



INTERNATIONAL MAPPING OF CRIMINAL LIABILITY OF EXECUTIVE OFFICERS AND LEGAL ENTITIES

May 2022

A survey conducted by the lawyers of BARO ALTO law firm
and members of the IR Global network



With the support of



INSTITUT POUR L'INNOVATION
ÉCONOMIQUE ET SOCIALE



Our approach

Baro Alto law firm carried out a survey –in partnership with the French think tank institution Institut pour l’Innovation Economique et Sociale (2IES) and Professor Pascal Beauvais, lecturer at the University of Paris 1 Panthéon-Sorbonne– on the connection between a legal entity’s criminal liability and that of its chief executive officer under French law.

To fuel reflection on the following subject: “Reconsider the connection between criminal liability of legal entities and that of their corporate officers for improved legal protection?”, Baro Alto decided to survey various foreign legal systems to find out what solutions they may have adopted in that respect.

Thus, Baro Alto contacted its IR Global network and organised a webinar on the subject on 1 March 2022. Baro Alto requested the participant law firms to validate the information it provided on their legal system and the connection between the criminal liability of legal entities and that of their executive officers.



Caroline Joly
BARO ALTO
Partner – Co-founder
Registered Mediator with the CMAP (Centre de Médiation et d’Arbitrage de Paris – Paris mediation and arbitration center) and with the Court of Appeal of Paris

Summary

OUR APPROACH.....	P. 2
MAIN FINDINGS.....	P. 3
DETAILED MAP OF CRIMINAL LIABILITY.....	P. 4
COUNTRY SUMMARY SHEETS.....	P. 8
PARTNER MEMBERS OF THE IR GLOBAL NETWORK.....	P. 30



Credits

This survey is the result of a collective contribution by the lawyers of Baro Alto law firm, in particular Charlotte Tenenhaus, assisted by Alexia Viau (intern), and the IR Global network members.

We would like to thank all our colleagues and legal practitioners in the IR Global network, as well as all those who accepted to help us and participate in the survey. We very much appreciate the exchanges we had and the work we completed with them. Without them, this survey would not have been possible.



Charlotte Tenenhaus
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Main findings

We collected information from 20 countries, besides France, concerning the criminal liability of legal entities and executive officers in their legal systems

The liability of a legal entity and that of its executive officer coexists in most of the countries surveyed.

In theory, the corporate criminal liability applies in most of the countries surveyed, except for Germany, Greece, and Italy, where a system of quasi-criminal liability exists.

Today, the system of direct liability of the legal entity is the most widespread in the countries surveyed.

Some systems, such as in Belgium or the Netherlands, provide for direct liability, whereas others, such as in France, the United States and Denmark, have a principle of indirect attribution.

In the legal systems surveyed, the liability of legal entities is often limited to specific offences.

As is the case in France, some countries have adopted general liability, e.g., the England and Wales, Romania, or Belgium, whereas others limit liability to specific offences, e.g., Spain and Poland.

An international medley: the priority between legal entities and natural persons (executive officers) varies across jurisdictions.

For a long time, corporate criminal liability did not exist in many legal systems, and is relatively recent, except in certain countries such as the United States.

We therefore understood that, in many legal systems, the introduction of corporate criminal liability was too recent and, consequently, was not or rarely applied in practice by the prosecution authorities and courts, or at least not as a general policy, particularly in countries where the principle of specific offences exists.

Accordingly, our survey did not give rise to many issues in terms of ultimate liability, insofar as corporate liability is marginally retained or attributed based on “guidelines”, as in the England and Wales, Brazil, the United States, Italy, Norway, Poland and Switzerland, for instance.

As a result, in most countries the question of whether criminal liability is ultimately attributable to a legal entity or a natural person apparently does not raise any major issues for many legal practitioners, contrary to France where corporate liability has been extended to all offences (with a few rare exceptions) and, in practice, the number of prosecutions has considerably grown in recent years.

Detailed map of criminal liability



All these interactions and our analysis of the information obtained allowed us to draw conclusions in the form of dynamic maps of comparative law concerning the ultimate attribution of criminal liability to legal entities and/or their executive officers.



Map 1

Corporate criminal liability

The analysis of the legal systems of the 21 countries surveyed shows major differences in their systems regarding corporate criminal liability. Map 1 shows the areas in which corporate criminal liability is fully or partially applicable or not at all.

Cumulative criminal liability of legal entities and natural persons is recognised in most of the countries compared. The map shows the various legal frameworks of this cumulative criminal liability.

Map 2

Cumulative criminal liability of legal entities and natural persons

Map 3

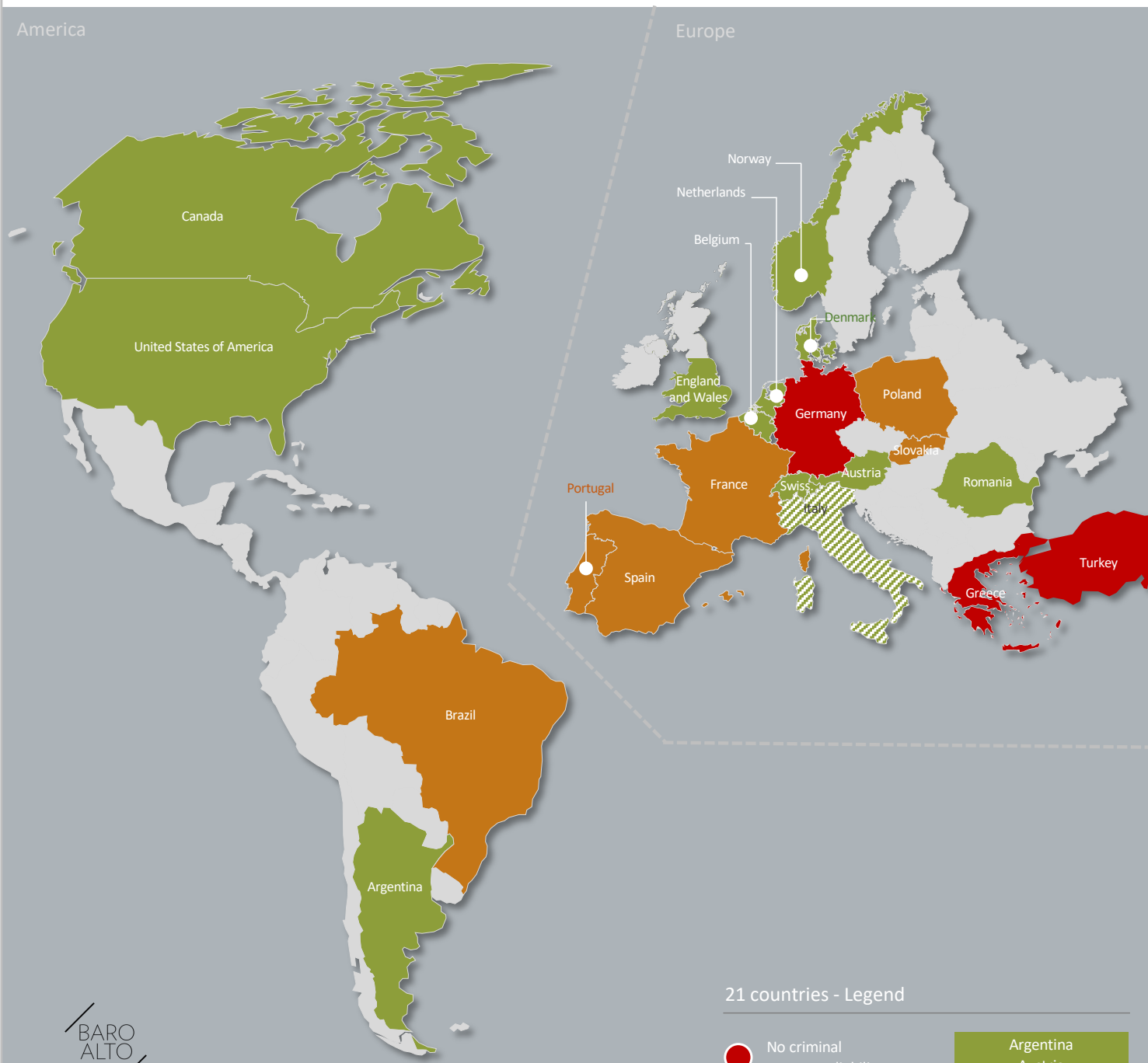
Clarity of the rules regarding cumulative criminal liability of legal entities and natural persons

Legal practitioners from 21 countries provided feedback on practices regarding cumulative criminal liability of legal entities and natural persons. The map shows the main differences in the current application of cumulative criminal liability in each jurisdiction.

Map 1



The analysis of the legal systems of the 21 countries surveyed shows major differences in their systems regarding corporate criminal liability. Map 1 shows the areas in which corporate criminal liability is fully or partially applicable or not at all.



Corporate criminal liability

21 countries - Legend

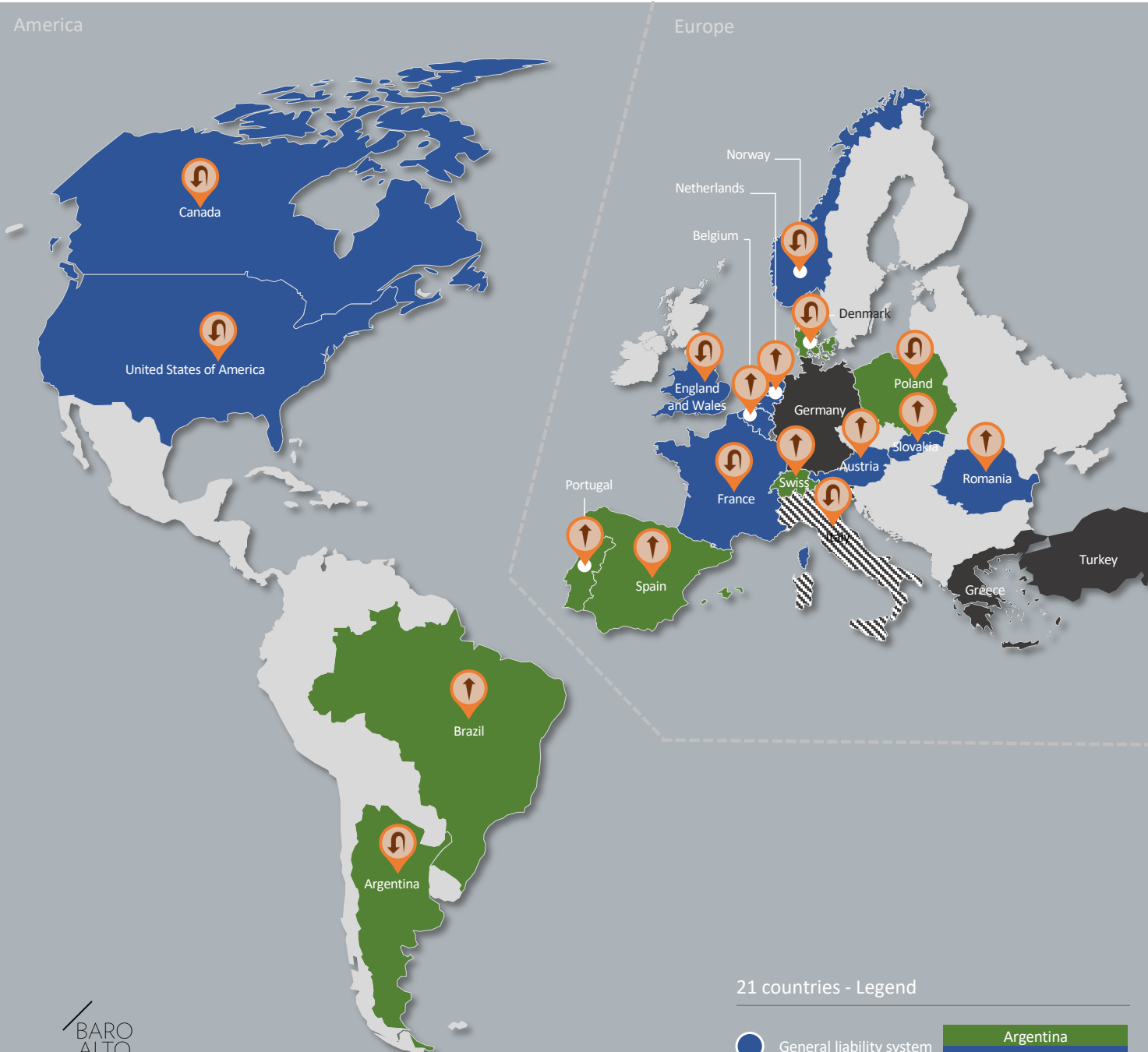
- No criminal corporate liability
- Criminal Corporate liability NOT fully applied
- Quasi criminal corporate liability
- Criminal Corporate liability fully applied
- See definitions p. 8

Argentina
Austria
Belgium
Brazil
Canada
Denmark
France
Germany
Greece
Italy
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Spain
Switzerland
Turkey
England and Wales
United States of America

Map 2



Cumulative criminal liability of legal entities and natural persons is recognised in most of the countries compared. The map shows the various legal frameworks of this cumulative criminal liability.



Cumulative criminal liability of legal entities and natural persons

21 countries - Legend

	General liability system		Argentina
	List liability system		Austria
	Criminal quasi-liability		Belgium
	No cumul		Brazil
	Indirect liability		Canada
	Direct liability		Denmark
	Indirect liability		France
	No cumul		Germany
	Criminal quasi-liability		Greece
	Direct liability		Italy
	Indirect liability		Netherlands
	Indirect liability		Norway
	Direct liability		Poland
	Indirect liability		Portugal
	Direct liability		Romania
	Direct liability		Slovakia
	Direct liability		Spain
	Direct liability		Switzerland
	No cumul		Turkey
	General liability system		England and Wales
	General liability system		United States of America

See definitions p. 8

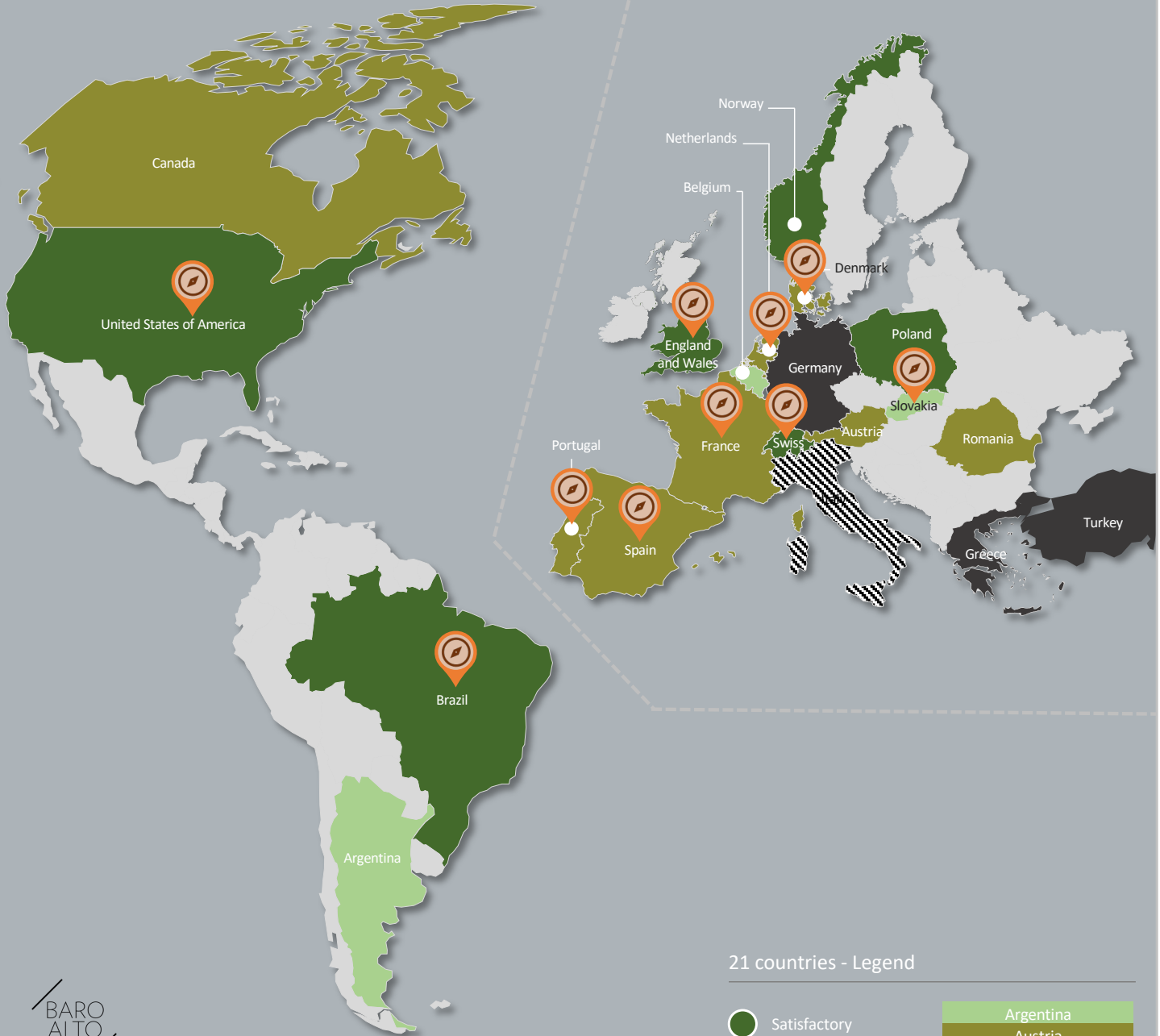
Map 3



Legal practitioners from 21 countries provided feedback on practices regarding cumulative criminal liability of legal entities and natural persons. The map shows the main differences in the current application of cumulative criminal liability in each jurisdiction.

America

Europe



21 countries - Legend

- Satisfactory
- Average
- System too recent
- Criminal quasi-liability
- No cumul
- Existence of guidelines
- See definitions p. 8

Argentina
Austria
Belgium
Brazil
Canada
Denmark
France
Germany
Greece
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Spain
Switzerland
Turkey
England and Wales
United States of America

BARO ALTO
LAW OF FINANCE

Clarity of the rules regarding cumulative criminal liability of legal entities and natural persons

Countries reviewed



Twenty-one legal systems were reviewed in the scope of this survey. For each of them, meetings and discussions took place to gain knowledge on the state of substantive law and legal practitioners' hands-on experience. The implications in terms of criminal liability are summarized in the attached country fact sheets.

- | | | |
|-----------|-------------|--------------------------|
| ARGENTINA | GERMANY | ROMANIA |
| AUSTRIA | GREECE | SLOVAKIA |
| BELGIUM | ITALY | SPAIN |
| BRAZIL | NETHERLANDS | SWITZERLAND |
| CANADA | NORWAY | TURKEY |
| DENMARK | POLAND | ENGLAND AND WALES |
| FRANCE | PORTUGAL | UNITED STATES OF AMERICA |

Legend

COUNTRY SHEET

COUNTRY LEGAL FRAMEWORK

SOURCE DOCUMENTATION

DEFINITIONS

REGULATION STATUS

CUMULATIVE LIABILITY REGULATION INDIVIDUAL + CORPORATION

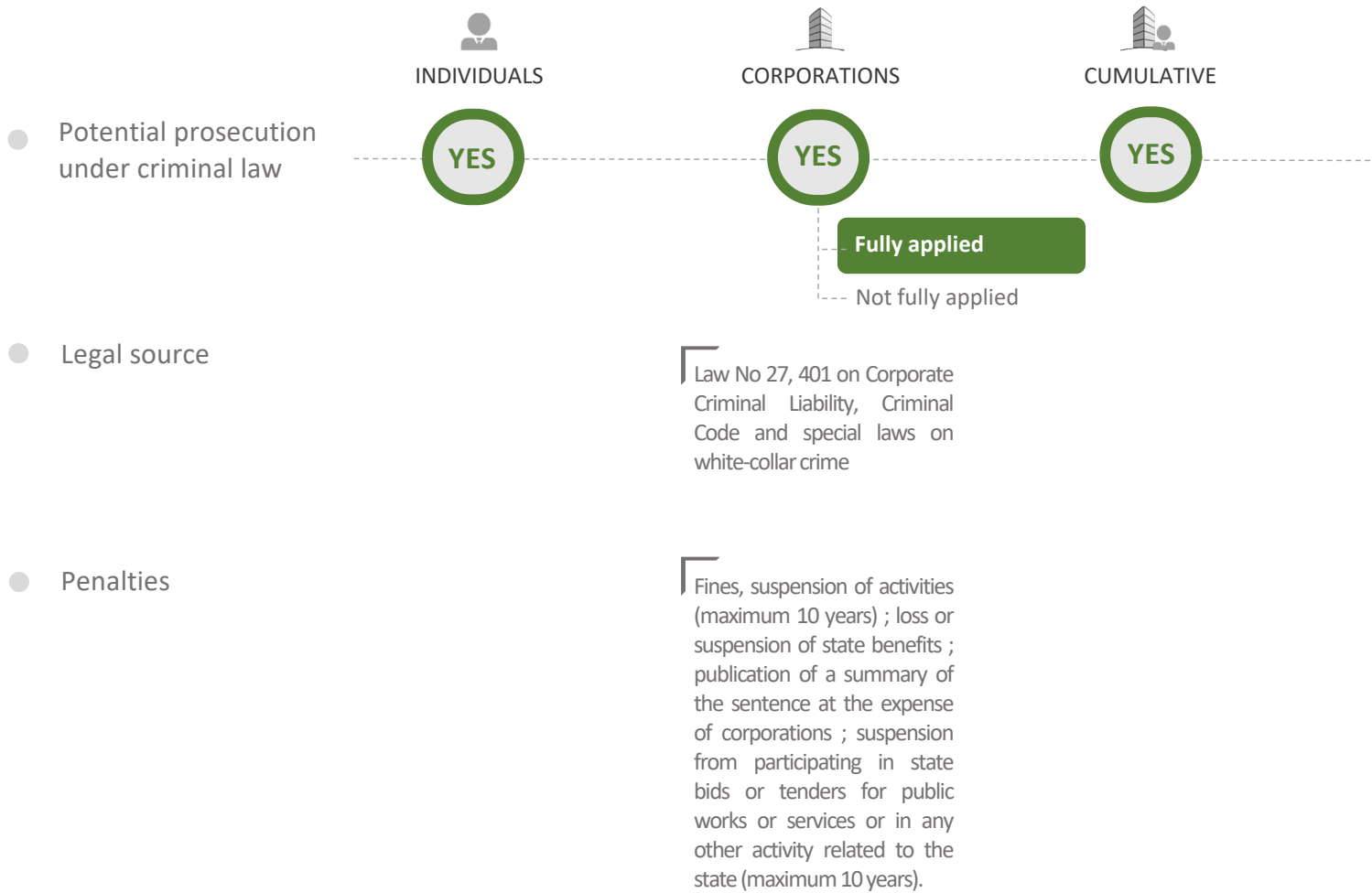
The screenshot shows a 'Country Sheet' for the United Kingdom. It includes sections for 'Potential prosecution under criminal law' (YES for individuals, corporations, and cumulative), 'Legal source' (listing various acts like the Companies Act 2008 and Bribery Act 2010), and 'Penalties' (fines, imprisonment, and disqualification). A 'CUMULATIVE LIABILITY REGULATION IN UNITED KINGDOM' section uses a series of buttons to indicate the status of different aspects: Type of liability (Indirect/Direct), Type of offence (General liability system/List of offence system), Existence of guidelines (Yes/No), and Clarity of the choice (Unpredictable/Variable/Consistent/System too recent to reply).

Definitions

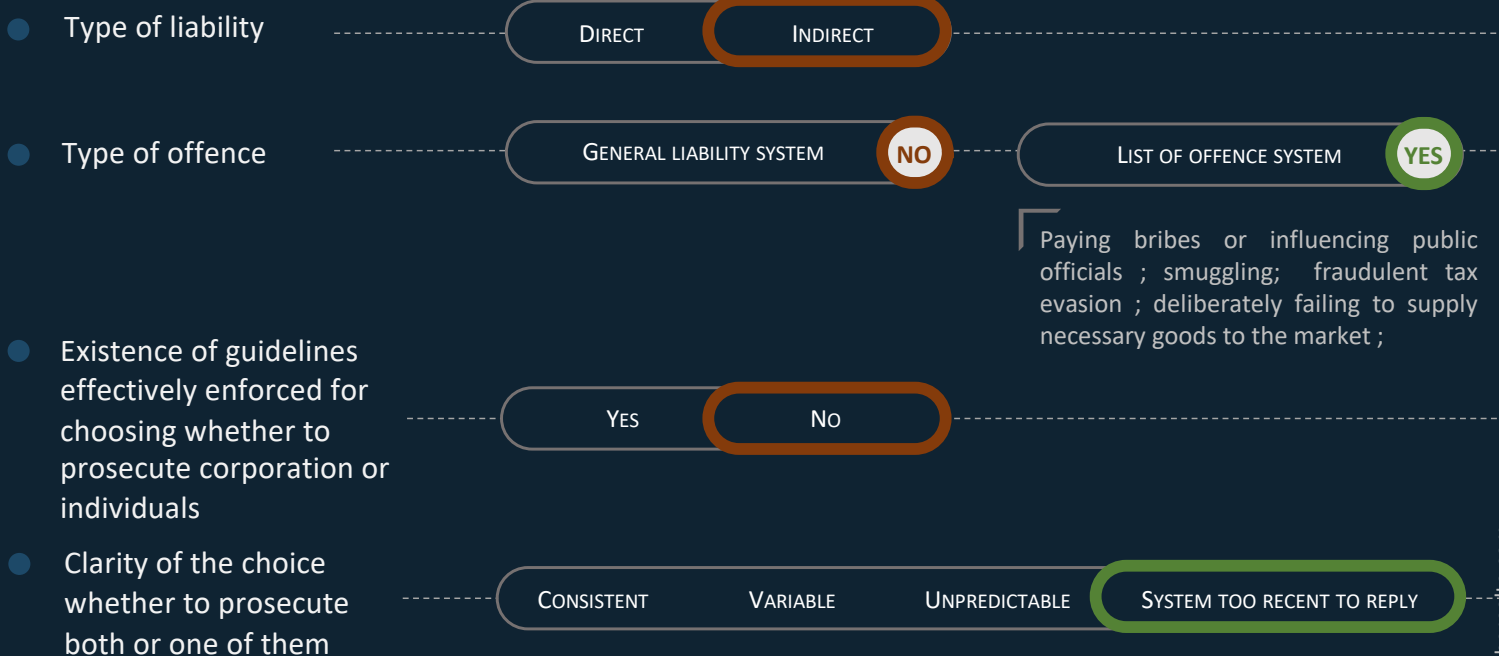
- **Corporation Potential prosecution under criminal law - Fully applied / Not fully applied :** corporate criminal liability, in the case where it exists, is effectively enforced.
- **Type of liability (Direct/Indirect) -** When the liability is direct, a legal entity can be prosecuted regardless of any identification or recognition of a natural person's guiltiness. When it is indirect, a legal entity can only be prosecuted if one of its executive officers commits a criminal offence.
- **Type of offence - « general liability system » / « List of offence system » :** The criminal liability of a legal entity is general if it is not limited to specific offences. In that case, a legal entity can, in principle, be prosecuted for any type of offence.



CRIMINAL LIABILITY ANALYSIS - 2022



CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022

	INDIVIDUALS	CORPORATIONS	CUMULATIVE
● Potential prosecution under criminal law	YES	YES	YES
● Legal source	Austrian Criminal Act (Strafgesetzbuch, StGB) and, in addition, various other criminal laws or criminal provisions in other laws (eg Financial Crimes Act (Finanzstrafgesetz, FinStrG), Narcotic Substances Act (Suchtmittelgesetz, SMG) Media Act (Mediengesetz, MedienG)).	Austrian Act on Corporate Criminal Liability (Verbandsverantwortlichkeitsgesetz, VbVG)	
● Penalties	Fines and imprisonment (the maximum penalty in Austria is 10-20 years or life imprisonment). The sentence may be conditionally suspended with a probationary period.	Fines. The amount of the fine shall be determined on the basis of the earnings situation of the association, taking into account its other economic performance.	

Fully applied

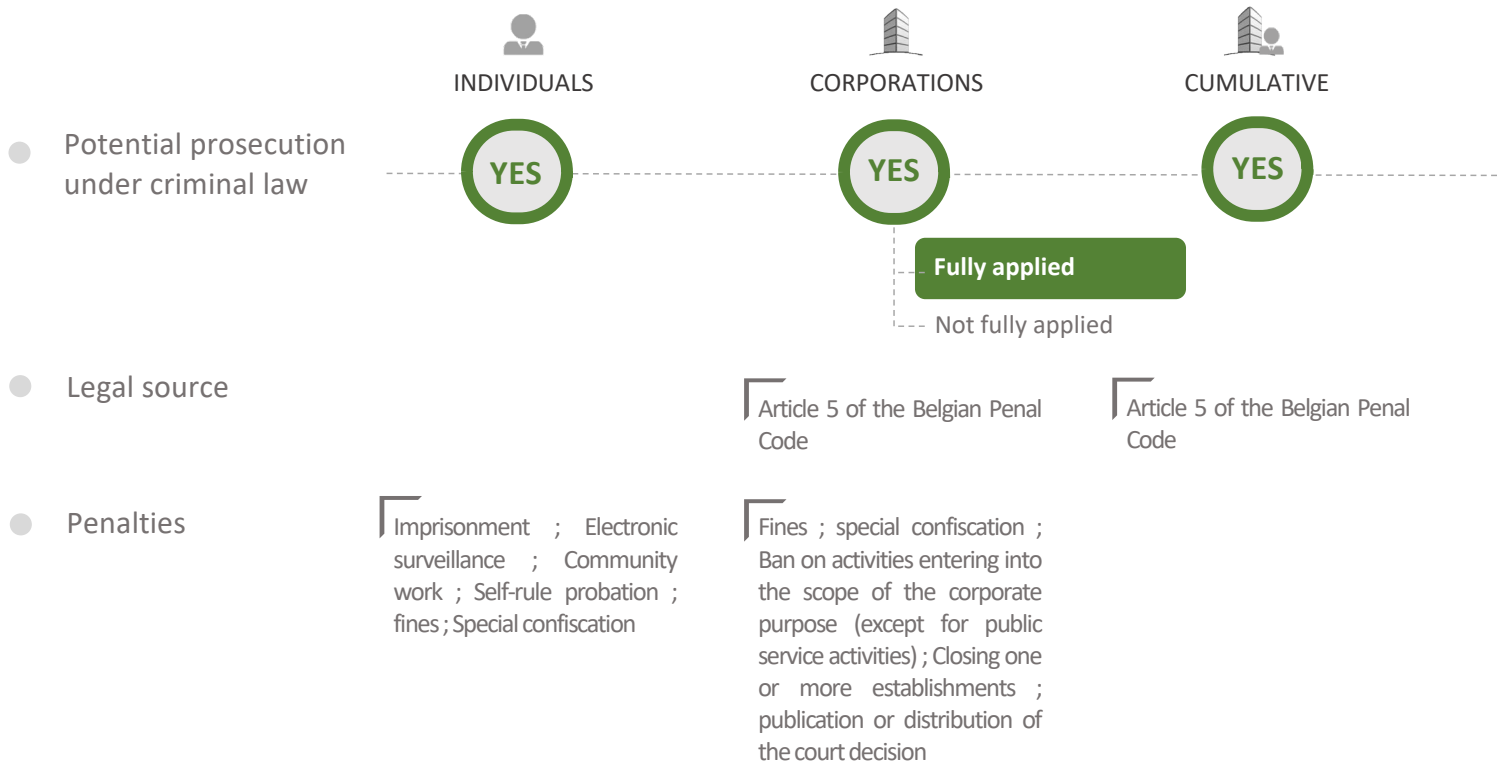
Not fully applied



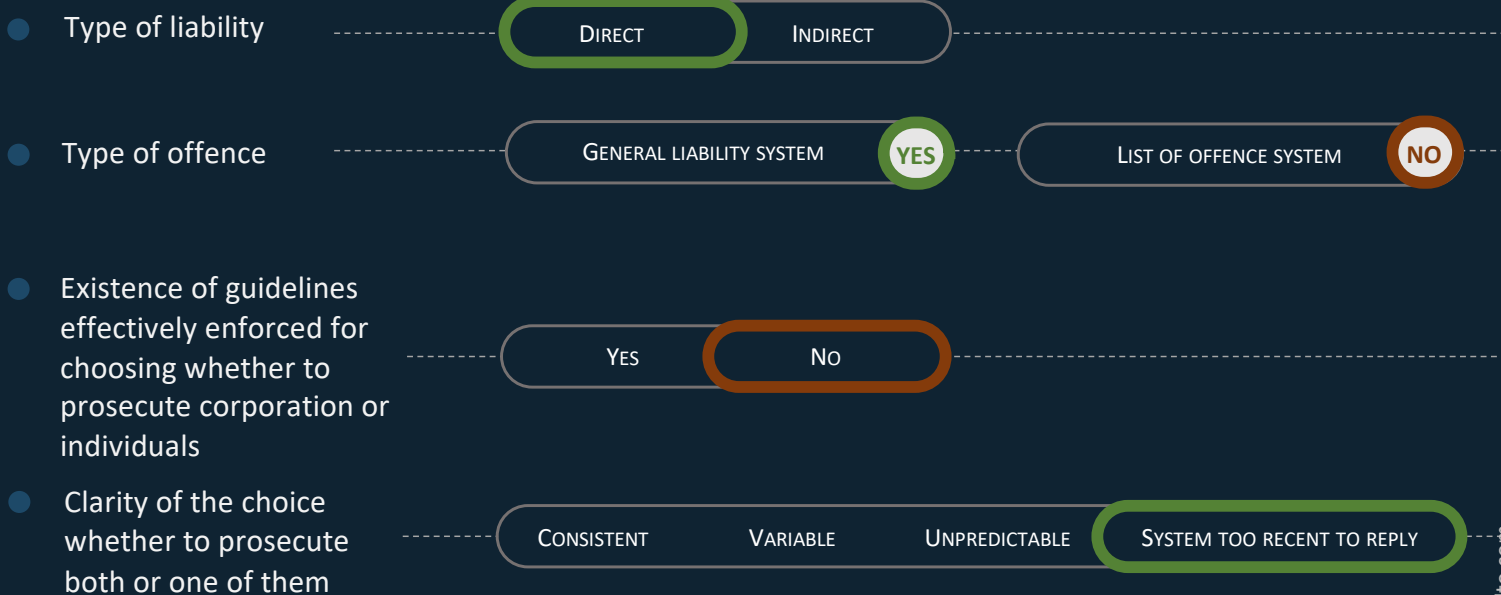
CUMUL OF CRIMINAL LIABILITY

● Type of liability	DIRECT	INDIRECT		
● Type of offence	GENERAL LIABILITY SYSTEM	YES	LIST OF OFFENCE SYSTEM	NO
● Existence of guidelines effectively enforced for choosing whether to prosecute corporation or individuals	YES	NO		
● Clarity of the choice whether to prosecute both or one of them	CONSISTENT	VARIABLE	UNPREDICTABLE	SYSTEM TOO RECENT TO REPLY

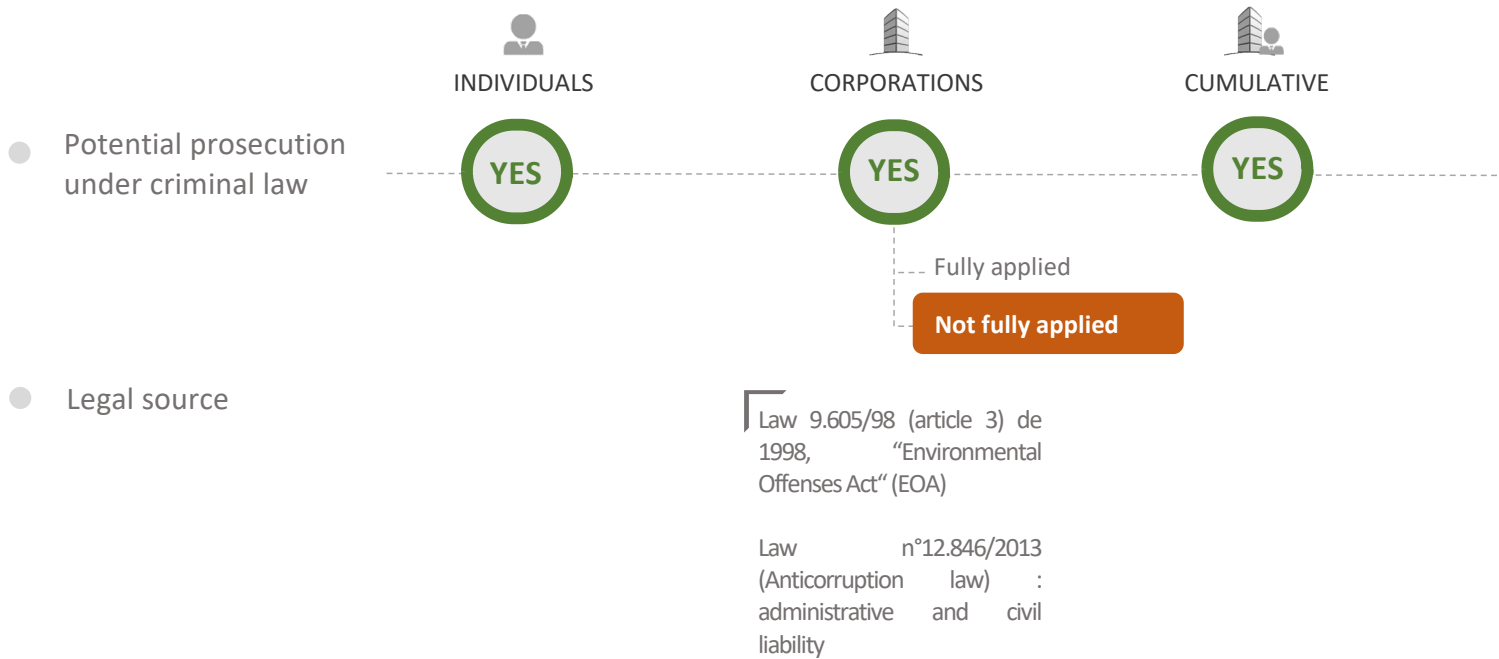
CRIMINAL LIABILITY ANALYSIS - 2022



CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022



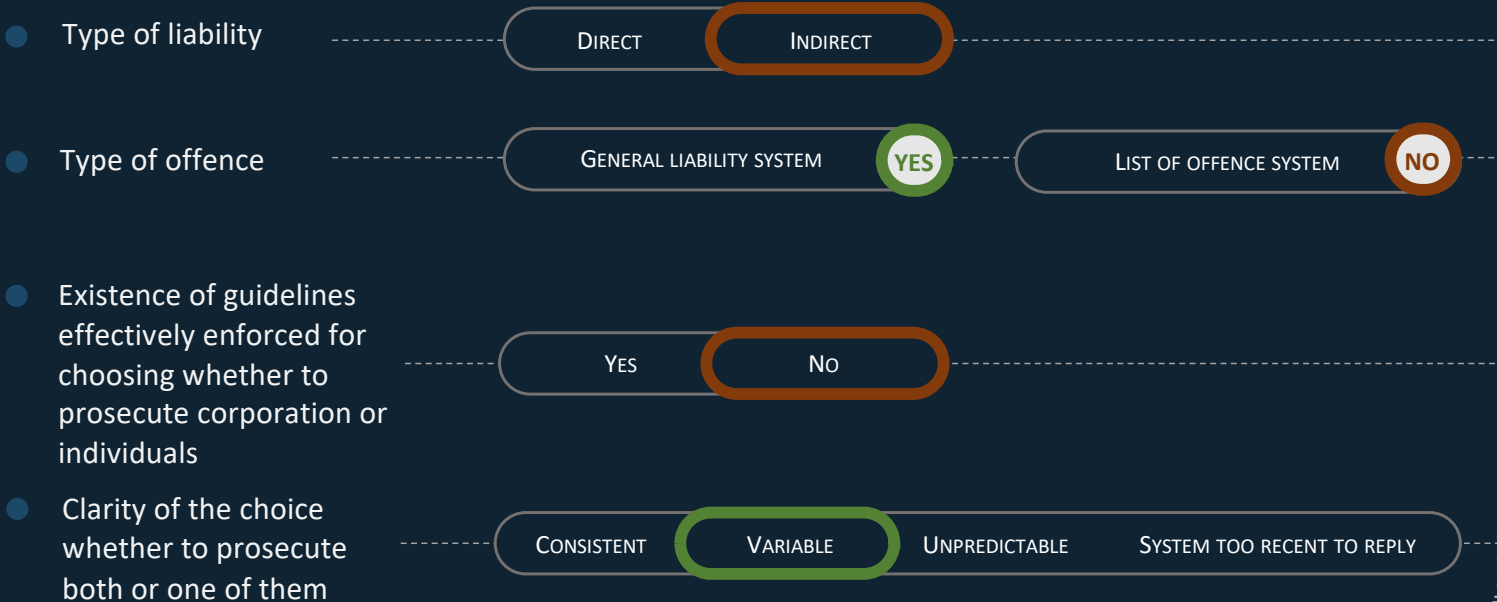
CUMUL OF CRIMINAL LIABILITY



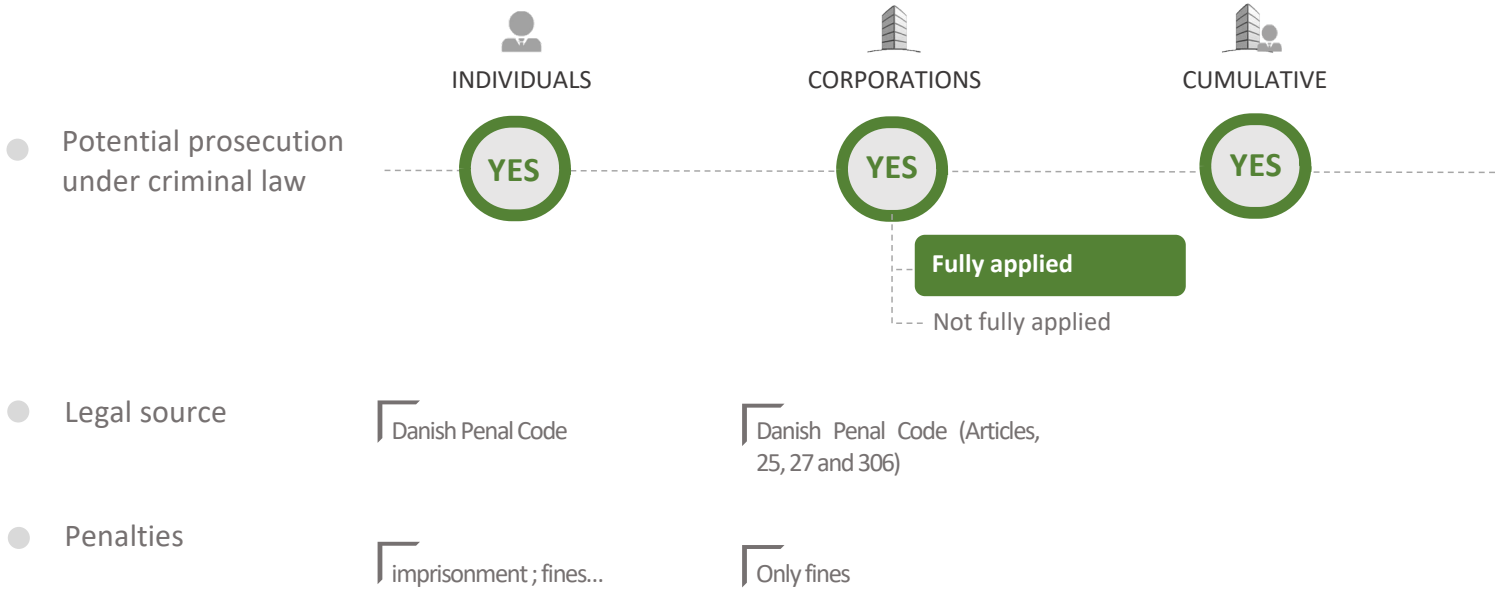
CRIMINAL LIABILITY ANALYSIS - 2022



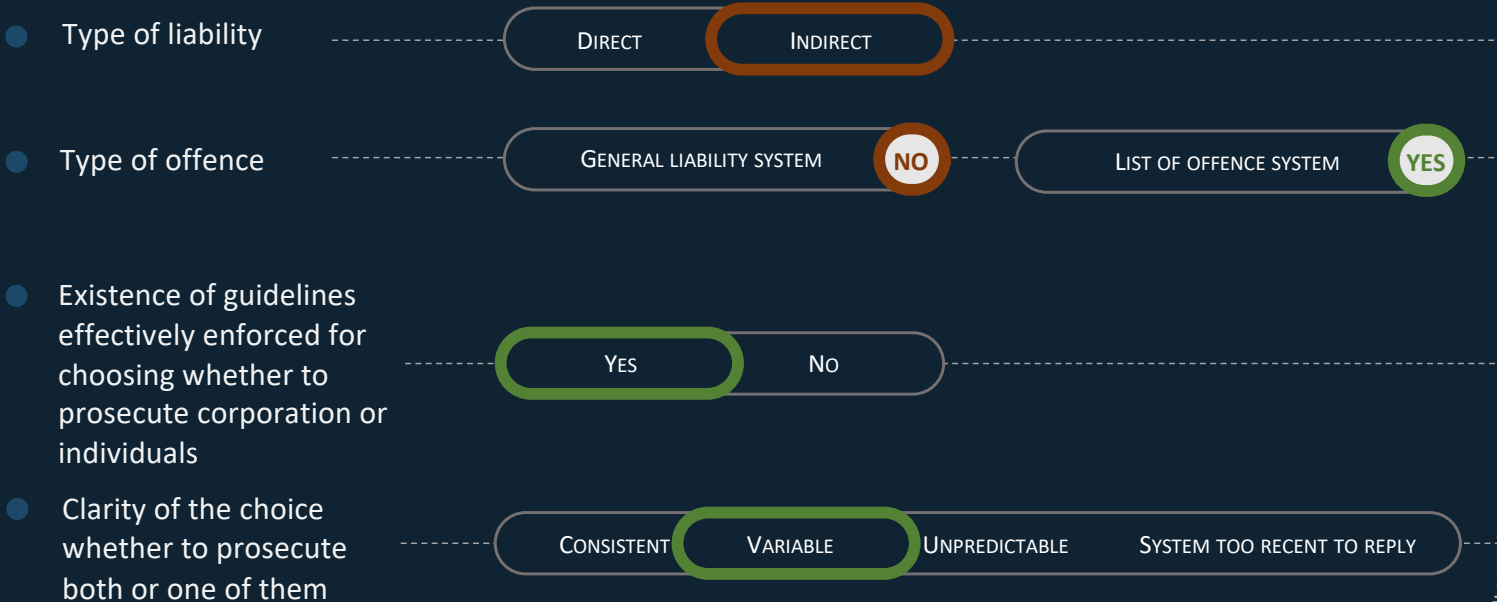
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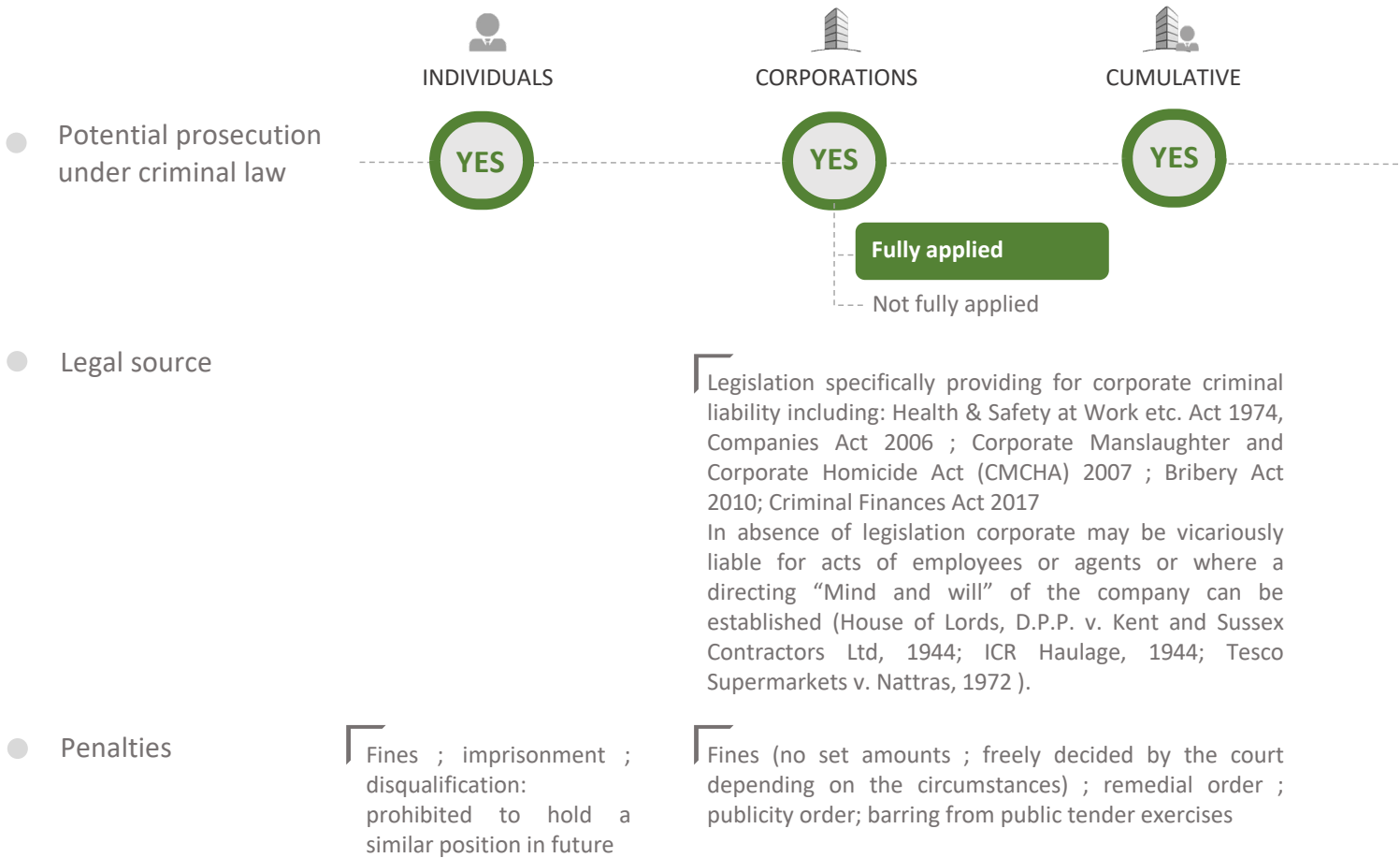
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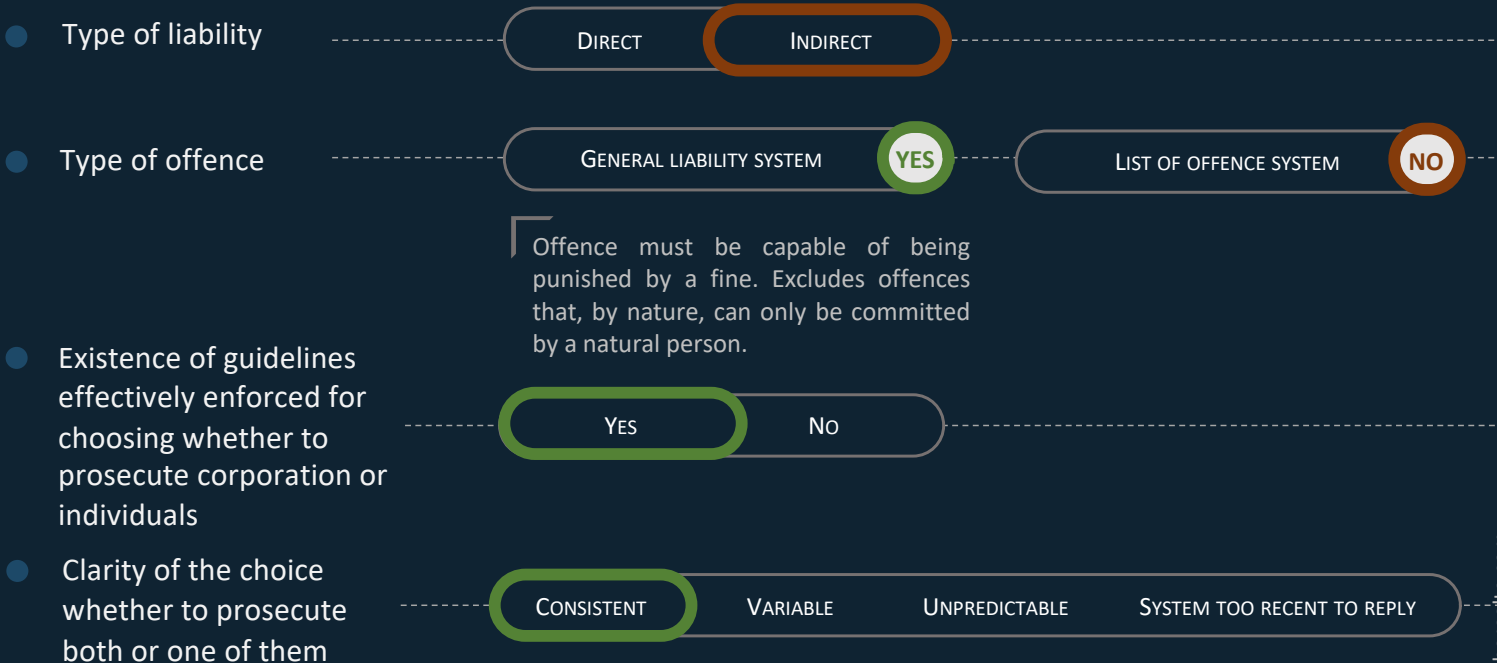
CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022



CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022

	INDIVIDUALS	CORPORATIONS	CUMULATIVE
Potential prosecution under criminal law	YES	YES	YES
Legal source	Criminal code + case law decisions	Article 121-2 of the Criminal Code: "Legal entities, with the exception of the State, are criminally liable, based on the definitions set out in Articles 121-4 to 121-7, for an offence committed by their governing bodies or representatives on their behalf".	Articles 121-2 and 121-3 of the Criminal Code + case law decisions
Penalties	Fines ; Imprisonment ; electronically monitored house arrest ; community work ; training ; bans (from driving, appearing in certain places, contacting certain people, etc.) ; obligations (medical treatment, training, etc.)	Fines (multiplied by 5 when a fine is provided for natural persons) or a maximum of EUR 1 MN when no fine is provided for natural persons ; additional penalties (winding up, placing under judicial supervision, exclusion from public procurement, closing of the establishments having served to commit the offences concerned)	

Fully applied
Not fully applied



CUMUL OF CRIMINAL LIABILITY

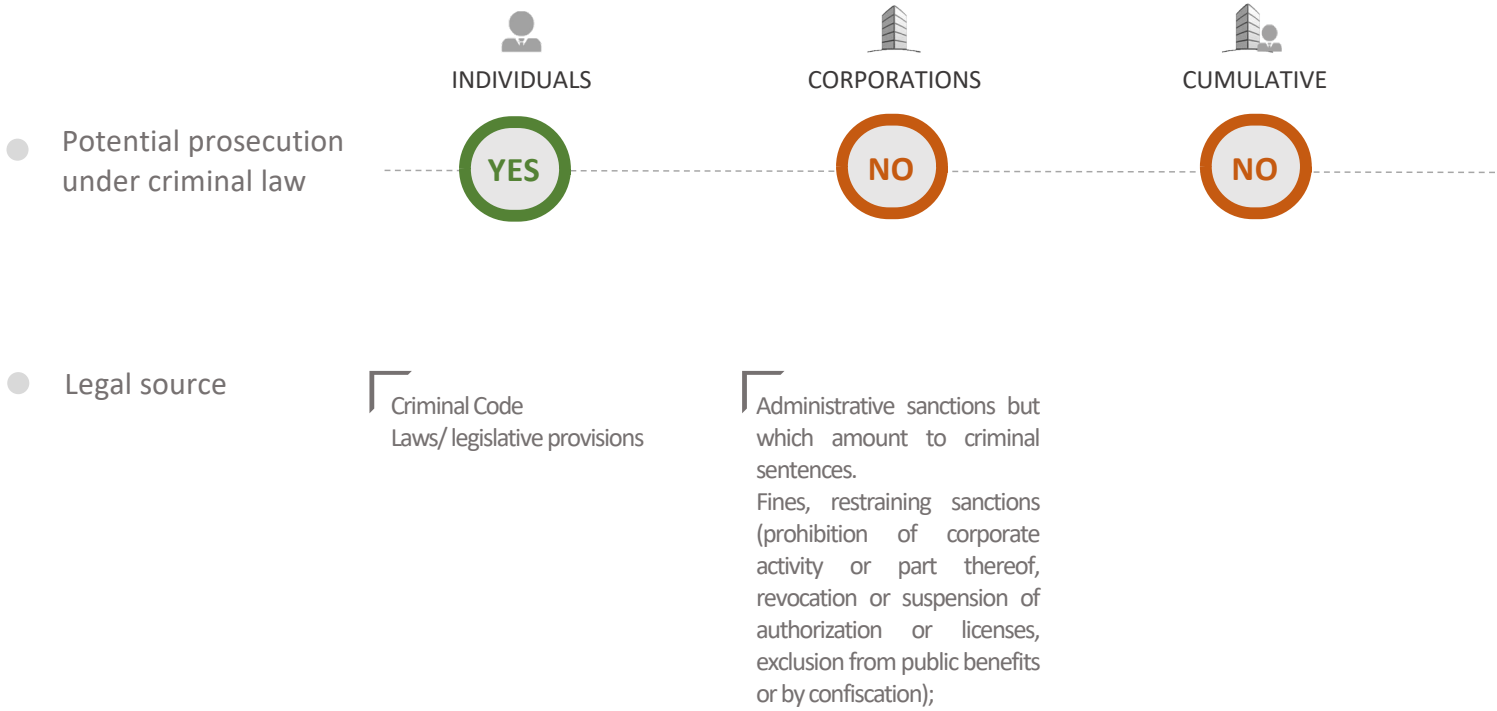
Type of liability	DIRECT	INDIRECT		
Type of offence	GENERAL LIABILITY SYSTEM	LIST OF OFFENCE SYSTEM NO		
Existence of guidelines effectively enforced for choosing whether to prosecute corporation or individuals	YES	No		
Clarity of the choice whether to prosecute both or one of them	CONSISTENT	VARIABLE	UNPREDICTABLE	SYSTEM TOO RECENT TO REPLY

	INDIVIDUALS	CORPORATIONS	CUMULATIVE
● Potential prosecution under criminal law			
● Legal source	<p>Section 14 of the German Criminal Code constitute special liability of members of the managing body. Additionally, there are different sections throughout the German Criminal Code which constitute personal liability.</p>	<p>Section 30 of the Administrative Offences Act (OWiG) provides the possibility for the administrative authorities to sentence a legal entity to an administrative fine (of up to 10 Million Euro).</p>	<p>Since there is no “criminal liability” of the corporations, there is no cumulative criminal liability. Nevertheless, the administrative fine of the corporation is only possible if an authorized representative of the company (Section 30 subs 1 OWiG) committed a crime or administrative offence. Criminal or administrative liability of the individual person and an administrative fine of the corporation is possible.</p>
● Penalties		<p>Sections 73 et seq. of the German Criminal Code provide the possibility for corporations to be deprived of its ownership of property that was used for or resulted from a crime if one of its representatives is responsible for the said crime and the legal entity benefited from it.</p>	



NO CUMUL OF CRIMINAL LIABILITY

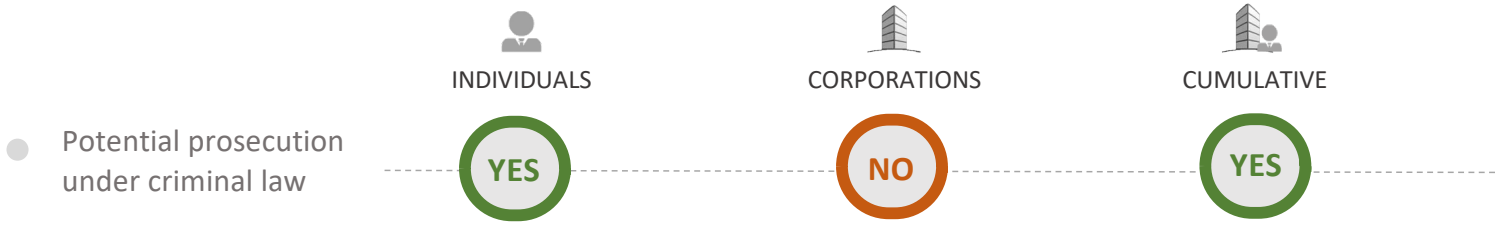
CRIMINAL LIABILITY ANALYSIS - 2022



NO CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022



● Legal source

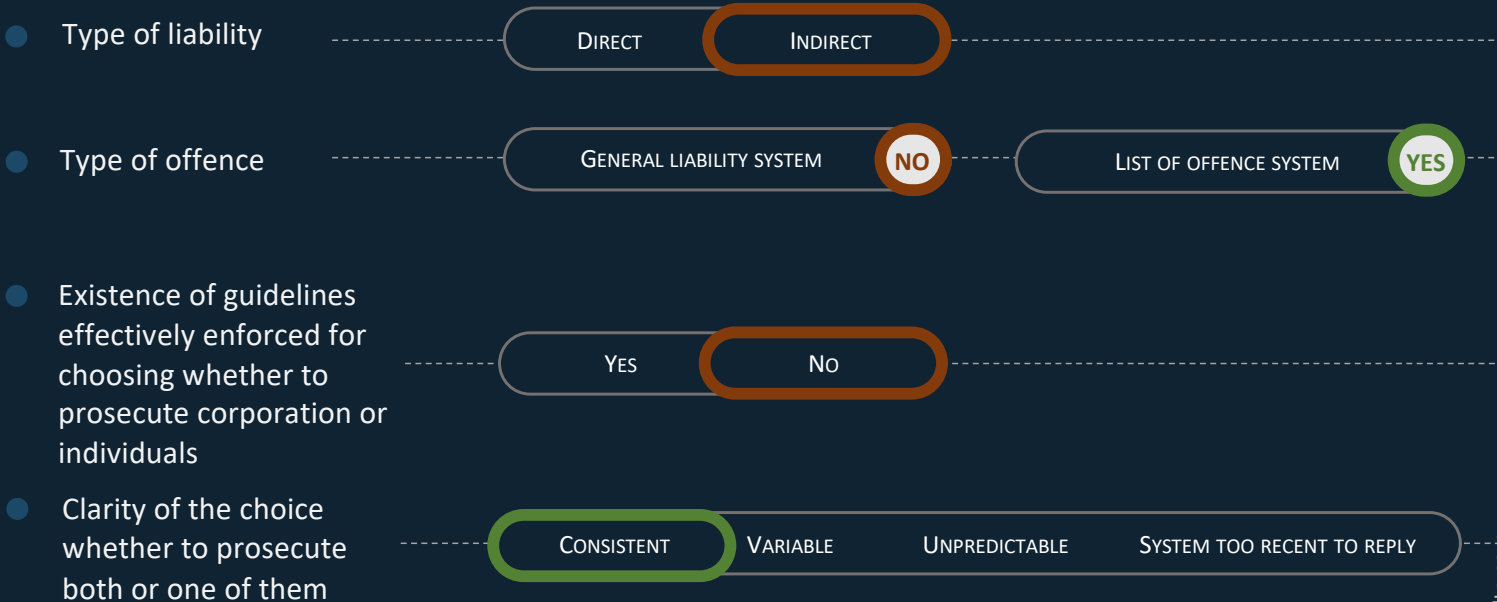
Legislative decree n°231/2001 of 8 June 2001 : No criminal liability but an administrative accountability (also referred to as administrative liability through criminal offence). This “administrative” liability falls under the jurisdiction of the criminal courts (to the effect that some observers wonder if the law does not implicitly create a criminal liability for legal entities).

● Penalties

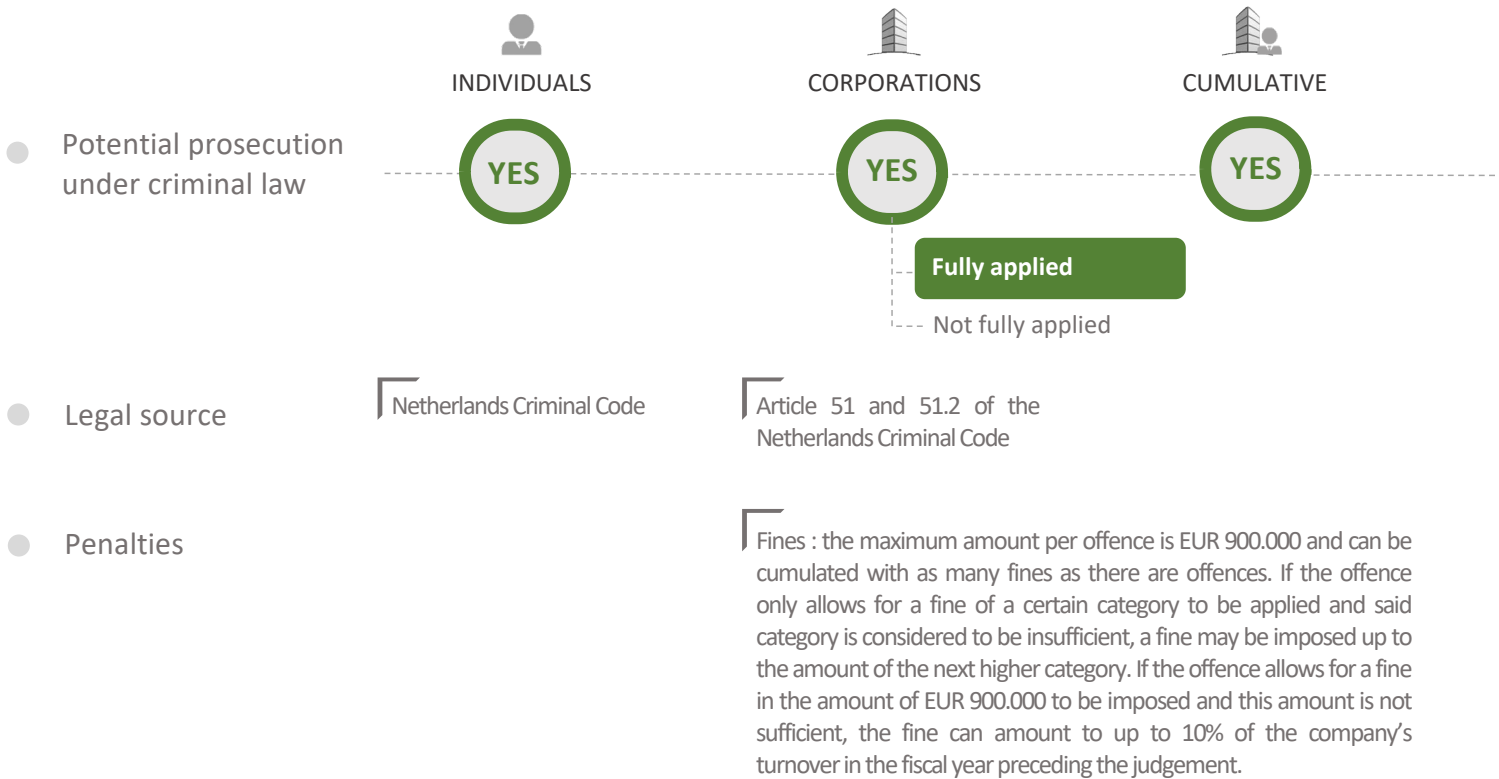
Fines of a maximum amount of EUR 1.4 MN ; Confiscation ; bans ; publication of the sentence.



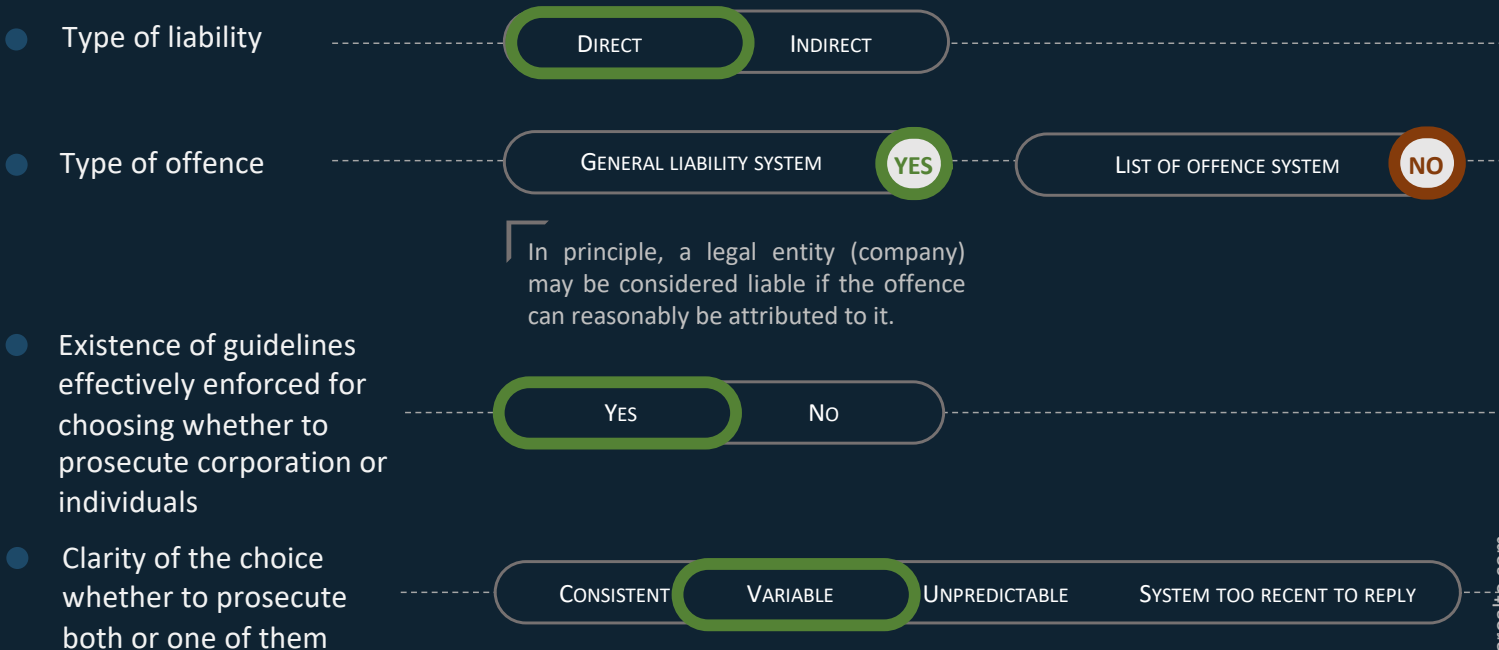
CUMUL OF CRIMINAL LIABILITY



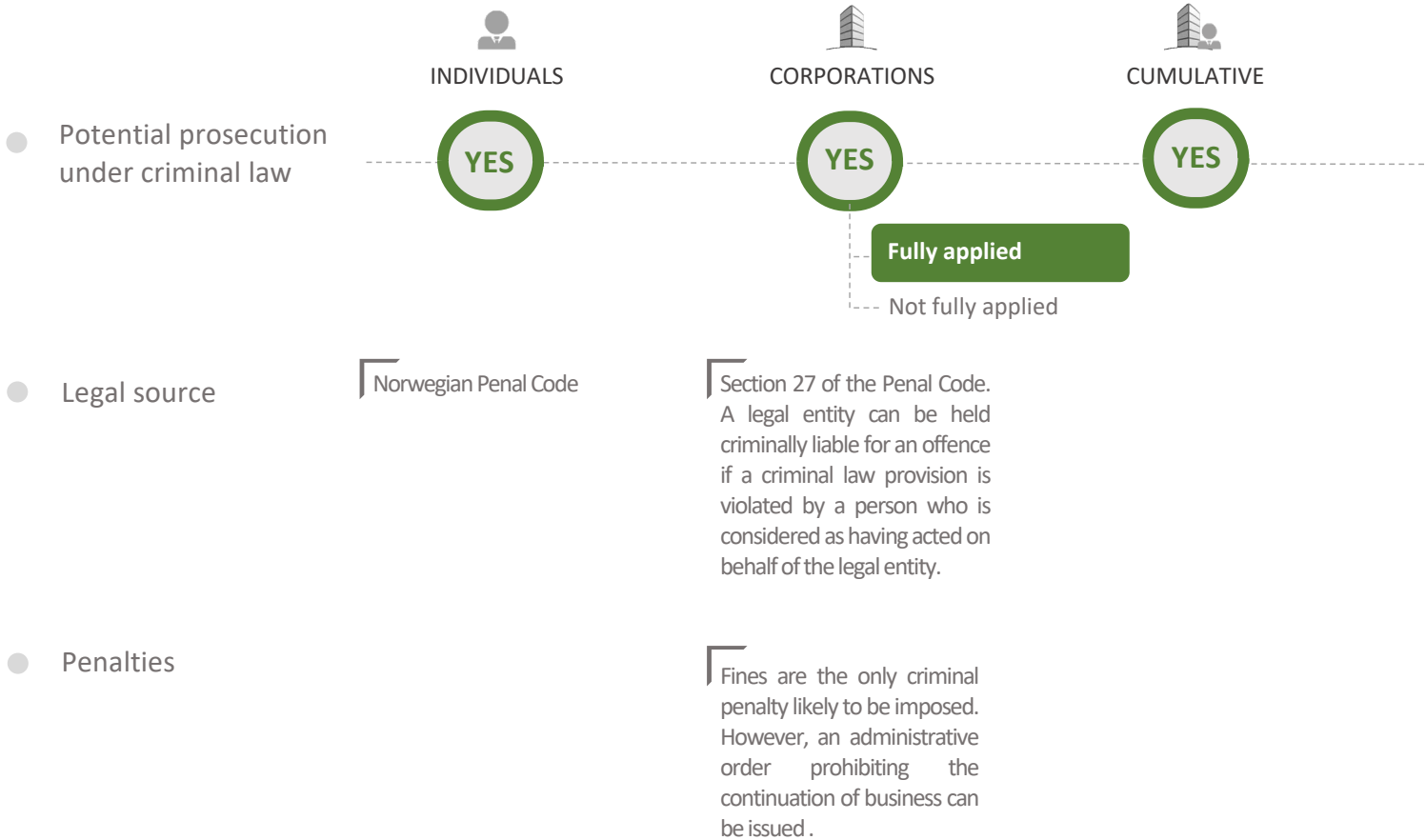
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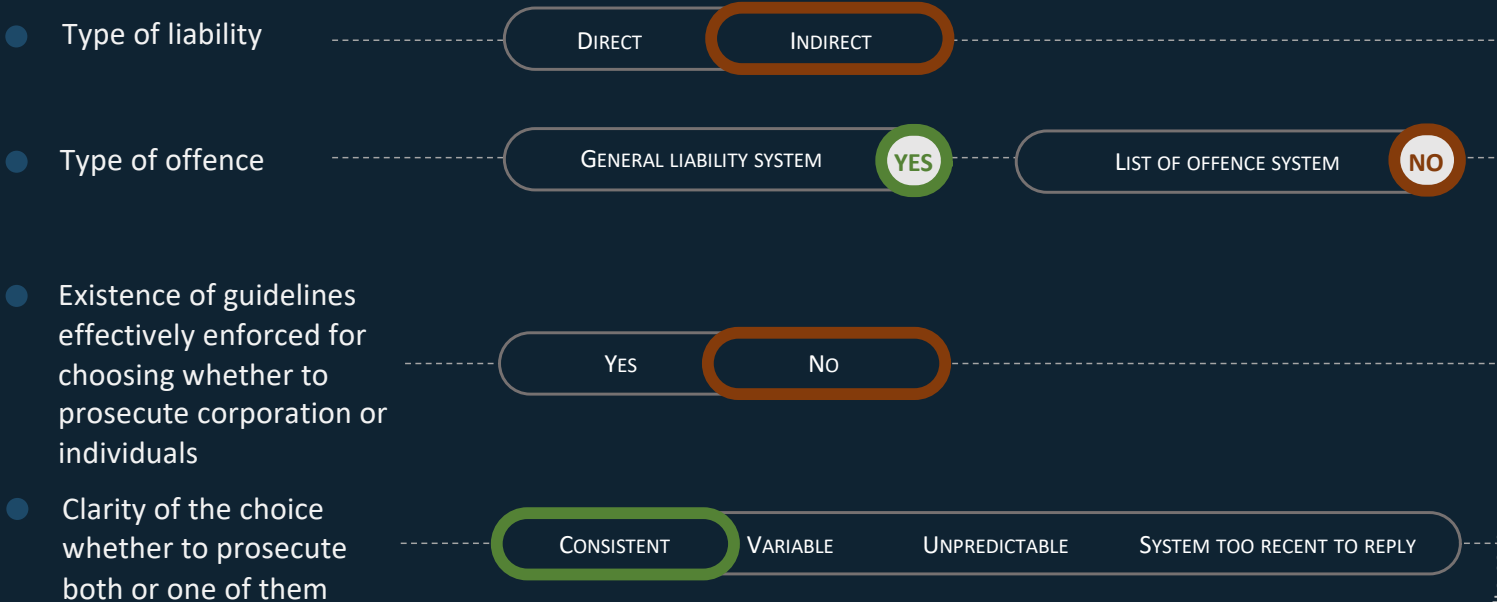
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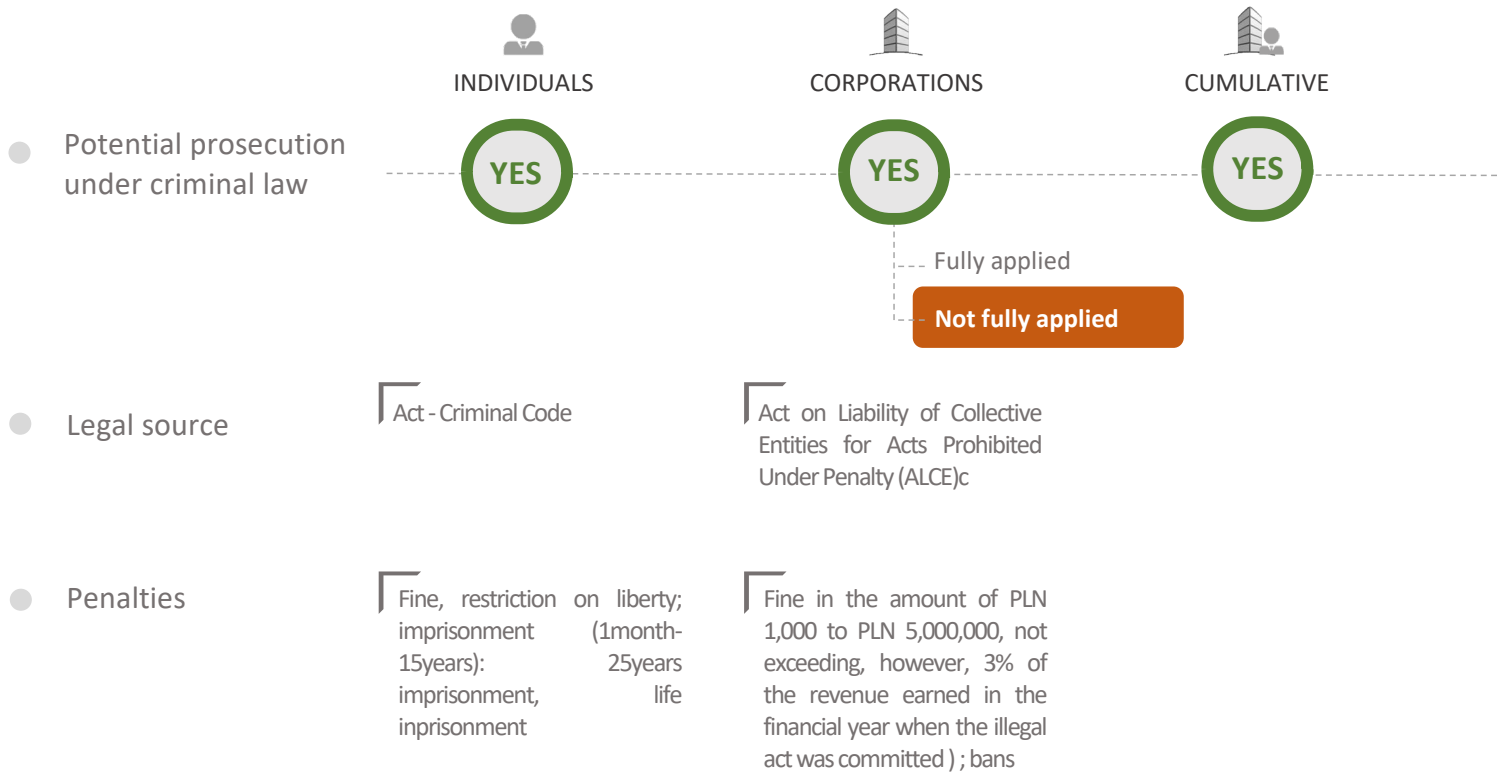
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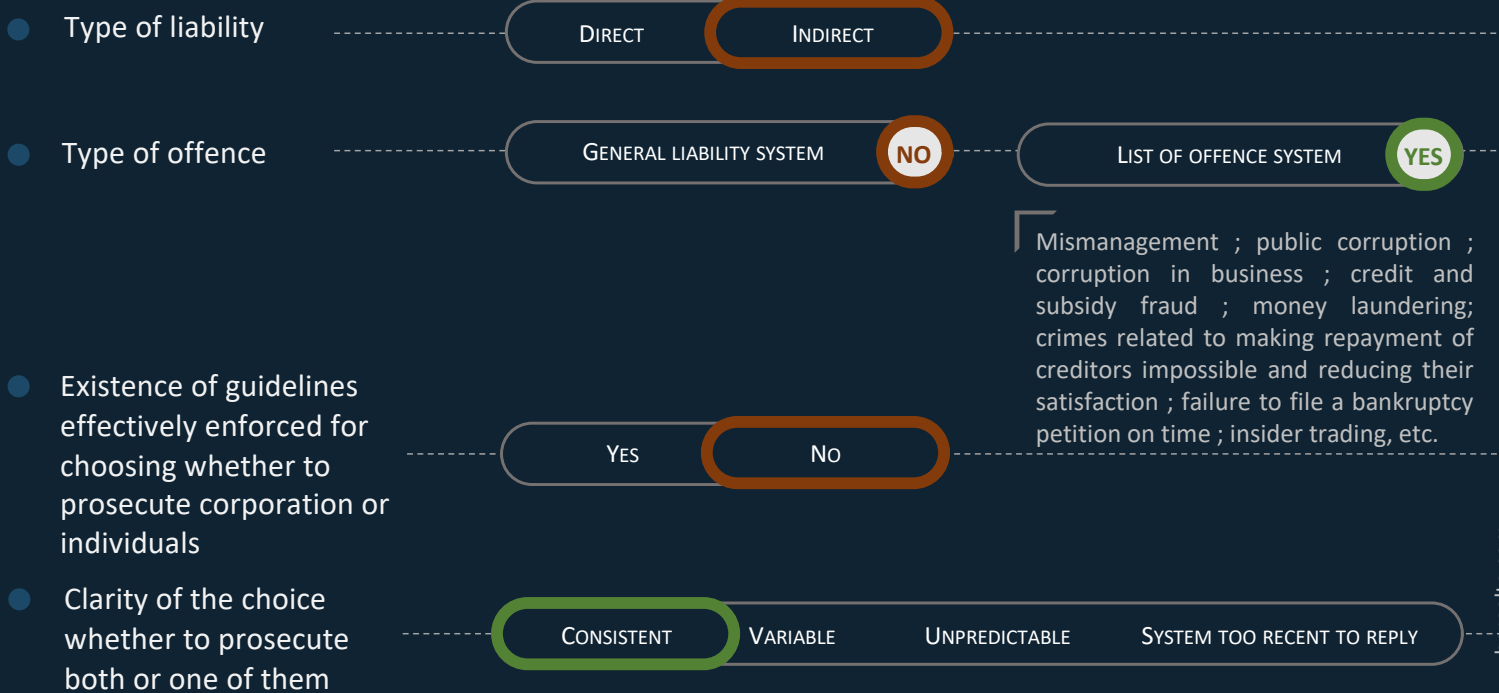
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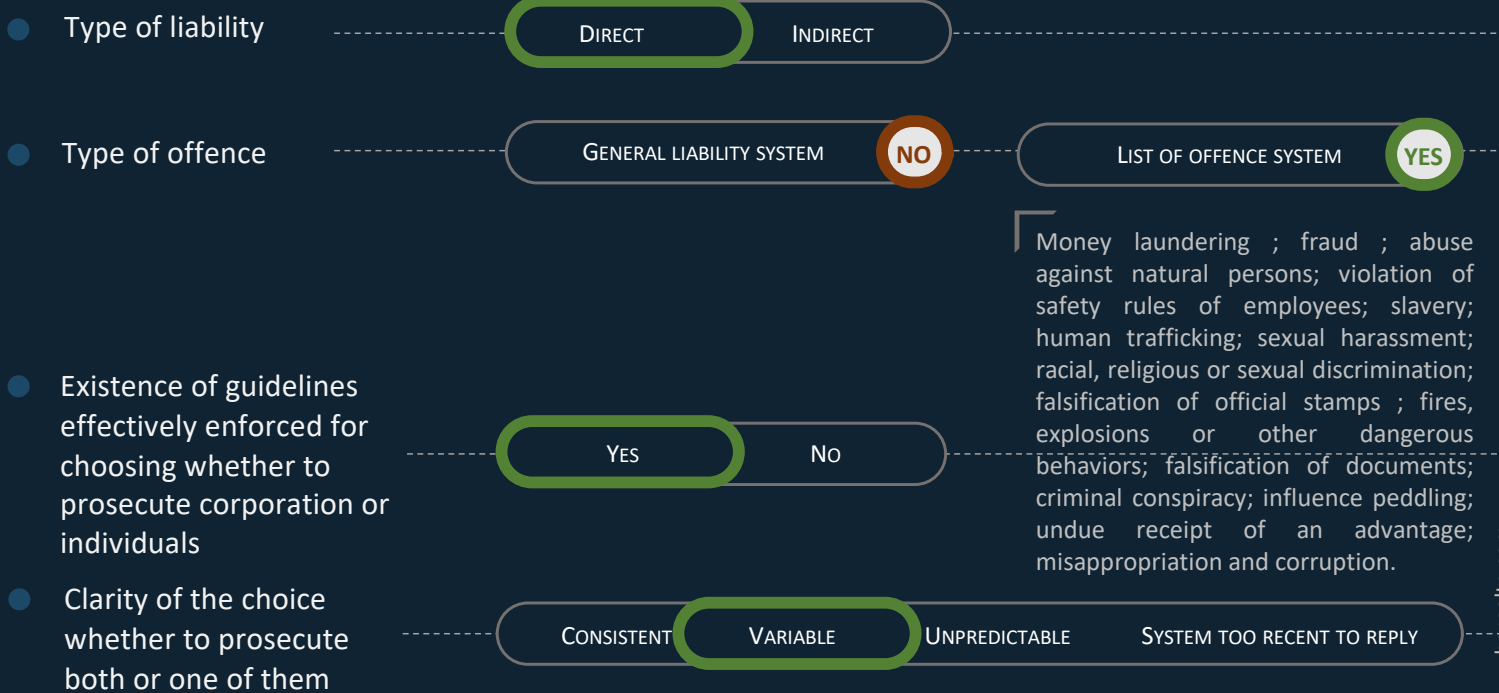
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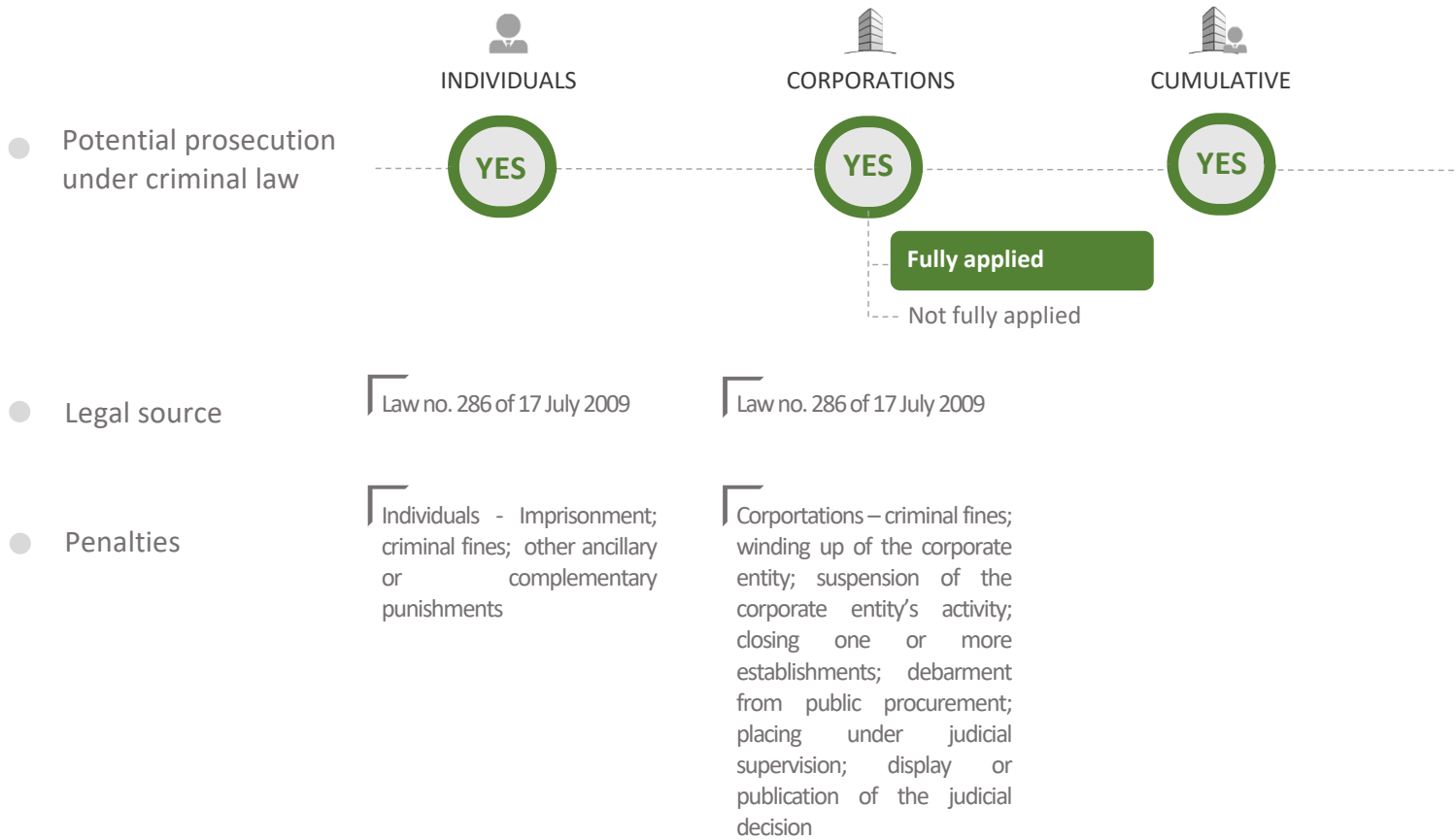
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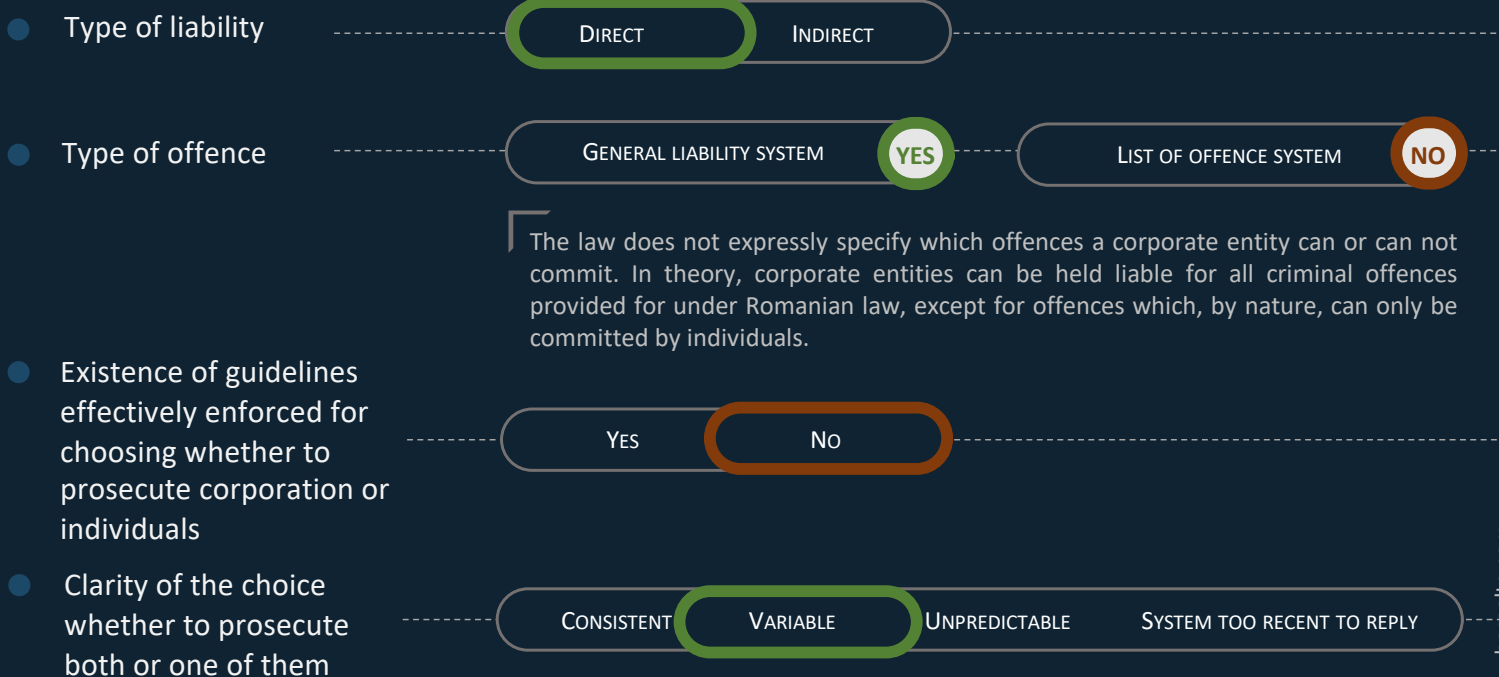
CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022



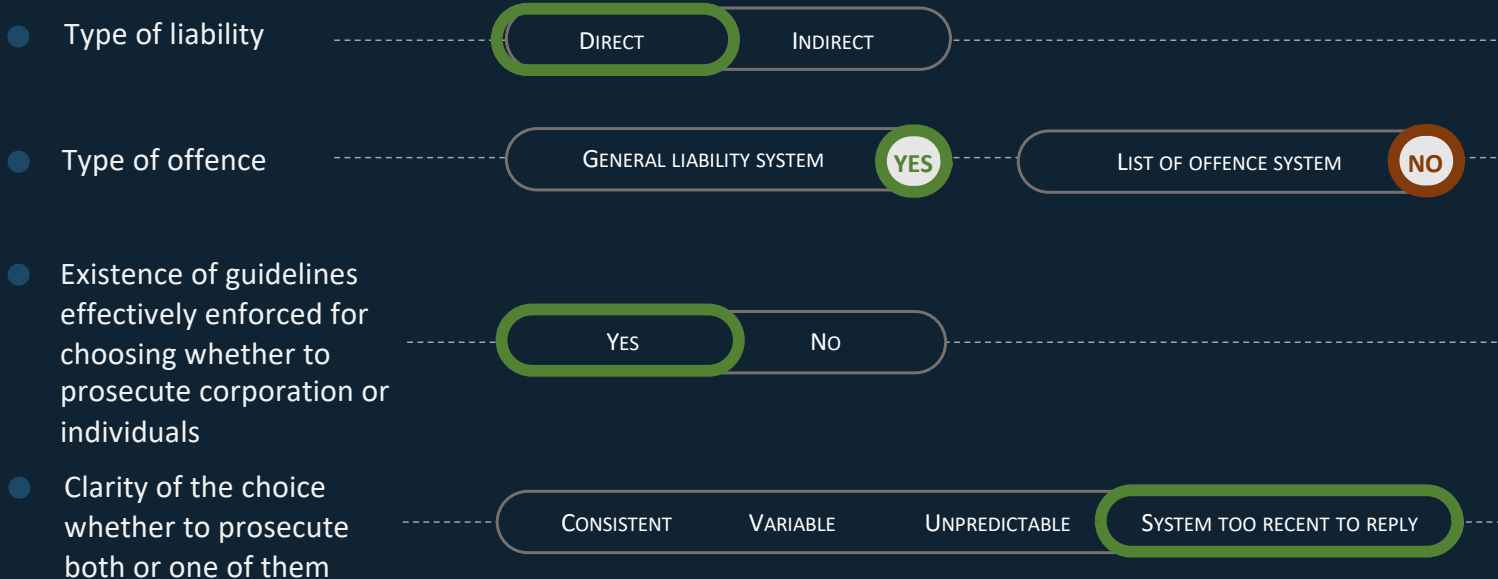
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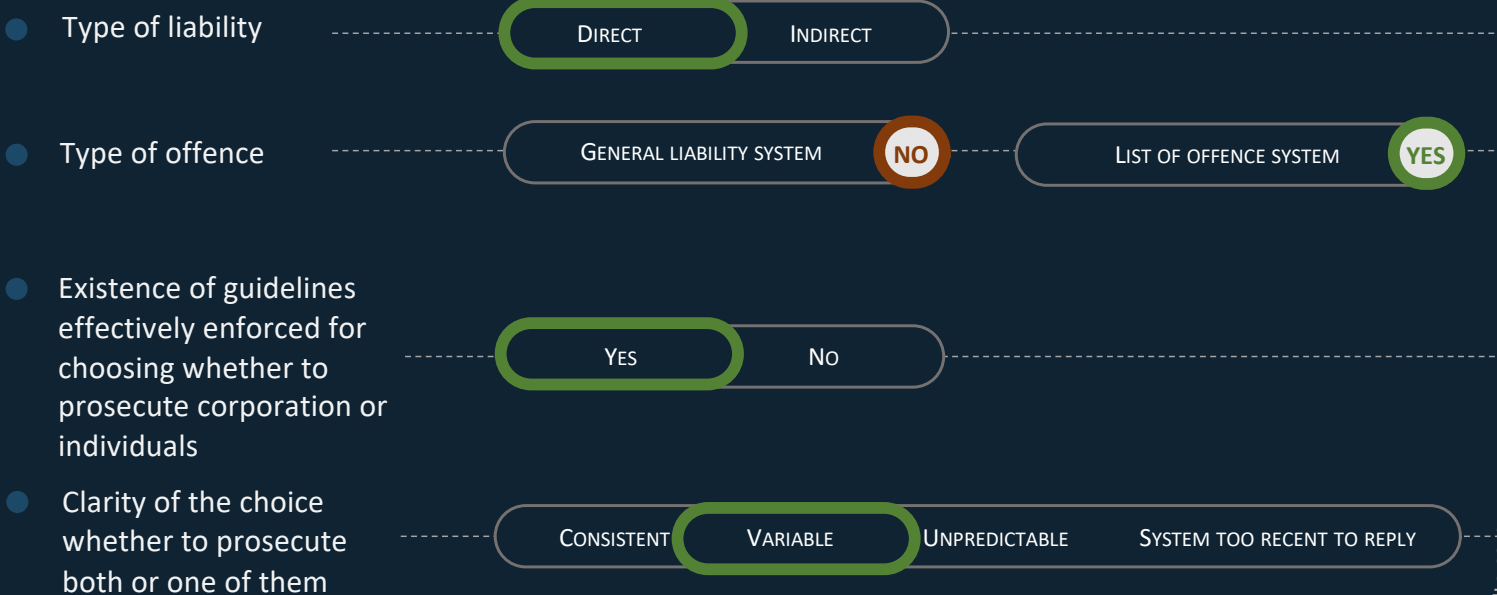
CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022



CUMUL OF CRIMINAL LIABILITY



CRIMINAL LIABILITY ANALYSIS - 2022

	INDIVIDUALS	CORPORATIONS	CUMULATIVE
Potential prosecution under criminal law	YES	YES	YES
Legal source	Swiss Criminal Code (SCC)	Article 102 para. 1 (secondary liability) and 2 (primary liability) SCC	Only in cases of primary criminal liability
Penalties	Fines, monetary penalties, custodial penalties (imprisonment), community services.	Fine up to a maximum amount of CHF 5 million (Article 102 para. 1 and 3 SCC).	

Fully applied

Not fully applied



CUMUL OF CRIMINAL LIABILITY

Type of liability	DIRECT	INDIRECT		
Type of offence	GENERAL LIABILITY SYSTEM	NO	LIST OF OFFENCE SYSTEM	YES
Existence of guidelines effectively enforced for choosing whether to prosecute corporation or individuals	YES	NO		
Clarity of the choice whether to prosecute both or one of them	CONSISTENT	VARIABLE	UNPREDICTABLE	SYSTEM TOO RECENT TO REPLY

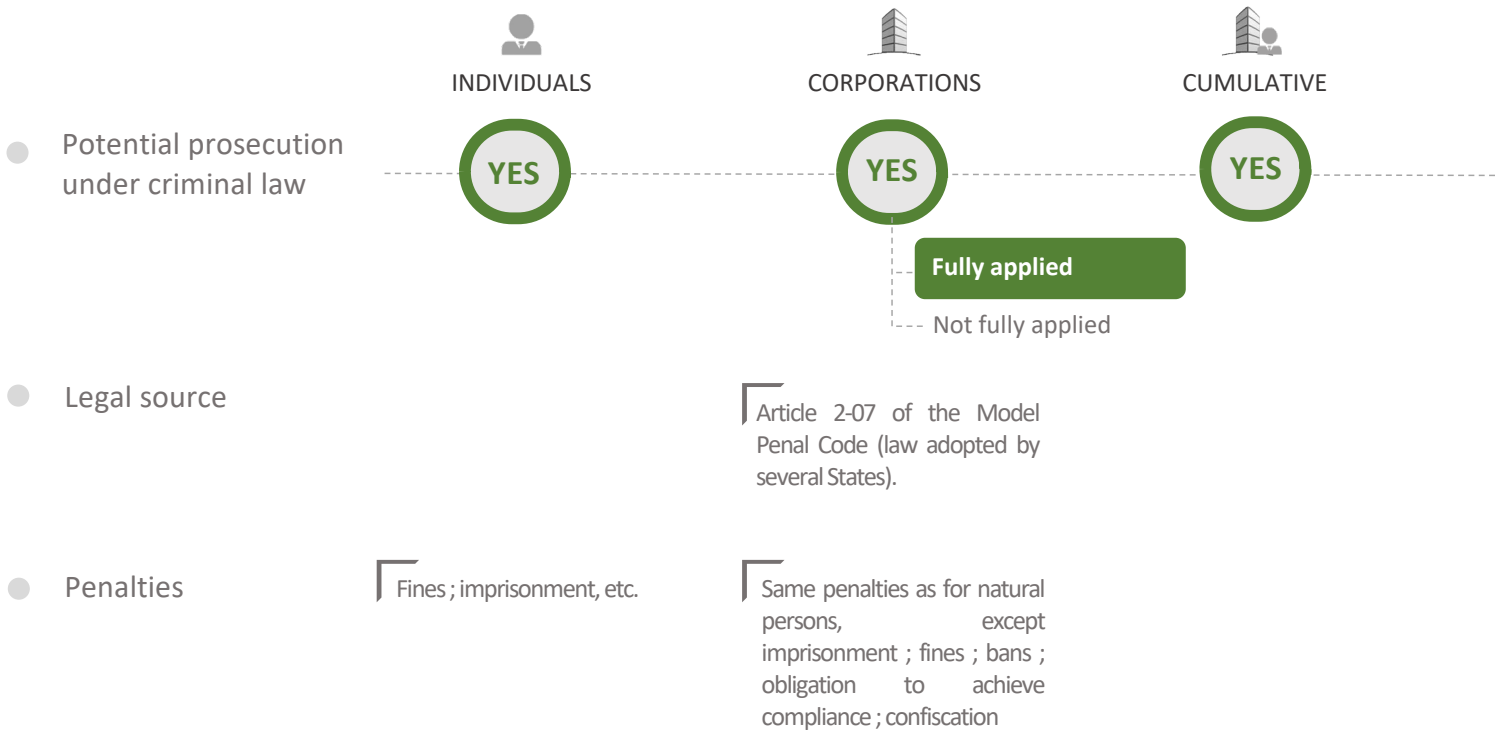
CRIMINAL LIABILITY ANALYSIS - 2022

	 INDIVIDUALS	 CORPORATIONS	 CUMULATIVE
● Potential prosecution under criminal law	 YES	 NO	 NO
● Legal source	┌ Turkish Criminal Code (TCC)	┌ Article 20 of the Turkish Criminal Code (TCC) states that legal entities, including corporations, are not subject to criminal liability.	
● Penalties		┌ Only administratives sanctions	

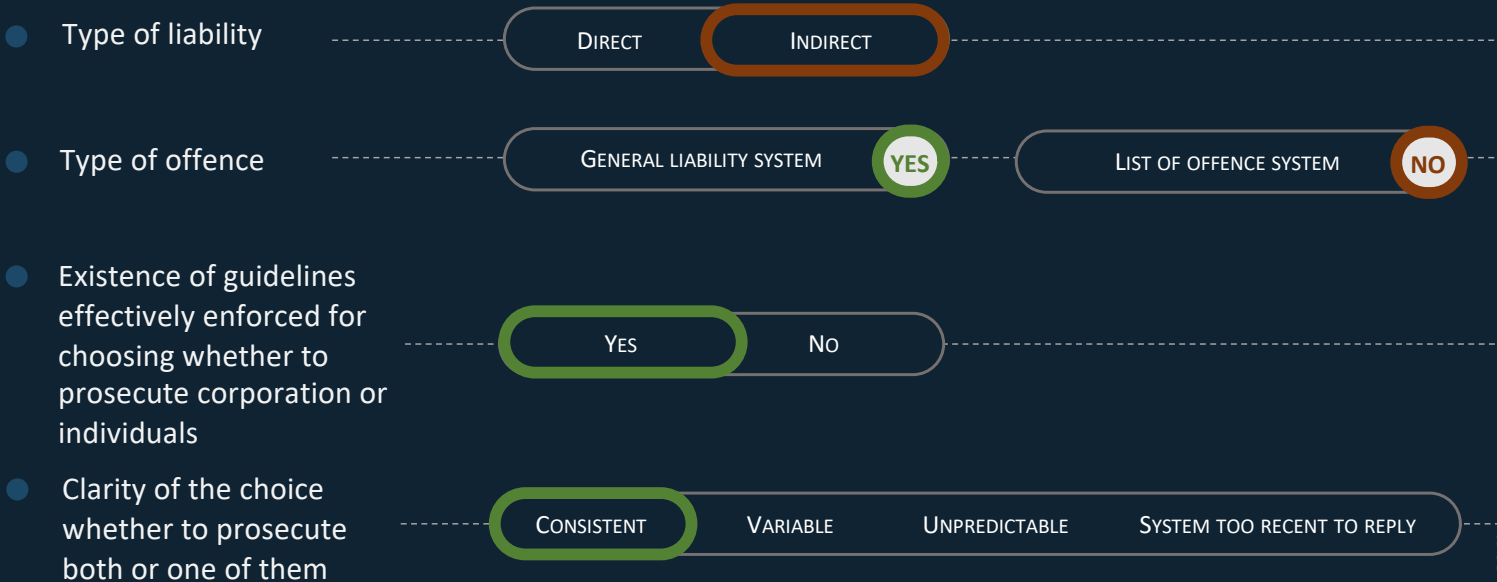


NO CUMUL OF CRIMINAL LIABILITY

CRIMINAL LIABILITY ANALYSIS - 2022



CUMUL OF CRIMINAL LIABILITY



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This survey is the result of a collective contribution by the lawyers of the IR Global network, whom we thank warmly for their expertise and their strong involvement.



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2IES

2IES is an endowment fund created in 2017 at the initiative of leaders of large and medium-sized companies. Its purpose is the reflection, emergence and dissemination of new ideas and transversal solutions on economic, social and societal issues. It is directed by Mrs. Erell Thevenon.



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