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The General Offense of Fraud under Article 190 of the Ukrainian Criminal Code vs. Section 263 StGB: A Comparative Criminal Law Characterization – Ukraine Perspective

Der allgemeine Betrugstatbestand nach Art. 190 des ukrainischen Strafgesetzbuches im Vergleich zu § 263 StGB: Eine vergleichend-strafrechtliche Charakterisierung – Ukrainische Perspektive

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I. Introduction

In recent years, fraud has become one of the most dynamic and rapidly growing crimes in Ukraine. According to the official statistical data of the Office of the General Prosecutor of Ukraine for 2025, 48,621 criminal offenses were registered under Article 190 of the Criminal Code of Ukraine (CCU). However, within the same reporting period, notices of suspicion were served in only 10,362 cases, and a mere 8,669 proceedings were forwarded to the court with an indictment.[1] This dramatic surge, contrasted with the fact that nearly 40,000 proceedings remained unresolved at the end of the term, exposes a vulnerability in the current legal framework. The traditional mechanisms of criminal liability often struggle to adapt to modern, sophisticated financial crimes. As Ukraine advances on its path toward full European integration, aligning national criminal legislation with European standards is no longer just a political objective, but a strict legal obligation. Ensuring the effective protection of economic relationships and preventing fraud is a fundamental for successful integration into the European legal and economic area.

In contrast to the Ukrainian trends, official German law enforcement statistics indicate a steady decline in fraud convictions under § 263 StGB over recent years, dropping from 69,334 in 2021 to 58,491 in 2023, underscoring a different dynamic in domestic property crime enforcement.[2]

This paper provides a comparative legal analysis of the general fraud models in Ukraine and Germany. The core research question is how effectively these two different legal traditions handle the challenge of modern fraud, and whether the Ukrainian framework aligns with European standards, specifically EU Directive 2017/1371 (the PIF Directive) on the fight against fraud to the Union's financial interests.

To answer this question, first, this paper examines the statutory elements of fraud under Article 190 CCU, focusing on the concepts of "deception" and "abuse of trust". Second, it explores the structure of § 263 StGB, analyzing how German law links the act of deception to an error, a disposition of property, and a resulting financial loss. Finally, the comparative section highlights the key differences in how both countries define "property damage" and handle cyber-enabled fraud. The study concludes with practical recommendations on how Ukraine can harmonize its criminal legislation with EU standards based on German experience and the Draft of the New Criminal Code of Ukraine.

The study concludes with practical proposals for harmonizing Ukrainian legislation with EU standards, drawing on the German experience and the Draft of the New Criminal Code of Ukraine.

II. Fraud under the criminal code of Ukraine

1. Object and Subject Matter of Fraud

In Ukrainian criminal law doctrine, fraud is a property offence committed for personal gain. Unlike theft, it involves intellectual influence rather than physical taking as the perpetrator manipulates the victim's will to induce

[1] Office of the General Prosecutor of Ukraine, Statistical Report On the State of Criminality" for January–December 2025
[2] Statistisches Bundesamt (Destatis), Strafverfolgungsstatistik, Status: 28.05.2026).

a voluntary transfer of assets. While the general object of fraud encompasses social property relations, its immediate object is the specific ownership right of a natural or legal person infringed through deception.[3]

The subject matter (*предмет)* of fraud is twofold: property (tangible assets) and the right to property (legal titles such as promissory notes, wills, or powers of attorney). Recognising the "right to property" as a distinct category emphasizes the preventive nature of Art. 190 CCU, as liability arises upon obtaining the title document, regardless of of actual physical possession.[4]

Fraud requires a deceived victim whose induced error causes asset damage, regardless of whether they hold legal title or merely exercise lawful possession.[5] Importantly, Ukrainian law recognizes 'indirect fraud,' where the deceived person and the victim are different individuals. The Supreme Court (SC) financial loss to be the same person.[6]

Under Ukrainian law, the value of the misappropriated property determines whether the act is a criminal offense or a minor administrative violation. According to Article 51 of the Ukrainian Code of Administrative Offenses (CAO), fraud is classified as an administrative infraction if the value of the property does not exceed 0.5 of the non-taxable minimum income of citizens (*неоподатовуваний мінімум доходів громдян*).[7] If the damage exceeds this specific mathematical limit, criminal liability under Article 190 CCU is triggered automatically.

The perpetrator of fraud is a general subject who has reached the age of 16.

2. Objective Element: Methods and Completion

A distinctive feature of the fraud is the method of commission: deception or abuse of trust, which causes a defect in the victim's will and a "voluntary" transfer of assets.[8] Legal theory distinguishes between active deception (providing false information) and passive deception (deliberately withholding essential information).[9] To prove passive deception, the withheld information must have been the decisive factor in the victim's asset transfer. Deception may take any form: from verbal and written communication to implied conduct (gestures, behaviour)[10].

Ukrainian law highlights fictitious representation and fictious intermediation (*фіктивне предстаництво і фіктивне посередництво*), where the perpetrator exploits the authority of institutions (banks, police, brands) by forging their attributes (forms, seals or websites). In this case, the victim believes they are dealing with a legal entity instead of an individual.[11]

If a forged document is used to deceive, the actions are classified under a combination of Art. 190 and 358 CCU. For the elements of fraud to be present, the intent to misappropriate property must arise at the very moment the person is deceived.[12]

Abuse of trust occurs when a fraudster exploits a relationship of trust with the owner of property. As a result of a previous good relationship, recommendations from acquaintances, or external circumstances, the victim enters a

3 *Chayka*, About the object of fraud, 76.
4 *Dorokhina,* Crimes against property, 213.
5 *Melnyk*, *Melnyk/Havroniuk* (Eds.), Commentary, Art. 190, 594.
6 SCU (Criminal Chamber), Judgment of 24 November 2016 – Case No. 5-250ks16, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/63445948 (last accessed: 16.05.2026).
7 Article 51 of the Code of Administrative Offenses of Ukraine, Document 8073-X, as amended December 11, 2025. In accordance with Paragraph 5 of Section XX and Subparagraph 169.1.1 of Article 169 of the Tax Code of Ukraine, for the qualification of administrative and criminal offenses, this monetary unit is legally equated to the tax social benefit (*податкова соціальна пільга*), which amounts to 50% of the subsistence minimum for an able-bodied person (*прожитковий мінімум для працездатної особи)* established by the state budget law as of January 1 of the respective fiscal year.
8 *Kryvochenko/Panov*, in: *Tatsii* Commentary, Art. 190, 216.
9 *Melnyk*, Art. 190, 594.
10 *Bidniak,* Theory and Practice, 21.
11 *Shakhman*, Modern Methods, 199.
12 Plenary of the SCU, Resolution No. 10 of 6 November 2009 "On Judicial Practice in Cases of Crimes Against Property", para. 19; *Kryvochenko/Panov*, in: Tatsii Commentary, Art. 190, 216

legal relationship with the fraudster for example, by entering into a loan agreement believing the other party to be a trustworthy counterparty.[13]

The moment the fraud is completed is when the property passes to the offender or when the right to dispose of the property is obtained.[14]

An essential component of fraud is "apparent voluntariness" (*уявна добровільність*): the victim hands over the property of their own volition, believing they are acting in their own best interests. This distinguishes fraud from extortion, where the transfer is forced through threats. It is important to note that voluntariness is ruled out if the person is unable to comprehend their actions due to age or state of health.[15]

For an offence to be classified under Article 190 CCU, deception must be the direct cause of the transfer of property. If, however, deception is used merely to gain access to an item which is then stolen secretly, the offence is considered theft.[16]

The SC ruled that posing as a relative of the owner to obtain a bag from a bus driver constitutes theft, not fraud. As the driver was merely a temporary keeper and not the owner, he had no right to dispose of the property. Therefore, there was no "voluntary transfer" by the owner and the deception served merely as a means of facilitating access to another person's property.[17]

Under Article 190 CCU, the victim's financial loss and the perpetrator's acquisition of disposal power must be causally driven by the fraudster's active misrepresentation. Merely capitalizing on a pre-existing error without contributing to it fails the definition of fraud and triggers liability under Article 193 CCU for the unlawful appropriation of accidentally acquired property.[18]

A crucial distinction in Ukrainian doctrine lies between fraud (Art. 190 CCU) and the causing of property damage by deception or abuse of trust (Art. 192 CCU). The key difference is the absence of signs of fraud in Art. 192, specifically the lack of a transition of property into the offender's possession. While fraud is characterized by the voluntary transfer of assets leading to the perpetrator's enrichment, Art. 192 addresses lost profit (e.g., evasion of mandatory payments or unauthorized use of services).[19]

3. Subjective Element

The subjective element of fraud requires exclusive direct intent and self-serving motive. The perpetrator is fully aware of the deceptive nature of their actions and deliberately misleads the victim to gain access to their property.[20] The intellectual aspect requires realizing the inevitability of the victim's loss, while the volitional aspect involves desiring this for personal gain. The perpetrator aims to induce a false belief in the victim regarding the necessity or profitability of transferring assets.[21] The intent to appropriate the property must have arisen before the property is received.[22]

A specific mercenary goal is mandatory. According to the SC, this goal consists of the desire to illegally obtain

[13] *Melnyk*, Art. 190, 595.
[14] *Kushnarova,* Criminal Liability, 56–57.
[15] Plenary of the SCU, Resolution No. 10 of 6 November 2009, para. 17; *Melnyk,* in: Melnyk/Havroniuk (Eds.), Commentary, Art. 190, 594.
[16] Resolution of the SCU No. 10, para. 17.
[17] CCS SCU, Judgment of 2 April 2019 – Case No. 655/289/17, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/80918735 (last accessed: 16.05.2026).
[18] Plenary of the SCU No. 10 of 6 November 2009, para. 17; *Melnyk,* in: Melnyk/Havroniuk (Eds.), Commentary, Art. 190, 594.
[19] *Pavlenko*, Causing Property Damage, 157.
[20] *Emeljanov*, Objective and Subjective Side, 188.
[21] Resolution of the Plenary of the Supreme Court of Ukraine "On judicial practice in cases of crimes against property" No. 10 (fn 9), para. 17; *Havroniuk, M. I.* (ed.), Criminal Code of Ukraine: Scientific and Practical Commentary, 2017, p. 140.
[22] Plenary of the SCU, Resolution No. 10 of 6 November 2009, para. 17; *Melnyk,* in: Melnyk/Havroniuk (Eds.), Commentary, Art. 190, 594.

material benefits or dispose of another's property as their own.[23] Such a predetermined aim excludes indirect intent, as the perpetrator acts with a clear vision of unjust enrichment. The absence of this goal precludes classification as fraud.[24]

The offender is aware that the property belongs to another and that they have no legal right to it. According to the SC, liability depends on the intent to misappropriate assets for personal or third-party benefit, rather than the identity of a specific victim. Thus, it is irrelevant whether the owner or a lawful possessor was deceived. An exception applies only under Art. 190(2) CCU, where the victim's specific financial status is required to establish "significant damage" for classification purposes.[25]

The intent in fraud is anticipatory. At the very moment the perpetrator makes a false representation or uses deception, they must already have the aim of misappropriating the property.[26] The SC concluded that extracting assets under the guise of a fictitious bribe, without the intent to transfer them to an official, constitutes fraud due to the pre-existing intent to deceive. However, if the perpetrator actively induces the victim to offer such an unlawful benefit, the conduct satisfies both fraud and instigation to bribery.[27]

4. Sentencing and Qualified Types of Fraud

The Ukrainian legislator provides a differentiated system of penalties under Article 190 CCU[28]. Basic fraud (Part 1) is punishable by alternative sanctions, including fines (2,000–3,000 tax-free minimums), community service, or probationary supervision for up to 3 years. Qualified types (Parts 2–3) involve aggravating circumstances such as recidivism, prior conspiracy, or significant damage. Notably, the 2023 amendments introduced a specific qualified type (Part 3) for fraud committed during martial law causing significant damage, punishable by 3 to 5 years' imprisonment.

The harshest penalties apply to fraud on a large scale or via electronic computing equipment (Part 4), and especially to offences committed on an especially large scale or by an organised group (Part 5). The latter carries a maximum penalty of 12 years' imprisonment with mandatory confiscation of property.

III. Fraud under the German Criminal Code (§ 263 StGB)

1. Objective Elements of the Offence

German doctrine characterizes fraud as a "self-inflicted harm" (*Selbstschädigung*)[29]. Unlike theft, the damage is not caused directly by the offender, but by the deceived person acting as an unwitting instrument against their own assets.[30] Thus, deception serves as a tool of psychological control to induce a voluntary property disposal.

A significant complexity within the objective element is so-called "triangular fraud" (*Dreiecksbetrug*), where the deceived person and the victim are different individuals. For the disposal of property to be attributed to the victim, German doctrine requires a normative link between them. The prevailing "proximity theory" (*Lagertheorie*) focuses on whether the deceived person stood in the victim's "sphere of power" (e.g., as a custodian), while the

23 Plenary of the SCU, Resolution No. 10 of 6 November 2009, para. 17.
24 *Kushnarova*, Criminal Liability, 119–124.
25 CCS SCU, Judgment of 14 September 2022 – Case No. 419/703/16-k, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/106315609 (last accessed: 20.05.2026).
26 *Kushnarova*, Criminal Liability, 123.
27 CCS SCU, Judgment of 11 March 2020 – Case No. 583/3508/18, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/88265271 (last accessed: 20.05.2026).
28 Art. 190 CCU (Law of Ukraine No. 2341-III of 5 April 2001, VVR 2001, No. 25–26, Art. 131), as amended up to 15 April 2026.
29 *Hoyer*, in: SK-StGB/Wolter, § 263 marginal no. 160.
30 *Heger*, in: Lackner/Kühl/Heger, StGB, § 263 marginal no. 2.

"legal authority theory" requires formal legal authorization for the disposal. If such a relationship is absent, the act is classified as theft committed through an innocent agent rather than fraud.[31]

In order to establish the elements of a criminal offence, it is crucial to prove a continuous causal link according to the following sequence: Deception (*Täuschung*) Error (*Irrtum*) Disposal of property (*Vermögensverfügung*) Financial loss (*Vermögensschaden*).[32] This "causal chain" was examined by the German Federal Court of Justice (BGH) in the "route planner" case. The Court established that a deceptive interface design can induce a relevant error regarding the cost of services, even if the price is technically stated. Notably, this case illustrates that fraud may involve a complex structure: multiple deceptive acts (website info, follow-up emails) can trigger several disposals, potentially affecting different victims (e.g., the deceived person vs. the one suffering the actual loss).[33]

The German objective element includes a normative standard of deception, which addresses whether the victim's own negligence can exclude the perpetrator's liability. In "route planner" or "obituary" scams, deception is often implicit (*konkludente Täuschung*)[34]: although costs are formally stated, they are obscured to induce error.

Historically, German courts questioned whether the law should protect individuals from their own inattention. Under a restrictive view, the perpetrator's liability could be excluded if a victim failed to exercise "reasonable attention" (*angemessene Aufmerksamkeit*) a standard applied especially to experienced merchants in a business context. In its earlier ruling (5 StR 805/78), the BGH declined to find fraud when misleading, invoice-like documents were sent to professional traders, reasoning that they are expected to verify such papers before payment. [35]

However, in the landmark "obituary case" (4 StR 439/00), the BGH departed from this stance. The court clarified that deception depends not on the victim's ability to uncover the truth, but on whether the offender systematically exploits a "potential for misunderstanding". By using a visual "façade" of legality during a victim's grief, the offender deliberately triggers a "typical inattention" in business matters. [36]

Ultimately, German law establishes that deliberate deception cannot be excused by the victim's lack of care. If the offender's conduct is subjectively intended and objectively capable of inducing error specifically by exploiting vulnerabilities the "causal chain" of fraud remains intact. Under § 263 StGB, criminal liability is not precluded simply because an attentive person might have avoided the mistake.[37]

Beyond active manipulation, German doctrine addresses deception by omission (*Täuschung durch Unterlassen*). The central debate is whether "mere silence" can constitute criminal deception under § 263 StGB.[38]

Current legal theory distinguishes two scenarios. First, silence may be viewed as implicit deception (*konkludente Täuschung*) if the offender's behavior carries a specific "communicative value" such as ordering a meal in a restaurant, which implicitly declares an ability and willingness to pay. Second, where no such behavior exists, silence is only punishable if the offender has a legal duty to disclose the truth (*Garantenpflicht*), arising from law, contract, or prior conduct (*Ingerenz*).[39]

Under the equivalence principle (§ 13 StGB), omission is only criminal if the silence is legally equivalent to an active lie (*Modalitätenäquivalenz*). Courts maintain that if a "guarantor" fails to correct an error, this omission

[31] *Beukelmann*, in: BeckOK StGB/Heintschel-Heinegg, § 263 marginal no. 34–35.1; *Hoyer*, in: SK-StGB/Wolter, § 263 marginal no. 141–143.
[32] *Werner*, in: Weber, Rechtswörterbuch, "Betrug", marginal no. 1.
[33] *BGH*, Judgment of 5 March 2014 – Case No. 2 StR 616/12, marginal no. 17, 20; See *Werner*, in: Weber, Rechtswörterbuch, keyword "Betrug", marginal no. 1.
[34] *Perron*, in: Tübinger Kommentar/Perron, § 263 marginal no. 32–32a.
[35] *BGH*, Judgment of 27 February 1979 – Case No. 5 StR 805/78; *Ladwig*, Strafrecht BT, § 11 Betrug, marginal no. 39, URL: https://dskrpt.de/chapter/8197b4b4-c0be-44b8-8f00-ebc9c073ab9e/#e6e69f6b-223c-4382-bcbf-809652c8acfd (last accesed: 21.05.2026).
[36] *BGH*, Judgment of 26 April 2001 – Case No. 4 StR 439/00, BGHSt 47, 1, URL: URL: https://www.servat.unibe.ch/dfr/bs047001.html; *Ladwig*, Strafrecht BT, § 11 Betrug, marginal no. 40.
[37] *Ladwig*, Strafrecht BT, § 11 Betrug, marginal no. 40–42; *Perron*, in: Tübinger Kommentar/Perron, § 263 marginal no. 38.
[38] *Satzger*, in: Satzger/Schluckebier, StGB, § 263 marginal no. 84–86.
[39] *Satzger*, in: Satzger/Schluckebier, StGB, § 263 marginal no. 40–41, 84; *Hoyer*, in: SK-StGB/Wolter, § 263 marginal no. 43.

satisfies the objective element of deception. [40] This completes the objective causal chain of the offense. By recognizing active, implicit, and strategic silence, German law shifts the focus to the normative quality of communication.

2. Property as the Protected Interest and the Concept of Financial Loss

In German law, the object of protection under § 263 StGB is property (*das Vermögen*) as a comprehensive economic asset. Unlike theft, which targets specific items, fraud is an offence against property in a broad sense (*Vermögensdelikt*), where the object of protection is the total value of a person's assets.[41]

The central doctrinal debate regarding the definition of property revolves around the degree of legal accessoriness (*Umfang der Akzessorietät*) of criminal law to the civil law order. German theory oscillates between two main positions: 1) the purely economic approach, which protects any asset of economic value, regardless of its legal status; 2) the legal-economic approach, which protects only those assets that are held under the protection of the legal system, excluding, for example, illegal claims.[42]

Consequently, the object of protection is not merely a collection of physical things, but the owner's freedom of economic decision-making free from deception.[43] Because property is viewed as a whole, German law determines fraud by looking at the entire financial balance (*Gesamtsaldierung*). This means a financial loss (*Vermögensschaden*) only happens if a person's total net asset value is lower after the transaction than it was before. If the lost asset is replaced by something of equal economic value, there is no overall loss, and therefore, no fraud.[44]

The German model of fraud is classified as so-called "e*rfolgskupiertes Delikt*"[45]. This structure implies that while the protection of the object (property) requires a proven financial loss (*Vermögensschaden*), the actual enrichment of the perpetrator is "cut off" from the objective requirements. Instead, enrichment is moved to the subjective element as a specific intent (*Bereicherungsabsicht*). This intent must be aimed at a materially identical advantage (Stoffgleichheit) to the loss incurred by the victim.[46] This confirms that § 263 StGB focuses on the reduction of the victim's assets rather than the successful gain of the offender.

3. Subjective Elements of the Offence

In German doctrine, the subjective element of fraud consists of two main components: general intent (*Vorsatz*) regarding all objective elements and a specific intent to enrich oneself (*Bereicherungsabsicht*).

The offender must act with intent in relation to all elements of the objective aspect: deception, error, disposal of property and damage.[47]

A crucial distinction from theft lies in the victim's perception of the disposal of property (*Vermögensverfügung*). While theft involves taking property against the victim's will, fraud (specifically *Sachbetrug*) requires the victim to be aware that they are reducing their assets a concept known as the "awareness of disposal" (*Verfügungsbewusstsein*). This subjective awareness is mandatory to differentiate fraud from a "theft by trick" (*Trickdiebstahl*), where the victim does not realize they are surrendering possession.[48]

[40] *Satzger*, in: Satzger/Schluckebier, StGB, § 263 marginal no. 117.
[41] *Hefendehl*, in: MuKoStGB/Hefendehl, § 263 marginal no. 1, 9.
[42] *Hefendehl*, in: MuKoStGB/Hefendehl, § 263 marginal no. 28; *Hoyer*, in: SK-StGB/Wolter, § 263 marginal no. 88–89, 153.
[43] *Hefendehl*, in: MuKoStGB/Hefendehl, § 263 marginal no. 3–5.
[44] *Becker*, NZWiSt 2022, no. 306.
[45] *Hefendehl*, in: MuKoStGB/Hefendehl, § 263 marginal no. 14.
[46] *Beukelmann*, in: BeckOK StGB/Heintschel-Heinegg, § 263 marginal no. 78.
[47] *Heger*, in: Lackner/Kühl/Heger, StGB, § 263 marginal no.57–58.
[48] *Kulhanek, T. O.*, JA 2015, 828 (831).

Furthermore, the disposal must be the result of a free expression of will, even if it is distorted by error. In "seizure cases" (*Beschlagnahmefälle*), if a one poses as a police officer and 'confiscates' a car, the victim complies, feeling they have no choice (coercion), this is not fraud but theft. For fraud to occur, it is essential that the victim believes they have an alternative but voluntarily chooses to dispose of their property (*nolens volens*).[49]

The intent to obtain unlawful enrichment (*Bereicherungsabsicht*) defines fraud as an offense with "excessive internal intent" (*überschießende Innentendenz*), meaning the benefit does not need to be actually realized. The benefit must be a direct result of the victim's loss (the principle of "material identity" *(Stoffgleichheit))*. Crucially, the offender must be aware that the enrichment is unlawful. If the perpetrator mistakenly believes they have a valid legal claim to the assets, they act without the necessary intent, which precludes liability for fraud.[50]

The "reverse factual error" (*umgekehrten Tatbestandsirrtum*) illustrates the focus on the perpetrator's subjective belief. As established by the Federal Court of Justice, a perpetrator is liable for attempted fraud if they believe a sought advantage is unlawful, even if it is objectively legal. In this landmark case, a doctor manipulated medical records to defeat a malpractice claim. Although the patient's claims were objectively unfounded (making the doctor's gain technically legal), the doctor was convicted of attempted fraud. His liability stemmed from his conditional intent: he accepted the possibility that the claim was legitimate and consciously used deception to prevent what he subjectively perceived as a rightful payment.[51]

4. Sentencing and Specialized Forms of Fraud

The German model is characterized by high legislative specialization. While § 263 StGB serves as the general provision, the system distinguishes between independent offences such as Computer Fraud (§ 263a), Subsidy Fraud (§ 264), and Insurance Fraud (§ 265). This reflects the specialization principle, where cyber-crimes or public fund manipulations are treated as autonomous crimes rather than mere aggravating circumstances.

Regarding penalties, basic fraud carries up to five years' imprisonment or a fine. However, § 263(3) introduces "particularly serious cases" (*Regelbeispiele*), increasing the range to six months to ten years for offenders acting on a commercial basis (*gewerbsmäßig*), causing major financial loss (starting at €50,000), or placing victims in financial hardship. For the most severe cases involving organized gangs and commercial intent, § 263(5) sets a mandatory minimum of one year's imprisonment.[52]

IV. Comparative analysis

1. Table 1: Fraud under Ukrainian and German Law

Criteria	**Ukrainian Criminal law**	**German criminal law**
Structure of the offence	Four-element (Object, Objective Side, Subject, Subjective Side)	Tripartite structure (1. *Tatbestand* (Statutory Elements) 2. *Rechtswidrigkeit* (Unlawfulness) 3. Schuld (Culpability).)[53]
Protected Interest	Right of ownership (*relations of property*	Property as a comprehensive economic

[49] *Ladwig*, Strafrecht BT, § 11 Betrug, marginal no. 141.
[50] *Hoyer*, in: SK-StGB/Wolter 2019, § 263 marginal no. 266–270.
[51] *BGH*, Judgment of 17 October 1996 – 4 StR 389/96, BGHSt 42, 268, URL: https://www.servat.unibe.ch/dfr/bs042268.html (last accesed 23.05.2026).
[52] § 263 Abs. 3 StGB; *Beukelmann*, in: BeckOK StGB/Heintschel-Heinegg, § 263 marginal no. 92–115.
[53] Christopher, Cardozo Law Review 28 (2007), 2675, 2676.

	distribution regarding specific assets).	whole
Objective Side	Linear process where deception is the *method* of stealing property or property rights.	A strict chronological and causal chain: Deception - induces Error - leads to Property Disposal - results in Pecuniary Loss.
The Nature of Disposal	The victim transfers assets because their will is compromised by lies.	Classified as a self-inflicted harm (*Selbstschädigung*); the victim acts as an unwitting instrument against their own assets.
Subjective Side	Direct intent combined with a specific purpose of unlawful enrichment.	General intent regarding the causal chain + specific intent of unlawful self-enrichment

2. Conceptions of Fraud in Ukraine vs Germany

The structural difference between the Ukrainian and German models of fraud appears primarily in the legislative approach. In Ukrainian criminal doctrine, fraud is defined mostly through the specific method of commission (*спосіб вчинення*), where the offense is legally defined by the employment of either deception (*обман*) or breach of trust (*зловживання довірою*).[54] Conversely, the German statutory model treats deception not as an isolated action, but merely as the first step of a rigid, four-tiered causal sequence. For a conviction under Section 263 StGB, the prosecution must establish an unbroken causal link where the deception (*Täuschung*) induces an error (*Irrtum*), which directly leads to a disposition of property (*Vermögensverfügung*), ultimately resulting in an objective financial loss (*Vermögensschaden*).[55]

While the Ukrainian model focuses on the quality of the perpetrator's conduct and its impact on the victim's consent,[56] the German approach prioritizes the individual economic loss to the victim's assets through a step-by-step psychological mechanism.[57] However both frameworks protect an inattentive or credulous victim. In German doctrine, as illustrated by misleading internet layouts, a consumer's failure to read hidden footnotes does not exclude criminal liability. Under Section 263 StGB, while the law does not protect against pure carelessness, a victim is not required to be "overly attentive" where special legal information duties justify their reliance; thus, any actual induced error (*Irrtum*) satisfies the causal chain.[58] Similarly, Ukrainian model reaches a parallel result by focusing on the subjective side: if the primary intent of the perpetrator was to deceive, the subsequent lack of prudence or the extreme credulity of the victim does not negate fraud under Art. 190 CCU.[59]

This dogmatic distinction shapes how both countries assess the concept of "apparent voluntariness" (*уявна добровільність*) and separate fraud from theft. Under Art. 190 CCU, the focus is on the defect in the victim's consent caused by deception.[60] However, if the deceived person lacks the legal authority to transfer the asset, Ukrainian courts reclassify the act. This is illustrated by the benchmark ruling of the Supreme Court of Ukraine in

54 *Kryvochenko/Panov*, in: Tatsii et al., CCU Commentary, Vol. 2, 218.
55 *Werner*, in: Weber, Betrug marginal no. 4.
56 *Melnyk,* in: Melnyk/Havroniuk (Eds.), Commentary, Art. 190, 594.
57 *Becker*, NZWiSt 2022, 307.
58 *BGH*, Judgment of 5 March 2014 – 2 StR 616/12, marginal no. 17, 20; BGH, Judgment of 27 February 1979 – 5 StR 805/78 = NStZ 1997, 186; *Ladwig*, Strafrecht BT, § 11 Betrug, marginal no. 41.
59 SCU (Criminal Chamber), Judgment of 24 November 2016 – Case No. 5-250ks16, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/63445948 (last accessed: 16.05.2026).
60 *Melnyk,* in: Melnyk/Havroniuk (Eds.), Commentary, Art. 190, 594.

the "bus driver case"[61], where obtaining property from a person who has mere physical custody without the right of disposal was ruled as theft, rather than fraud. In contrast, German dogmatics solve this boundary problem through the normative framework of the *Lagertheorie*.[62] Under Section 263 StGB, a "third-party fraud" (*Dreiecksbetrug*) is maintained only if the deceived custodian stands close enough to the owner's legal sphere holding a protective function over the asset. If there is no such normative proximity, the act constitutes theft via indirect perpetration. The German approach depends on whether that person holds a protective function over the owner's property.

3. Financial Loss and Right to Property

A key difference between the two legal systems is how they define and calculate financial loss. Ukrainian criminal law strictly requires a positive transition of tangible assets or property rights into the offender's possession. If deception is used merely to evade payments or block expected revenue, the act lacks the mandatory elements of fraud and falls exclusively under Article 192 CCU (*causing property damage by deception or abuse of trust*).[63]
In Ukraine, the line between criminal fraud and a minor administrative offense is also strictly depends on a formalized monetary threshold set by the law.[64] While the Ukrainian framework primarily guards the static right of ownership, the German model is functionally designed to protect overall dynamic financial well-being.
In contrast, German law rejects any fixed financial minimum for fraud under § 263 StGB. According to the landmark "weight-loss pills" ruling[65], fraud is completed the moment any economic loss occurs, no matter how small.[66] The BGH emphasized that even if the victim has a 14-day money-back guarantee, the criminal damage happens immediately when the money is handed over.
Furthermore, courts calculate this loss using "Total Economic Balancing" (*Gesamtsaldierung*), which compares the victim's total assets before and after the deception, including lost profits.[67] Minor cases do not change the definition of fraud; instead, they are filtered procedurally. Under § 263 Abs. 4 in conjunction with § 248a StGB, low-value fraud (*Bagatellbetrug*) becomes a relative petition-dependent offence (*Antragsdelikt*), strictly requiring a criminal complaint from the victim. The boundary for such minor damage was traditionally fixed at €25–30, but modern doctrine recognizes it at up to €50 due to inflation.[68]

4. Computer Fraud under Subsection 4 of Article 190 CCU and Section 263a StGB

To address computer fraud, the German Criminal Code utilizes a dedicated standalone provision, § 263a StGB (*Computerbetrug*), which penalizes the unlawful manipulation of data-processing operations for financial gain.[69] Conversely, the Ukrainian legislator retains computer fraud within the general framework of Article 190 of the Criminal Code of Ukraine (CCU) merely as a qualifying circumstance.[70] This creates a conflict as traditional fraud strictly requires a human whose will is manipulated through deception or abuse of trust. Since an automated system or computer lacks a psyche, it cannot be deceived. Therefore, while § 263a *StGB* logically replaces the human

61 CCS SCU, Judgment of 2 April 2019 – Case No. 655/289/17, Unified State Register of Court Decisions, URL: https://reyestr.court.gov.ua/Review/80918735 (last accessed: 16.05.2026).
62 *Beukelmann*, in: BeckOK StGB/Heintschel-Heinegg, § 263 marginal no. 34–35.1.
63 *Bidniak,* Theory and Practice, 10.
64 Article 51 of the Code of Ukraine on Administrative Offenses of 7 December 1984, No. 8073-X (as amended); Article 169, paragraph 169.1 of the Tax Code of Ukraine of 2 December 2010, No. 2755-VI (as amended).
65 *BGH* NJW 1987, 388, 388.
66 *BGH* NJW 1987, 388, 389.
67 *Becker*, NZWiSt 2022, no. 306; *Hefendehl*, in: MuKoStGB/Hefendehl, § 263 marginal no. 1, 9.
68 *Satzger*, in: Satzger/Schluckebier, StGB, § 263 marginal no. 117.
69 Section 263a StGB.
70 Art. 190 Part 4 CCU

element with technical interference, the current wording of Art. 190 *CCU* forces a crime requiring "voluntary transfer" to apply to situations that are equivalent to a secret, technical encroachment on property. To resolve this, Ukrainian scholars heavily criticize this construct and propose moving these acts to Art. 185 *CCU* as a qualifying feature of theft.[71]

5. The PIF Directive 2017/1371/EU and Harmonization Challenges

The differences between the Ukrainian and German models deeply affect how each country implements EU standards, especially the PIF Directive (Directive 2017/1371).[72] Article 3(2) of this Directive requires member states to criminalize both revenue and expenditure fraud. The German system complies with this standard as it combines the general fraud law (§ 263 StGB) with special economic crimes, such as Subsidy Fraud (§ 264 StGB). This allows Germany to punish the misuse of public funds early, without always having to prove a completed financial loss (*Vermögensschaden*) or a specific mistake (*Irrtum*) by an official.[73]
Moreover, the German approach successfully bridges the gap between the EU's autonomous concept of "damage to the Union's financial interests" and the traditional domestic element of *Vermögensschaden*. Through the application of the "equivalent threat to property" (*schadensgleiche Vermögensgefährdung*), German courts can recognise criminal completion at a very early stage such as the unlawful acquisition of an EC card with a PIN code thereby meeting the PIF Directive's requirement for effective and deterrent sanctions without distorting the core structure of § 263 StGB.[74]

In contrast, Ukraine's current approach is more fragmented. Because Article 190 CCU strictly requires a physical transfer of assets or property rights, tax or customs fraud usually cannot be qualified under it. Instead, Ukraine has to use a mix of different articles, such as Article 192 (causing damage without deception) or Article 212 (tax evasion). Ukrainian Criminal Code also has a special Article 222 for fraud with financial resources. This article was designed to punish providing false information to get subsidies or loans, similar to the German § 264 StGB.[75] Therefore, to achieve full European integration, Ukrainian criminal law needs to move away from a strict, physical understanding of property. It should adopt a dynamic protection of financial interests, like the German model.

However, the Draft of the New Criminal Code of Ukraine proposes a completely different approach. The Draft actually removes fraud (*шахрайство*) as a standalone, independent crime that we currently see in Article 190 CCU. Instead, deception (*обман*) and abuse of trust (*зловживання довірою*) are treated merely as specific methods of committing general property crimes. For instance, under Article 6.1.1 (for movable property) and Article 6.1.5 (for immovable property and rights to property), deception is placed in the same category as secret (theft-like) or open (robbery-like) taking of property. This structural changes show a significant dogmatic difference: while German law keeps § 263 StGB as a distinct intellectual offense based on the victim's own flawed decision (*Vermögensverfügung*), the new Ukrainian Project views deception more like a tool for misappropriation.[76]

At the same time, the Draft introduces special economic crimes to meet EU standards and the PIF Directive.

71 *Reznichenko/Chekmarova*, YNEZ 2024, p. 559 (560).
72 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law OJ L 198, 28.7.2017, 29–41.
73 *Satzger*, Satzger/Schluckebier/Werner, StGB, § 263 marginal no. 5–9.
74 *Brodowski*, Stellungnahme BT-Drs. 19/7886, 2019, 6.
75 Art. 190, 192, 212, 222 CCU.
76 Working Group, *Draft CCU 2026*, Art. 6.1.1, 6.1.5.

Articles 6.3.21, 6.3.22, and 6.3.23[77] directly criminalize fraud that damages the financial interests of the European Union. This very much resembles the specialized German framework under § 264 StGB (Subsidy Fraud). These new articles penalize the use of false statements that lead to the "reduction of budget resources" rather than requiring a physical transfer of assets. This proves that the new Ukrainian model is ready to adopt a modern, normative understanding of financial damage.

V. Conclusion

This comparative study demonstrates that while both legal systems effectively protect property, they operate on fundamentally different dogmatic structures. The Ukrainian model under Art. 190 CCU remains strictly act-based, focusing on the specific methods of deception or breach of trust and prioritizing the static right of ownership. Conversely, the German model under § 263 StGB utilizes a dynamic, causal-chain mechanism that prioritizes the victim's overall financial well-being (*Vermögen*) through the normative concepts of *Vermögensverfügung* and *Gesamtsaldierung*.

In the light of Ukraine's ongoing European integration and the requirements of the PIF Directive (2017/1371), the German combined framework of general fraud and specialized economic offenses (such as subsidy fraud under Section 264 StGB) offers a valuable base for reform. Based on this comparative analysis, it is argued that the current Ukrainian model requires a profound dogmatic modernization. First, to overcome the limitations of its strict material structure, the Ukrainian legislator should consider shifting toward a truncated offense layout (*усічений склад злочину*). By redefining the completion of fraud to encompass the creation of an immediate threat to property similar to the German doctrine of *schadensgleiche Vermögensgefährdung* the law could penalize fraudulent attempts earlier and more effectively, without waiting for the physical transfer of assets to materialize. Second, Ukraine must separate computer fraud from traditional fraud. Logically, a computer has no human mind and cannot be deceived. Therefore, cyber-enabled property crimes should be placed in a e.g. standalone article or treated as a special form of theft (Art. 185 CCU), just like Germany did with § 263a StGB.

Ultimately, the Draft of the New Criminal Code of Ukraine demonstrates a promising readiness to adopt these changes. By transforming deception into a method of misappropriation and introducing specialized articles to protect EU financial interests, the Draft effectively shifts Ukrainian law toward a dynamic, normative protection of financial well-being, successfully aligning it with modern European standards

[77] Idem, Articles 6.3.21, 6.3.22, 6.3.23.

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