged legal entity is a person who, by virtue of a law, competent government authority or the Bylaws, Articles of Association or another act of the legal entity, is empowered to represent it. A representative of a charged foreign legal entity is the person who manages its branch. If several persons represent the charged legal entity or branch of a foreign legal entity together, those persons elect a legal representative from among themselves. If they fail to do that even though have been invited by the court or fail to notify the court about the choice made in writing within the deadline set, the court appoints one of them as a representative. The legal representative or the persons who represent the charged legal entity together may authorise another person to act as a legal representative. If the legal entity ceases to exist before the final completion of the criminal proceedings, the court appoints a representative of the charged legal entity.

The representative of the charged legal entity may not be a person summoned as a witness in the same case. The representative of the charged legal entity may not be a person against whom proceedings were initiated for the same crime unless this is the only member of the legal entity. In such cases, the court is to invite the charged legal entity or branch of the charged
foreign legal entity, the competent authorities of the charged legal entity in the country or abroad to appoint another representative and notify the court about it in writing within the deadline set. If the charged legal entity does not have a competent authority to appoint a representative or if it fails to notify the court within a deadline when it appointed one, the court appoints a representative.

The costs of the legal representative of the charged legal entity are part of the costs in the criminal proceedings. These costs are paid in advance from the budget of the authority conducting the criminal proceedings if the charged legal entity does not have the means to cover them.

In addition to the legal representative, a charged legal entity may also have a defence counsel (attorney). The charged legal entity and the charged individual may not have the same defence counsel.

To ensure the penalties, the court may impose interim measures and, if there is a likelihood of recidivism, it may prohibit the charged legal entity from performing one or more specific economic activities. If criminal proceedings have started against the legal entity, the court may, upon a proposal of the prosecutor or ex officio, prohibit it from changing the legal status which could lead to deleting the charged legal entity from the commercial register.

The Slovenian legislation envisages a subsidiary application of the provisions of the Criminal Procedure Law even if proceedings have started against the legal entity only.

### III. United Kingdom

The idea of corporate criminal liability was born almost simultaneously in two common law countries – England and the United States – in the 19th century. The first company to be convicted was in the UK: in 1842, a railway company was convicted for the failure to execute an order to remove a bridge in violation of the rules for that.

Initially, corporate criminal liability emerged on the basis of the identification theory; since 1944, this liability has not been for another person’s acts but a direct one.

According to the contemporary theory of corporate criminal liability, the latter is borne by companies. A company is a legal entity which may prosecuted and should not be treated differently from individuals on account
of its artificial personality. Usually, a “company” means a company registered under the current Companies Act of 2006 or any of its predecessors cited in the Act; or equivalent legislation in another jurisdiction. Unincorporated bodies (for example, partnerships and clubs) may also be prosecuted when criminal liability can be established (attributed to them)\textsuperscript{36}.

The winding up of the company has the same significance as the death of an individual respondent inasmuch as the company ceases to exist. Still, there is a possibility to request an order to declare the winding up null and void or to restore the company in the register. Criminal proceedings may begin upon approval of the court responsible for the winding up or liquidation.

The criminal prosecution of the company is not considered a substitute for the prosecution of the guilty individuals as directors, officials, employees or partners/shareholders.

The corporate employer is liable for the acts of its employees and agents when the individual would also be liable\textsuperscript{37}. The criminal liability of the company may not be sought for any crime which may not be committed by its employees in the performance of their official duties, for example rape.

The company may bear criminal liability for crimes where guilt is necessary and crimes where the liability is objective.

The company may be part of a criminal conspiracy but only with at least two other conspirators who are individuals and at least one of them is a company official who acted within their powers\textsuperscript{38}.

The penalties for legal entities may include fines, compensation orders, debarment from public procurement processes and/or confiscation orders. Where there is evidence that an offender (which may include a corporate entity) has benefited financially from the offending, the court must, in accordance with the Proceeds of Crime Act 2002, consider whether to make a confiscation order\textsuperscript{39}.

There has been a steady increase in the level of fines over recent years, and fines can now be so high that they put a legal entity out of business.

\textsuperscript{36} See Archbold [2009], paragraphs 1-78 and 1-81b, Crown Prosecution Service, Home Prosecution Policy and Guidance, Corporate Prosecutions, www. cps.gov.uk
\textsuperscript{37} (Mousell Bros Ltd v London and North Western Railway Co [1917] 2 KB 836)
\textsuperscript{38} Ibid.
should be noted that the court decides whether insolvency is an acceptable consequences of a heavy fine in each case. For example, in the first prosecution of a legal entity under section 7 of the Bribery Act, the court took into account the company’s financial circumstances when opting to use a relatively low starting figure as the basis for penalty calculation.

From February 2014, prosecutors have been able to enter into deferred prosecution agreements (DPAs) with cooperating companies. These are agreements that proceedings for alleged offences of economic crime will be stayed and eventually discontinued provided the company complies with certain conditions (which will usually include the imposition of a substantial financial penalty and other remedial measures and/or the appointment of a monitor). Whether a DPA is appropriate is decided by reference to relatively detailed prosecutorial guidance; its proposed terms are the product of negotiations between the prosecutors and the company, although the DPA itself requires the approval of the court.

The prosecutors are obligated to weigh the pros and cons for the criminal prosecution of a particular company carefully and fairly. The factors related to public interest which may impact on the decision to start criminal prosecution usually depend on the gravity of crime and the peculiarities of the subject. Criminal prosecution usually takes place as long as there are no factors of public interest against it which are obviously more important that the factors for criminal prosecution.

The factors in favour of prosecution include: a) the company has a history of illicit behaviour (including prior criminal, civil and regulatory enforcement actions against it); b) the conduct alleged is part of the established business practices of the company; c) the offence was committed at a time when the company had an ineffective corporate compliance programme; d) the company had been previously subject to warning, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct. The factors against prosecution include: a) a genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice, involving self-reporting and remedial actions, including the compensation of

40 Ibid.
victims; b) a lack of a history of similar conduct involving prior criminal, civil and regulatory enforcement actions against the company; c) the existence of a genuinely proactive and effective corporate compliance programme; d) the availability of civil or regulatory remedies that are likely to be effective and more proportionate, for example: civil recovery orders combined with a range of agreed regulatory measures which may prove a more effective and appropriate measure than sentencing; e) the offending represents isolated actions by individuals in the company; f) the crime was committed during a transitional period and, at present, the company is a different subject from the one which committed the crime – for example, has been taken over by another company, it no longer operates in the relevant industry or market, all of the culpable individuals have left or been dismissed, or corporate structures or processes have been changed in such a way as to make a repetition of the offending impossible; g) a conviction is likely to have adverse consequences for the company under European Law, always bearing in mind the seriousness of the offence and any other relevant public interest factors; h) the company is in the process of being wound up\textsuperscript{41}.

In considering the seriousness of any offence, the court must consider the corporate entity’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might, foreseeably, have been caused. From 1 October 2014, sentencing of corporate offenders has been governed by a new Definitive Guideline for Fraud, Bribery and Money Laundering Offences issued by a special authority, the Sentencing Council. It sets out a ten-step process for judges to follow when deciding on the appropriate penalties to impose on companies following conviction. The quantum of the punitive element of financial penalties is determined by reference to multipliers (between 20 and 400\%) of a figure representing the financial “harm” caused by the particular offending in question. Higher levels of “culpability”, characterised by, for example, orchestrated or sustained wrongdoing, lead to the application of higher “multiplier” figures. The Guideline indicates that the fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law\textsuperscript{42}.

Corporate offenders can receive up to one-third off their sentence for an early plea of guilty, and can also be given immunity or reduced sentences for cooperating with the prosecuting authorities in certain limited circumstances. In addition, self-reporting is one of the factors in considering whether to propose a plea bargain.43

IV. Ireland

In Ireland, the crimes against the financial interests of the EU are provided for in a separate Part 6 “Convention on Protection of European Communities’ Financial Interests” of the Criminal Justice (Theft and Fraud Offences) Act of 2001.

The legal framework for the liability of legal entities for crimes and, in particular, abuse of EU funds, includes provisions from statutory acts and rules of common law.

The Interpretation Act 2005 provides that in all Irish legislation, any reference to “persons” includes references to companies and corporate entities. Therefore, a company, in theory, can be subject to criminal or civil liability in the same manner as individuals, and can be liable for the conduct of its employees and officers. However, corporate liability has predominately been restricted to offences where a fault element (mens rea) is not required, namely, those of absolute, strict and vicarious liability. Many regulatory offences carrying corporate liability are established as such offences.44

Irish criminal legislation typically provides for monetary fines or terms of imprisonment for offences. Given the nature of corporate entities, the most common form of sanction against a corporate entity is a fine. However, while less common, Irish legislation also provides for compensation orders (whereby the guilty party is required to pay compensation in respect of any personal injury or loss to any person resulting from the offence), adverse publicity orders (in the form of publication of the offence and the identity of the entity found

43 Ibid.
guilty) and remedial orders (to undo the harm caused by the offence).

Another common sanction against businesses is a disqualification order. Under Section 839 of the Companies Act 2014, where a person has been convicted of an indictable offence in relation to a company, that person may not be appointed to, or act as, an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company45.

The circumstances taken into account in setting a penalty include whether the company ceased the crime upon finding it, if there are further offences or complaints after finding the crime; if the company used funds to compensate the damages; whether the company itself reported the crime before it was identified by the authorities46.

The common criminal proceedings are applied to the legal entities bearing criminal liability.

45 Ibid.
46 Ibid.
I. Conclusions from the analysis of the legal framework and law enforcement

The provisions for corporate liability for crimes have developed significantly in a positive direction. After almost 10 years in which the legal concept was very rarely used, it was overhauled with the amendments to the law being expected to thrust law enforcement forward as well. At present, the legal framework providing for the abuse of EU funds in Bulgaria is significantly better than its previous version but there is still room for improvement. The catalogue of crimes aimed at the public relations ensuring the appropriate disbursement, use and reporting for EU funds provided to Bulgaria is broad but does not cover the whole range of possibilities.

The study has allowed to identify certain weaknesses in the regulatory framework which would be good to be remedied. Such are:

- Sparse provisions for the liability of legal entities in AVSA;
- Inaccurately outlined catalogue of crimes entailing the liability of the legal entities which gained benefits;
- Lack of alternative or cumulative sanctions along with the property sanction to assist in achieving the goals of administrative punishing of legal entities and acting as an effective preventive and warning mechanism;
- Lack of rules to individualise the property sanction;
- Lack of rules as to whether the liability of legal entities elapses due to the statute of limitation and following what limitation period;
- Lack of rules for the effect of the substantive law – Article 83a AVSA in time (ratione temporis);
- Lack of clarity about the relationship between the taking away of the benefit under the different statutory acts setting out such a sanction – CC, AVSA, IAFA;
- Lack of adequate mechanisms against changes in the legal status and legal organisational form of the legal entity in order to hamper the proceedings or circumvent the liability of the subject;
- Lack of provisions regarding winding up, merger, acquisition, separation of the legal entity after the act but before the sanction is imposed;
• Imprecise provisions for the powers of the competent judicial instances. So far, there has been scarce case-law in the application of the legal concept under Article 83a et seq. AVSA. The intensification of the prosecution to submit more proposals to impose liability on legal entities for different types of crimes from which the legal entities gained or could have gained benefits will probably result in identifying other weaknesses and deficiencies of the regulatory framework.

Outside these weaknesses and deficiencies of the regulatory framework, one of the main reasons for the limited application of the legal concept is the lack of the necessary specialised training for those applying the law. Almost 15% of the respondents in the study were not familiar with the legal concept at all while 60% have not attended training or received clarification or methodological guidance in relation to its possible application. The results necessitate measures to boost the awareness of the law-enforcement authorities in relation to the application of the legal concept and the others related to it such as interim measures in criminal procedures. There is also a need for specialised training in the field of interim measures.

II. Conclusions of the comparative legal study

The comparative legal review of the foreign legislation allows for the conclusion that legal concepts such as the one under Article 83a AVSA in Bulgaria exist in all other EU Member States. The provisions for corporate liability for crimes are the least developed in our country.

As a result of the analysis of the legislation in the four countries studied – Romania, Slovenia, the United Kingdom and Ireland – a conclusion can be reached that the Bulgarian legislation seems closest to those of Romania and Slovenia. This is why these countries could be the source of best practices to complement and improve the Bulgarian law.

The Romanian model of liability of legal entities demonstrates the following best practices in providing for:

• A broad range of additional sanctions which could be imposed by the court and rules to individualise those sanctions;
• A broad range of interim measures to ensure unhampered flow of the
proceedings and prevent possible transformations of the legal entity aimed at avoiding liability;
- Rules for the concepts of limitation and rehabilitation of legal entities;
- Special rules for representation of legal entities;
- Special rules in the event of merger, acquisition, separation or spin off of the legal entity at the different stages of the proceedings.

The Slovenian model of liability of legal entities demonstrates the following best practices in providing for:
- Alternative sanctions for legal entities;
- Special grounds to exclude or reduce the liability of legal entities;
- Interim measures to ensure unhampered flow of the proceedings;
- The legal concept of statute of limitation;
- Special rules for the proceedings with regard to legal entities;
- Special rules in the event of merger, acquisition, separation or spin off of the legal entity at the different stages of the proceedings.

III. Recommendations

The following recommendations can be formulated as a result of the analysis and the study:
1. Undertake legislative initiatives aimed at:
   - Placing the AVSA provisions for the liability of legal entities and setting out substantive and procedural prerequisites for such liability in a separate statutory act;
   - Complementing the catalogue of crimes entailing the liability of legal entities which gained benefits (for example, with certain documentary crimes);
   - Providing for a possibility for a legal entity to be liable in the cases when the guilty individuals under Article 83a, para 1, item 4 AVSA were aiders and abettors in committing the crime from which the legal entity gained or could have gained a benefit;
   - Providing for additional sanctions along with the main one – property sanction, for example an obligation to compensate/reimburse the
damages; promulgation of the court act issued; restricting the right of the legal entity; removing tax relief; suspending or revoking permits, licences or concessions related to the violation; prohibition to take part in public procurement procedures; prohibition to advertise goods and services; closing down branches or premises; and the like in relation to the liable legal entities;

• Providing for rules on how to individualise the property sanction and possibly – the other types of sanctions;

• Regulating for the relationship between the taking away of the benefit under the different statutory acts setting our such a sanction – CC, AVSA, IAFA;

• Setting out a prohibition to enter changes in the status of the company during the proceedings;

• Providing for liability in the event of winding up, merger, acquisition, separation, spin off of the legal entity after the act but before the imposing of the sanction;

• Express provisions on the statute of limitations applicable to legal entities in such cases and the applicable terms;

• Regulating the effect of the substantive law – Article 83a AVSA in time (ratione temporis);

• Change in territorial jurisdiction, laying down that competent to hear the case shall be the court as per the place of committing the crime;

• Express provisions for the power of the court to schedule the case in an open court hearing and the elements of the judicial ruling in each of the cases under Article 83d, para 1 AVSA;

• Improve the provision of Article 83d, para 8 AVSA to set out an obligation of the court to rule on the merits of the request by an operational part of a judgment in an open court hearing with the participation of the parties.

2. Review all cases suspended or terminated by the Prosecutor’s Office and those which ended with a sentence against the respective individual which entered into force for crimes against EU funds in order to establish prerequisites to initiate proceedings under Article 83a et seq. AVSA.

3. Encourage the prosecutors who manage and supervise the investigation of the crimes under Article 83a, para 1 AVSA to check pending cases for prerequisites to prepare a proposal to the court to impose a sanction on
legal entities which gained a benefit.

4. The Prosecutor General to prepare methodological guidelines instructing the respective prosecutors to notify the persons who submitted signals about proposals under Article 83b AVSA, about the refusal to file a proposal and the results of the court proceedings initiated.

5. Conduct joint training for judges and prosecutors on the topics of:
   • Applying the legal concept of the liability of legal entities for crimes against EU funds;
   • Imposing interim measures in the course of sanction proceedings – proceedings under CPC and those under Article 83a AVSA.
REVIEW
of the report under the project
LIABILITY OF LEGAL ENTITIES FOR THE ABUSE OF EU FUNDS IN BULGARIA:
A COMPARISON WITH OTHER EU MEMBER STATES

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The report for review is prepared under the project Liability of Legal Entities for the Abuse of EU Funds in Bulgaria: A Comparison with EU Member States implemented with the financial support of the Hercule III Programme of the European Anti-Fraud Office (OLAF).

The report consists of an introduction, two chapters and a final part setting out conclusions and recommendations.

The subject of the project is topical for two reasons. First, the issue about the protection of EU funds against criminal infringement such as fraud, bribery and money laundering is essential. Second, the phenomenon of corporate crime is becoming ever more widespread globally and in the EU, causing unseen adverse consequences for individuals, legal entities and entire states. Therefore, analysing the provisions for the liability of legal entities for crimes affecting the EU interests, identifying problems in them and proposing measures to improve the mechanisms to counter and sanction corporate crime are topical and significant.

The project report is content-rich and well-structured.

The report introduction familiarises the readers with the problems of uncovering and sanctioning the abuse of funds from the EU budget and convincingly provides arguments, including through statistical data, for the need to combat effectively this type of crime by seeking not only the liability of the responsible individuals but also of the legal entities to whose benefit the crime with EU funds was committed. It finds that the legal concept of corporate liability for crimes in Bulgaria is rarely applied and reasonably asks the question whether the mechanisms to combat and sanction corporate crime set out in Bulgaria are adequate.
Further on, the introduction presents the subject matter and methodology of the study. They are adequately formulated and well expounded in the report.

The exposition makes it clear that the subject of study is the sanctioning mechanisms provided for in the existing Bulgarian legislation to combat the abuse of EU funds and, more specifically, two groups of non-criminal measures applicable to legal entities as well as similar legal concepts in other EU Member States. In clarifying the focus of research, emphasis is placed on the criminal mechanisms along with a detailed classification of the types of crimes they are associated with. The study reviews the different non-criminal measures used to combat the abuse of EU funds on the basis of which the subject of analysis under the project is specified – the two groups of measures applicable only to legal entities – forfeiture of the benefit or its cash equivalent from the legal entity which gained the benefit as a result of a crime under Article 83a, para 4 AVSA (new); and a property sanction imposed on the legal entity which gained the benefit as a result of a crime under Article 83a, para 1 AVSA (new). These measures are identified as the essence of the legal concept providing for the corporate liability for crimes in Bulgaria.

The methodology of the study is presented with an exposition of the project activities performed – an analysis of the current Bulgarian legal framework and the case-law related to the liability for the criminal abuse of EU funds; a comparative legal research of the legislation in Romania, Slovenia, the United Kingdom and Ireland dedicated to the corporate liability for crimes; a study of theoretical works and analyses of OECD and OLAF in the area of corporate liability and preventing crime with funds from the EU budget; holding in-depth interviews with lawyers working in different areas in the country; preparing and disseminating online surveys in relation to the subject of study among Bulgarian and European experts.

Following the arguments for the topicality and significance of the matter analysed under the project and the formulation of the subject and the methodology, the document progresses to the analysis itself.

Chapter One offers a detailed study of the current provisions for the liability of legal entities which gained or could have gained benefits as a result of crime according to the Bulgarian law. It clarifies the type of liability, the place it is provided for, the prerequisites to impose liability on a legal entity for a crime under the Criminal Code, the types of crimes entailing it, the types of sanctions
as well as the procedural legal aspects of concept. It presents different views of the matter related to the liability of legal entities for crimes, levels certain criticism and makes a series of useful and well arguments proposals for improvement to the current provisions. Special attention should be paid to the detailed analyses of otherwise the scarce case-law in the application of the legal concept of corporate liability for crimes in Bulgaria. In itself, this analysis is one of the essential benefits of the report.

Chapter Two is dedicated to a comparative legal analysis of the provisions for liability of legal entities for crimes with EU funds in the four selected jurisdictions – Slovenia, Romania, the United Kingdom and Ireland. It studies the main features of the substantive and procedural provisions for the corporate liability for crimes in the said countries. The method of comparative legal analysis is successfully applied to the study of foreign legislation.

The last part of the report formulates conclusions separately from the analysis of the provisions for the liability of legal entities for crimes according to the Bulgarian law and from the comparative legal analysis of the provisions in the said four EU Member States. It finds that the legal framework for the corporate liability for crimes in Bulgaria is relatively good. It notes its gradual improvement following the initial introduction as a positive aspect.

Essential are the identified deficiencies of the current framework – highly brief provisions in AVSA; imprecisely outlined catalogue of crimes entailing the liability of the legal entities which gained benefits; lack of a broader catalogue of sanctions along with the property sanction to assist in achieving the goals of the administrative punishing of legal entities; lack of rules to individualise the property sanction; lack of clarity about the relationship between the taking away of the benefit under the different statutory acts providing for such a sanction – CC, AVSA, IAFA; lack of adequate mechanisms against changes in the legal status and legal organisational form of the legal entity; lack of provisions for the matter about the liability in the event of winding up, merger, acquisition, separation of the legal entity after the act but before the sanction is imposed; imprecise provisions for the powers of the competent judicial instances. Issues are also reported such as the scarce case-law in the application of the legal concept under review and the lack of sufficient training for the law-enforcement authorities in the field.

The comparative legal analysis has led to the informed conclusion that
the provisions in Romania and Slovenia are closest to the Bulgarian law and we could benefit from experience from there. Very useful is the outline of specific best practices from these two countries – expanding the catalogue of sanctions for legal entities, providing for rules for the cases of transformation of legal entities, special rules for proceedings against legal entities, rules for interim measures, statute of limitation and rehabilitation, and others.

At the end, the most significant part of the report makes numerous informed proposals in five key directions. First, a number of amendments to the current provisions are suggested to guarantee a more effective countering of the corporate crime related to the abuse of funds from the EU budget. The more important recommendations include: placing the AVSA provisions for the liability of legal entities and setting out substantive and procedural prerequisites for such liability in a separate statutory act; complementing the catalogue of crimes entailing the liability of legal entities which gained benefits; providing for additional sanctions along with the property one; providing for a possibility for a legal entity to be liable in the cases when the guilty individuals under Article 83a, para 1, item 4 AVSA were aiders and abettors in committing the crime from which the legal entity gained or could have gained a benefit; providing for rules to individualise the property sanction and possibly – the other types of sanctions; providing for the relationship between the taking away of the benefit under the different statutory acts setting our such a sanction – CC, AVSA, IAFA; setting out a prohibition to enter changes in the company status during the proceedings; providing for liability in winding up, merger, acquisition, separation, spin off of the legal entity after the act but before the imposing of the sanction; express provisions for the matter when the liability of legal entities for crimes elapses due to statute of limitation and the applicable terms; change in territorial jurisdiction for the cases, laying down that competent to hear the case is the court as per the place of committing the crime; improve the provision of Article 83d, para 8 AVSA to set out an obligation of the court to rule on the merits of the request by an operational part of a judgment in an open court hearing with the participation of the parties; and others.

Well-argued and very useful are the suggestions in the other four directions as well – 1) review all cases suspended or terminated by the Prosecutor’s Office and those which ended with a sentence against the respective individual which entered into force for crimes against EU funds in order to
establish prerequisites to initiate proceedings under Article 83a et seq. AVSA; 2) encourage the prosecutors who manage and supervise the investigation of the crimes under Article 83a, para 1 AVSA to check pending cases for prerequisites to prepare a proposal to the court to impose a sanction on legal entities which gained a benefit; 3) the Prosecutor General to prepare methodological guidelines instructing the respective prosecutors to notify the persons who submitted signals about proposals under Article 83b AVSA about the refusal to file a proposal and the results of the court proceedings initiated; 4) conduct joint training for judges and prosecutors on matters related to the corporate liability for crimes.

In conclusion, an overall assessment can be made that the report is well-structured, full, content-rich and logical. The style is clear and highly professional. The analyses in the report correspond to the contemporary scientific achievements and the state of research in the area of combating corporate crime focusing on the abuse of EU funds.

The most important achievements of the report are: clarifying the current provisions for the liability of legal entities for crimes, the detailed analysis of the case-law, the useful comparative legal analysis and the numerous well-argued suggestions for changes to improve the mechanisms of combating and sanctioning corporate crime focusing on the abuse of EU funds.
On 9 December 2016, PDJS began the implementation of the project Liability of Legal Entities for the Abuse of EU Funds in Bulgaria: A Comparison with Other EU Member States. The project has an approved EU funding of EUR 31,809.60. The deadline for its implementation is 31 December 2017. PDJS initiated the report in response to the 2015 OLAF report which lists Bulgaria among the Member States with the highest financial value of irregularities in the use of EU funds. The project will ensure a better awareness and motivation of the Bulgarian legal profession in applying the amended rules for the liability of legal entities under the Administrative Violations and Sanctions Act, with a special focus on the liability in the event of abuse of EU funds. The project is targeted at judges, prosecutors and investigators tasked with applying the new mechanisms to impose liability on legal entities in the event of abuse of EU funds as well as other specialists in legal areas related to the liability of legal entities (for example, criminal and administrative criminal law) from universities in Bulgaria and staff of the administrative units managing EU funds or tasked with auditing and identifying the abuse of EU funds.

The activities proposed include a comparative legal study of the provisions and case-law in the area of the liability of legal entities. In the course of research, the analysts will review the legislation, conduct in-depth interviews with Bulgarian and foreign lawyers and online survey of the respective practices. The review will be targeted at Bulgaria, Romania, the United Kingdom (where, according to the 2015 OLAF report, the financial effect of the abuse is quite high) and Slovenia and Ireland (where the financial effect is quite low).

An important element of the implementation of the project is the research and holding a conference to announce the findings made. An OLAF representative will be invited to the conference. Another foreign expert identified in the process of comparative research will also take part in the conference. The activity will contribute to boosting the awareness of the new AVSA provisions for the liability of legal entities and the need to apply them. In conclusion, it will give
Bulgarian and foreign lawyers additional knowledge in the matter and create possibilities for a professional exchange of best practice.
Program for the Development of the Judicial System (PDJS) is an association whose mission is to assist in helping the Bulgarian judiciary work in a qualitative, predictable, transparent and effective way.

For 10 years now, the PDJS has supported initiatives of the judiciary and implemented projects, nationally and locally, in relation to strengthening the magistrates’ capacity, improving the citizens’ access to justice and boosting the trust and confidence in the work of the judiciary.

The PDJS is the only non-governmental organisation which has, in addition to performing research work, introduced and implemented directly at courts practices of effective governance which guarantee the citizens a quality and quick service, easy access to information, fair and timely resolution of their disputes.

The PDJS is working towards disseminating the best practices in the country and ensuring sustainability and continuity of the experience gained while relying on long years of partnership with all institutions involved directly in the functioning of the judiciary.

Over the past years, the PDJS has continued its efforts to improve the work of the judicial authorities and strengthen the rule of law in Bulgaria taking up topics such as juvenile justice and anti-corruption.