



Bundesrepublik Deutschland
Federal Republic of Germany
Bundesministerium der Justiz
Federal Ministry of Justice

UNOFFICIAL ENGLISH TRANSLATION

Excerpts from the German Criminal Code

(in the version of the Act to Combat Corruption of 13 August 1997)

'Sections dealing with corruption of public officials

Section 331: Acceptance of an advantage,

(1) Any public official or person under a special obligation in respect of the public service who demands, allows **himself** to be promised or accepts an advantage for himself or a third person for performance of an official duty shall be punished by **imprisonment** not exceeding three years or by a fine.

(2) A judge or an arbitrator who demands, allows himself to be promised or accepts an **advantage** for himself or a third person in return for his having performed, or his performing in future, a judicial act shall be punished by imprisonment not exceeding **five** years or by a fine. An attempt shall incur criminal **liability**.

(3) Criminal liability shall not be incurred pursuant to Subsection 1 if the **perpetrator** allows himself to be promised or accepts an **advantage** that he has not demanded and the competent authority, acting within the scope of its powers, either previously approved acceptance or the perpetrator promptly reports it to the authority and the latter approves acceptance.

Section 332: Taking a bribe

(1) Any public official or **person** under a special obligation in respect of the public service who demands, allows himself to be **promised** or accepts an advantage for himself or a third person in return for his having performed, or his performing in future, an official act, and by so doing violates or would violate his official duties; shall be punished by **imprisonment** of six months to five years. In less serious

cases the sentence shall be imprisonment not exceeding three years or a fine. An attempt shall incur criminal liability.

(2) A judge or an arbitrator who demands, allows himself to be promised or accepts an advantage for himself or a third person in return for his **having** performed, or his performing in future, a judicial act, and by so doing violates or would violate his judicial duties, shall be punished by imprisonment of one to ten years. In less serious cases the sentence shall be imprisonment of six months to five years.

(3) If the perpetrator demands, **allows** himself to be promised or accepts an advantage in return for a future act, Subsections 1 and 2 shall already apply if he has indicated his willingness to the other person

1. to violate his duties in performing the act, or
2. to allow himself to be influenced by the advantage in the exercise of his discretion in a case where performance of the act is at his discretion.

Section 333: Granting an advantage

(1) Whoever offers, promises or grants, for the person concerned or a third person, an advantage to a public official, a person under a special obligation in respect of the public service or a soldier of the Federal Armed Forces for performance of an official duty shall be punished by imprisonment not exceeding three years or by a fine.

(2) Whoever offers, promises or grants an advantage to a judge or an arbitrator, for the judge or the arbitrator concerned or a third person, in return for his having performed, or his performing in future, a judicial act shall be punished by **imprisonment** not exceeding five years or by a fine.

(3) Criminal liability shall not be incurred pursuant to Subsection 1 if the competent authority, acting within the scope of its powers, either previously **approved acceptance** of the advantage by the recipient **or approves acceptance following** a prompt report thereon by the recipient.

Section 334: Offering a bribe

(1) Whoever offers, **promises** or grants; for **the person** concerned or a third person, an advantage to a public official, a person under a special obligation in respect of the **public service** or a soldier of the Federal Armed Forces in return for his having performed, or his performing in future, an **official** act, so that the, **person concerned** has violated, or would violate, his **official** duties, shall be punished by imprisonment **of three** months to five years. In less serious cases the sentence shall be imprisonment not exceeding two years or a fine.

(2) Whoever offers, promises or grants a judge or an arbitrator an **advantage**, for the judge or the arbitrator concerned or a third person, in return for

1. his having performed **a judicial** act, thereby violating his judicial duties, or
 2. his performing a judicial act in future, so that he would violate his judicial duties
- shall be punished in the cases referred to in number 1 with imprisonment of three months to five years, and in the cases referred to in number 2, with imprisonment of six months to **five** years. An attempt shall incur criminal liability.

(3) Where the perpetrator offers, promises or grants the advantage in return for a future act, Subsections 1 and 2 shall already apply if he attempts to make the other person

1. violate his duties in performing **the act**, or
2. allow himself to be influenced by the advantage in the exercise of his discretion in a case where performance of the act is at his discretion:

Section 335: Particularly **serious** cases of Taking a bribe and Offering a bribe

- (1) In particularly serious cases
1. an **offence** pursuant to
 - a) Section 332 Subsection 1, first **sentence**, **also** in conjunction with Subsection 3, and
 - b) Section 334 Subsection 1, first sentence, **and** Subsection 2, in each case also in conjunction with Subsection 3, the sentence shall be **imprisonment of** one to ten years, and

2. **an offence** pursuant to Subsection 332 **Subsection** 2, also in conjunction **with** Subsection 3, the sentence shall be imprisonment of not less **than** two years.

(2) A particularly serious case within the meaning of Subsection 1 shall, as a rule, **be deemed to exist if**

1. the **offence** relates to an advantage on a **large** scale,
2. the perpetrator recurrently accepts advantages that he has demanded in return for his performing an official act in the future, or
3. the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

Section 336: Omission to perform the official act

Omission to perform an official act or a judicial act shall be deemed equivalent to performance of an official act or a judicial act within the meaning of Sections 331 to 335.

Section 337: Remuneration of arbitrators

Remuneration of an arbitrator shall only be deemed an advantage within the meaning of Sections 331 to 335 if the arbitrator demands, allows himself to be promised or accepts it from one **party** behind the back of the other or if it is offered, promised or granted to the arbitrator by one party behind the back of the other.

Section 338: Property fine and Extended forfeiture

(1) Section **73d shall** be applied in the cases referred to in Section 332, **also** in conjunction **with** Sections 333 and 337, if the perpetrator acts **commercially** or as a **member** of a gang that has come together for recurrent commission of **such** offences.

(2) Sections 43a and 73d shall be **applied in** the cases referred to **in** Section 334, also in **conjunction** with Sections 336 and 337, if the perpetrator acts as **a member** of a gang that has come together for recurrent commission of such offences. Section 73d shall also be applied if the perpetrator acts **commercially**.

Section 11: Persons and definitions

(1) **Within** the meaning of this **Code**, the following shall be deemed to **be**

- [...]
2. a public official:
 - any person who, under German law,
 - a) is a civil servant or judge,
 - b) exercises some other official capacity under public law, or
 - c) has otherwise been appointed to carry out functions of public administration with an authority or other agency, or on its behalf, irrespective of the organisational form selected to carry out the functions;
 3. a judge:
 - any person who, under German law, is a professional or honorary judge;
 4. a person specially entrusted with public service functions:
 - any person who, without being a public official, is employed by, or works for,
 - a) an authority or other agency exercising functions of public administration, or
 - b) an **organisation** or other association, operating unit or enterprise carrying out functions of public administration for an authority or other agency, and is formally obliged by statute to fulfil his/her duties conscientiously;

[...]

Section dealing with money laundering

Section 261: Money laundering; disguising of illegal property

(1) From three months' to five years' imprisonment or a **fine** shall be imposed 'on **any** person who conceals or disguises the origin of an **item** which derives from an **illegal** act specified in the second sentence, committed by another, **or** who prevents or places in jeopardy the detection of the **origin**, the location, forfeiture, confiscation **or seizure** of such an object. illegal acts in the meaning of the first sentence shall be:

1. major crimes,

2. minor crimes pursuant to

a) section 332 subsection 1, also in conjunction with subsection 3, and section 334,

b) section 29 subsection 1 first sentence No. 1 of the Narcotics Act (**Betäubungsmittelgesetz**) and section 29 subsection 1 No. 1 of the Commodities Control Act (**Grundstoffüberwachungsgesetz**),

3. minor crimes pursuant to section 373 and, if the offender acts on a commercial basis, pursuant to section 374 of the Tax Code (**Abgabenordnung**), in each case in conjunction with section 12, subsection 1 of the Act to Implement the Common Market Organisations (**Gesetz zur Durchführung der Gemeinsamen Marktorganisationen**)

4. minor crimes

a) pursuant to sections 180 b, 181 a, 242, 246, 253, **259**, 283 to 264, 288, 287, ,269, 284, 326 subsections **1, 2** and 4, as well as section 328 subsection **1, 2** and 4,

b) pursuant to section 92 a of the, Act on Aliens (**Ausländergesetz**) and section 84 of the Asylum Procedure Act (**Asylverfahrensgesetz**),

committed on a commercial basis by a member of a gang formed for recurrent commission of such offences, as well as

5. minor crimes committed by a member of a criminal association (section 129).

In cases **falling** under the second sentence No. 3, the first sentence shall also apply to an item which has been the subject of tax evasion.

(2) The same punishment shall be imposed on any person who, in respect of **the** item referred to in **subsection 1**,

1. acquires such **item** for himself or herself or for a third person, or

2. possesses or uses such item for himself **or** herself or for a third person, knowing at the time of receipt the **origin of** such item.

(3)The attempt shall be punishable.

(4) In particularly serious cases the punishment shall be imprisonment from six months to ten years. A particularly serious case shall generally be one in which the offender acts on a-commercial basis or as a member **of** a gang formed for recurrent commission of money laundering.

(5) Whoever in the cases falling under subsection 1 or 2 recklessly fails to realise that the item derives from an unlawful act as specified in subsection **1**, shall be punished by imprisonment of up to **two years** or a fine.

(6) The **offence** shall not be punishable under subsection 2 if a third person has previously acquired the item without committing a criminal **offence** in doing so.

(7) Items to which the criminal **offence** relates may be confiscated. Section 74 a shall be applicable. Sections 43 a and 73 d shall be applied if the offender acts as a member of a gang formed for recurrent commission of money laundering. Section 73 d shall also be applied if the offender acts on a commercial basis.

(8) The items referred to in subsections 1, 2 and 5 shall be on an equal footing with items deriving from **offences** committed abroad of the nature specified in subsection 1, provided the **offence** is punishable at the **place** of commission as well.

(9) **Punishment** under subsections 1 to 5 shall not be imposed on any person who
1. voluntarily reports the **offence** to the competent authority, or **arranges voluntarily** for **such a report** to be made, provided **that the offence had** not yet been discovered at this time, wholly or in part, and the offender was aware of this, or on reasonable consideration of the facts must have anticipated this, and
2. in the cases falling **under subsection 1 or 2 under** the conditions referred to in No. 1 cause! the item to which the criminal **offence** relates@ be seized.
Punishment under subsections 1 to 5 shall not be **imposed** on **any** person who is punishable in respect of the predicate **offence**.

(10) The court may at its **discretion** mitigate punishment (section 49' subsection 2) in **the** cases falling under subsection 1' to 5 or dispense with punishment under these provisions if the offender by **voluntarily** disclosing his or her knowledge has substantially **helped** to make it possible for the **offence**, or an unlawful act of another, **as** specified in subsection 1 , to be detected, going beyond his or **her** own contribution thereto.

Sections dealing with corruption of Members of Parliament

Section 108e: Bribery of a Member of Parliament

(1) Whoever undertakes to buy or sell a vote for an election or ballot in the European Parliament or in a representative body of the Federation, of **the Länder**, of **the** municipalities or associations of municipalities shall be punished with imprisonment not exceeding five years or with a fine.

(2) In' addition to imposing a sentence of imprisonment for a criminal **offence under** Subsection 1 the court may **deprive** the **convicted** offender of the **capacity** to **acquire** rights ensuing from public elections and of the **right to** vote or cast a **ballot** in public matters.

Sections dealing with Corruption in the private sector

Section 299: Taking a bribe and Offering a bribe in the course of commercial activity

(1) Whoever, **as an employee** or agent of **a** commercial enterprise, in the course of commercial' activity, demands, allows **himself** to be promised or accepts **any** advantage for himself or a third **person** in **return** for his giving, in an unfair manner, preference to, another 'in the acquisition, in **competition**, of goods, or commercial **services** shall be **punished** by imprisonment not exceeding three **years or by a fine**.

(2) The **same sentence** shall apply to whoever, in the course of commercial activity and for the purposes of competition, offers, promises or grants an **advantage** to an employee or agent of **a** commercial enterprise or to **a third** person in return for his giving, **in** an unfair manner, preference to him or to another in the acquisition of goods or commercial services.

Section 300: Particularly serious cases of Taking a bribe and Offering a bribe in the course of commercial activity

(1) In particularly serious cases the sentence for an **offence** pursuant to Section 299 shall be imprisonment from **three** months to five years. A particularly serious case shall, as a **rule**, be deemed to exist if

1. the **offence** relates to an advantage **on a large scale**; or
2. the perpetrator acts commercially or as a member of a gang that has come together for recurrent commission of such offences.

Section 301: Application for criminal prosecution

(1) Taking a bribe and offering a bribe in the course of commercial activity pursuant to **Section 299** shall only be prosecuted upon **application** being made, unless the prosecuting authority deems ex officio intervention to be required in view of the particular public interest in criminal prosecution.

(2) Besides the victim, any person **engaged** in commerce, any association and any chamber. referred to in Section 13 Subsection 2 numbers **1, 2** and 4 of the Act Against Unfair Competition shall have the right to make an **application** for criminal prosecution pursuant to Subsection 1.

Section 302: Property fine and Extended forfeiture

(1) Section 73d shall be applied in the cases referred to in Section 299 Subsection 1 if the perpetrator acts **commercially** or as a member of a gang that has come together for recurrent commission of such offences.

(2) Sections 43a and 73d shall be applied in the cases referred to in Section 299 Subsection 2 if the perpetrator acts as a member of a gang that has come together for recurrent commission of such **offences**. Section 73d shall also be applied, if the perpetrator acts commercially.

'Sections dealing with jurisdiction

Section 3: Offences committed in Germany

German criminal law shall apply to **offences** committed in Germany

Section 4: Applicability to offences committed on German vessels and aircraft

German criminal law shall apply, **regardless of** the law of the place of commission, to **offences** committed on a vessel or an aircraft authorised to fly the Federal flag or display the nationality mark of the Federal Republic of Germany.

Section 5: Offences committed abroad against domestic legal interests

German **criminal** law shall apply, regardless of, the law of the place of commission, to, the following **offences** committed abroad:

12. **offences** committed by a German public official or by a person under a special obligation in respect of the **public** service while on duty or in connection with **his** duties;
13. **offences** committed by a foreigner acting as a public official or as a person under a special obligation in respect of the **public service**;

Section 7: Applicability to offences committed abroad in other cases

(1) German criminal law shall apply to **offences** committed abroad against a German if the **offence** attracts criminal liability at the place of commission or if such place is not subject to any criminal jurisdiction.

(2) German criminal law shall apply to other **offences** committed abroad if the **offence** attracts criminal liability at the place of commission or if such place is not subject to any criminal jurisdiction and if the perpetrator

1. was a German at the time of the **offence** or became one subsequently, or
2. was an alien at the time of the **offence**, was found inside Germany and, although the Aliens Act would permit his extradition for the type **of offence** involved, has not been extradited because **a request** was not made for extradition, or was refused, or because extradition cannot be executed.

Extended Forfeiture

Section 73d: Wended Forfeiture

(1) If an unlawful act has been committed in violation of a law that refers to this provision, the court shall also order forfeiture of objects of the perpetrator or **accessory** if circumstances justify the assumption that such objects have been obtained for or from unlawful acts. The first sentence above shall **also** apply if the sole reason why the object does not belong or appertain to the perpetrator or accessory is that he obtained it for or from an unlawful act. Section 73, subsection **(2)**, shall apply mutatis mutandis.

(2) If, after the act, forfeiture of a particular object has become **wholly** or partially impossible, sections 73a and 73b shall apply analogously.

(3) If, after forfeiture has been ordered pursuant to subsection (1) above, a new decision is to be taken on forfeiture of objects of the perpetrator or accessory because of another unlawful act that the perpetrator or accessory committed prior to the order, the court shall take into account the order previously made.

(4) Section **73c** shall apply mutatis mutandis.