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Property and Economic Offenses under the Ukrainian Criminal Code in Comparison with the German Criminal Code – Comparative Criminal Law Perspectives –

Deutsch-Ukrainisches Tandemseminar im Sommersemester 2026

in Zusammenarbeit der

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VORWORT

Die vorliegenden rechtsvergleichenden[1] Seminararbeiten von Studierenden eines strafrechtlichen Tandemseminars zwischen einer deutschen und einer ukrainischen Universität[2] im Sommersemester 2026, die zu einer Zeit entstanden sind, in der die Ukraine weiterhin täglichen Kriegsangriffen ausgesetzt ist, geben Anlass, sich den besonderen Wert universitärer Lehre vor Augen zu führen, die selbst unter diesen Bedingungen fortgesetzt werden kann. Zugleich ermöglichen sie es den Studierenden, ihr eigenes Rechtssystem durch die Perspektive der Anforderungen der PIF-Richtlinie zu betrachten. Die unter diesen Umständen verfassten Beiträge aller Teilnehmenden gewähren aufschlussreiche Einblicke in die ukrainische Gesetzgebung zum PIF-*Acquis*, deren Angleichung im Rahmen der Cluster des EU-Beitrittsprozesses fortlaufend bewertet wird.[3] Der Band richtet sich daher sowohl an allgemein hieran interessierte Leserinnen und Leser und Forschende als auch an die mit dieser drängenden Frage befassten Organe, Einrichtungen und sonstigen Stellen der Europäischen Union, die Generaldirektion Justiz und Verbraucher, das Europäische Parlament und den Rat der Europäischen Union[4]: Gewährleistet das ukrainische PIF-Strafrecht bereits den harmonisierten Mindeststandard (*de minimis*), der innerhalb der Europäischen Union erforderlich ist, deren strafrechtlicher Schutz der finanziellen Interessen seit dem 1. Juni 2021 durch die Europäische Staatsanwaltschaft institutionell verstärkt wird?[5]

Die Beiträge dieses Bandes zeigen, dass das ukrainische Strafrecht bereits über ein breites und ausdifferenziertes

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1 Das Potenzial und Bedürfnis rechtsvergleichende Tandemforschung zu betreiben, zeigt sich daran, dass trotz der RL 2017/1371/EU, die EU Kommission nach wie vor von einer uneinheitlichen harmonisierten Materie ausgeht (so wurde Schweden im Dezember 2025 zu Letzt angehalten einen Brief der Kommission zu beantworten EU Kommission, November infringements package: key decisions, 21.11.2025, Commission calls on SWEDEN to comply with the rules on the fight against fraud to the Union's financial interests by means of criminal law, https://malta.representation.ec.europa.eu/news/november-infringements-package-key-decisions-2025-11-21_en); auch die PIF-Straftatbestände in allen Mitgliedsländern sind teils weiter partiell angleichungsbedürftig, wenn es um funktionale Erfassung der PIF-Verhaltensweisen geht; vgl. Ergänzend, einschließlich einer materiell-rechtlichen, mitgliedstaatenbezogenen Übersicht in Form annotierter Länderberichte zum Zwecke des Rechtsvergleichs, *Hauck/Schneider* (Hrsg.), The EPPO/OLAF Compendium of National Procedures. Desktop Codes on the Procedural Law of the Member States with Annotations by National Experts, 27 Bde., Berlin 2024–2026. Übersichten zur mitgliedstaatlichen Regelung der „PIF offences" finden sich in Vol. I (AT), Art. 26 Rn. 55; Vol. II (BE), Art. 26 Rn. 29 ff.; Vol. III (BG), Art. 26 Rn. 39 ff.; Vol. IV (HR), Art. 26 Rn. 74 ff.; Vol. V (CY), S. 71; *Hauck/Schneider/Jelínek/Ottová*, Vol. VI (CZ), Berlin 2026, Annex II Rn. 1–22; Vol. VII (DK), Teil D Rn. 35; Vol. VIII (EE), Art. 26 Rn. 32; Vol. IX (FI), Art. 26 Rn. 38; *Hauck/Schneider/Christodoulou*, Vol. X (FR), Berlin 2024, Art. 26 Rn. 46; *Hauck/Schneider/Karakocaoğlu/Laird*, Vol. XI (DE), Berlin 2025, Art. 26 Rn. 56; Vol. XII (EL), Art. 26 Rn. 52; Vol. XIII (HU), Teil C Rn. 25; Vol. XIV (IE), Teil E Rn. 166–194; Vol. XV (IT), Art. 26 Rn. 24; Vol. XVII (LT), Art. 26 Rn. 30; Vol. XVIII (LU), im Erscheinen; Vol. XIX (MT), Art. 26 Rn. 21 ff.; Vol. XX (NL), Art. 26 Rn. 43; Vol. XXI (PL), Teil E Rn. 91; Vol. XXII (PT), Art. 26 Rn. 58; Vol. XXIII (RO), Art. 26 Rn. 37; Vol. XXIV (SK), Art. 26 Rn. 40; Vol. XXV (SI), Art. 26 Rn. 55; Vol. XXVII (SE), Art. 26 Rn. 71. Vgl. ergänzend die amtlichen Mitteilungen der Mitgliedstaaten nach Art. 117 EUStA-VO.

2 Kooperationspartner war die *Nationale Jurij-Fedkowytsch-Universität Tscherniwzi* (ChNU), die sie 1875 als Franz-Josephs-Universität im östlichsten Kronland Österreichs durch Franz Joseph von Habsburg-Lothringen Hauptstadt der Oblast Tscherniwzi, Westukraine ca. 200km von Lwiw gegründet wurde und mit Düsseldorf, Regensburg und Göttingen sowie Gießen kooperiert. Die Kooperation bezog sich inhaltlich auf in beiden Ländern im Grund- und Haupt- sowie Schwerpunktstudium gelehrtes Vermögens- und Finanzschutzstrafrecht (Strafrecht, Besonderer Teil II) in Kombination mit dem EU-Recht, dem sog. EU-Finanzschutzstrafrecht, fachlich dem PIF-Strafrecht zum Schutz der finanziellen Interessen der Union und verlief seit 1.3.26 nach Vorbereitung im Februar bis 26.6.2026 über ein mehrere Sitzungen und eine Recherche- und Schreibphase beinhaltendes Online-Tandemseminar der Strafrechtsprofessuren beider Universitäten, wodurch sich ukrainische und deutsche Studierende mit wissenschaftlichen Artikeln aus beiden Ländern binational zwecks Rechtsvergleichs ihrer Themen versorgten und gemeinsam in Englisch über die Themen kommunizierten. JLU und Department of Criminal Law der Yuriy Fedkovych Chernivtsi National University, Ukraine. Mehr Informationen zum Seminar https://law.chnu.edu.ua/german-ukrainian-student-online-seminar-cooperation-in-criminal-law/ und der Bericht der JLU https://www.uni-giessen.de/de/ueber-uns/pressestelle/pm/pm110-26seminarfuerukrainischestudierende. Es besteht zukünftig weiteres Interesse zur u.a. Erforschung von Themen wie häuslicher Gewalt und Gewaltschutzdelikte in beiden Ländern, wie Teilnehmende nach dem Seminar signalisierten.

3 Rat der Europäischen Union, European Union Common Position – Cluster 1: Fundamentals, AD 18/26 CONF-UA 2/26, Brüssel, 12.6.2026, S. 16.

4 Das Bedürfnis nach Erkenntnissen ist nun auch Gegenstand weiterer Forschung im Auftrag von OLAF unter Federführung von Spark Legal and Policy Consulting in Zusammenarbeit mit CSES (Centre for Strategy & Evaluation Services) durchgeführt; zu den wissenschaftlichen Experten für europäisches und ukrainisches Straf- und Strafprozessrecht gehören John *Vervaele*, Mykhaylo *Shepitko* und Volodymyr *Petrakovskyi*, vgl. https://www.sparklegalpolicy.eu/news/new-study-on-ukraines-compliance-with-the-pif-directive-and-olaf-regulation/.

5 Auch für die Ukraine selbst ist dies unter den Bedingungen des fortdauernden Krieges eine wichtige Frage; siehe Урядовий офіс координації європейської та євроатлантичної інтеграції (Regierungsbüro für die Koordinierung der europäischen und euro-atlantischen Integration), Звіт про виконання Угоди про асоціацію між Україною та Європейським Союзом за 2025 рік [Bericht über die Umsetzung des Assoziierungsabkommens zwischen der Ukraine und der Europäischen Union für das Jahr 2025], Kyjiw 2026.

Spektrum materiell-strafrechtlicher Vorschriften verfügt, die grundsätzlich geeignet sind, die finanziellen Interessen der Europäischen Union zu schützen. Zugleich verdeutlicht der Vergleich mit dem deutschen Strafrecht sowie mit der Richtlinie (EU) 2017/1371[6] in ihrer durch die Richtlinie (EU) 2026/1021 konsolidierten und fortentwickelten Fassung, dass eine lediglich formale Kriminalisierung nicht ausreicht.[7]

Die in diesem Band vorgenommene rechtsvergleichende Bewertung führt schließlich zu einem differenzierten Ergebnis. Dem ukrainischen Strafrecht fehlt es nicht etwa an Straftatbeständen gegen Betrug, Geldwäsche, Korruption, die missbräuchliche Verwendung öffentlicher Mittel, organisierte Kriminalität oder unternehmensbezogenes Fehlverhalten. Im Gegenteil enthält das ukrainische Strafgesetzbuch ein breites und zunehmend ausdifferenziertes Spektrum von Straftatbeständen, die den durch die Richtlinie (EU) 2017/1371 über den strafrechtlichen Schutz der finanziellen Interessen der Union geforderten Tatbeständen in vielerlei Hinsicht funktional entsprechen.[8]

Nicht spezifischer untersucht im Blockseminar, jedoch durchaus besprochen wurde die zumindest funktionale Ähnlichkeit, da jene nicht mit vollständiger PIF-Äquivalenz gleichzusetzen ist. Entscheidend ist nicht allein, ob ein vergleichbarer Straftatbestand existiert, sondern ob das nationale System insgesamt die kumulativen Anforderungen der Art. 3, 4, 5, 6, 7, 8, 9, 10 und 12 der PIF-Richtlinie erfüllt: eine hinreichend bestimmte Kriminalisierung, wirksame Sanktionen, die Erfassung von Versuch und Beteiligung, die Verantwortlichkeit juristischer Personen, erschwerende Umstände, Einziehung sowie Verjährungsfristen, die eine effektive Strafverfolgung ermöglichen.[9]

Die Beiträge zum allgemeinen Betrug nach Art. 190 des ukrainischen Strafgesetzbuchs (uStGB) und § 263 StGB zeigen eine weitgehende konzeptionelle Überschneidung. Beide Rechtsordnungen schützen das Vermögen vor täuschungsbedingter Selbstschädigung, bedienen sich hierfür jedoch unterschiedlicher dogmatischer Konstruktionen. Das deutsche Recht ist stark auf den Ablauf des Tatgeschehens ausgerichtet und verlangt die bekannte Kette von Täuschung, Irrtum, Vermögensverfügung und Vermögensschaden im objektiven Tatbestand. Das ukrainische Recht ist stärker erfolgsorientiert und stellt auf die Erlangung fremden Vermögens oder fremder Vermögensrechte

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6 Vgl. zur Geschichte des Finanzschutz und Anti-Betrugsrechts Hauck, Fraud in Europe: From Roman Law to the Implementation of the PIF Directive. Edward Elgar, Cheltenham 2025; auch zum Steuerrecht Unger, Brigitte, Lucia Rossel, and Joras Ferwerda (eds), Introduction, in Brigitte Unger, Lucia Rossel, and Joras Ferwerda (eds), Combating Fiscal Fraud and Empowering Regulators: Bringing tax money back into the COFFERS (Oxford, 2021); zur Interpretation der durch die Ukraine umzusetzenden PIF-Richtlinie siehe Hauck, The PIF Directive. A Commentary on the Directive on the Fight against Fraud Affecting the EU's Financial Interests by Means of Criminal Law. Edward Elgar, Cheltenham 2026, wo zur PIF Rechtslage in Art. 1.085-1.561 eine dezidierte Bewertung der Mitgliedstaaten vergleichend abgedruckt ist; Die PIF Rechtslage ist Voraussetzung für die materiell-rechtlichen Ermittlungen der Europäischen Staatsanwaltschaft (EUStA) und der verwaltungsrechtlichen Kontrolle des Europäischen Anti-betrugsbüros (OLAF), vgl. für die Interpretation ihrer Ermittlungsbefugnisse u.a. Hauck, The EPPO Regulation: A Commentary on the Rules on Investiga-tions and Investigation Measures in Relation to the Fight Against Fraud (Art. 26–33). Edward Elgar, Cheltenham 2026; sowie zum Recht der EUStA allgemein Herrnfeld, Hans-Holger/Brodowski, Dominik/Burchard, Christoph (Hrsg.), European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO). Article-by-Article Commentary, 2. Aufl., Nomos, Baden-Baden 2026; sowie zur aktuellen Evaluation und den Vorschlägen der Wissenschaft Brodowski D, Trautmann S (eds) Strengthening the Future of the European Pub-lic Prosecutor's Office. Nomos, Baden-Baden.

7 Gebura, Oleh, Verfahren ohne Ende. Wie Tausende Korruptionsfälle in der Ukraine ergebnislos bleiben, Ukraine-Analysen Nr. 322 (2025), 7–11, DOI: 10.31205/UA.322.02.

8 Zu Hinweisen zur Methode und Bewertung strafrechtlicher Rechtsvergleichung siehe Eser, Albin, Strafrechtsvergleichung: Entwicklung – Ziele – Methoden, in: Eser, Albin/Perron, Walter (Hrsg.), Strukturvergleich strafrechtlicher Verantwortlichkeit und Sanktionierung in Europa. Zugleich ein Beitrag zur Theorie der Strafrechtsvergleichung, Teil 4, Duncker & Humblot, Berlin 2015.

9 Busch, Markus, „Negotiation and Transposition of the PIF Directive – The German Perspective", eucrim – The European Criminal Law Associations' Forum 16 (2021), 182–187; Bock, Der Schutz der finanziellen Interessen der Union – Überlegungen zur Betrugsbekämpfungsrichtlinie 2017/1371, in: Ambos/Bock (Hrsg.), Aktuelle und grundsätzliche Fragen des Wirtschaftsstrafrechts / Les questions actuelles et essentielles du droit pénal des affaires. 6. Deutsch-Französische Strafrechtstagung / 6e rencontre du droit pénal franco-allemand, Duncker & Humblot 2019, S. 155 ff.

durch Täuschung oder Missbrauch von Vertrauen ab. Für Art. 3 der PIF-Richtlinie ist dies als allgemeiner Auffangtatbestand funktional ausreichend. Der Vergleich zeigt jedoch zugleich, dass der allgemeine Betrugstatbestand allein die Anforderungen der PIF-Konformität nicht vollständig erfüllen kann. Die finanziellen Interessen der EU werden häufig nicht durch gewöhnlichen privatrechtlichen Betrug beeinträchtigt, sondern durch Subventionsmissbrauch, Unregelmäßigkeiten bei der öffentlichen Auftragsvergabe, Umsatzsteuerbetrugssysteme, Betrug mit Finanzmitteln, Korruption, Geldwäsche und anschließende Verschleierung.

Besonders deutlich wird dies im Vergleich zwischen § 264 StGB und Art. 222 uStGB. Der deutsche Subventionsbetrug weist eine strukturelle Nähe zu Art. 3 der PIF-Richtlinie auf, weil er unrichtige Angaben, pflichtwidriges Unterlassen, die zweckwidrige Verwendung von Subventionen und aus EU-Mitteln finanzierte Vorteile erfasst. Der ukrainische Finanzbetrug nach Art. 222 uStGB erfasst wesentliche Verhaltensweisen, insbesondere die Vorlage falscher Angaben zur Erlangung von Subventionen, Zuschüssen, Krediten oder Steuervergünstigungen. Gleichwohl verbleiben Lücken. Der ukrainische Tatbestand erscheint hinsichtlich des Unterlassens, der nachträglichen zweckwidrigen Mittelverwendung, einer ausdrücklichen Bezugnahme auf EU-Mittel und der Sanktionen in schweren PIF-Fällen schwächer ausgeprägt. Dies gilt in noch stärkerem Maße für Art. 212 uStGB über die Hinterziehung von Steuern und Pflichtabgaben. Bei schwerwiegendem Umsatzsteuerbetrug zum Nachteil der Eigenmittel der EU besteht bei einer primär auf Geldstrafen beruhenden Vorschrift die Gefahr, hinter den Anforderungen des PIF-Acquis zurückzubleiben, insbesondere wenn keine hinreichend strengen Freiheitsstrafen, angemessenen Verjährungsfristen und eine klare Erfassung grenzüberschreitender Umsatzsteuersysteme vorgesehen sind.

Der Vergleich zur Geldwäsche ergibt demgegenüber ein günstigeres Bild. Art. 209 uStGB und § 261 StGB kriminalisieren beide den Umgang mit Vermögenswerten, die aus strafbaren Handlungen herrühren, und können grundsätzlich auch Erträge aus PIF-Vortaten erfassen. Das deutsche Recht ist technisch stärker ausdifferenziert, insbesondere durch den All-Crimes-Ansatz und besondere Regelungen für berufsmäßige Unterstützer sowie zur Selbstgeldwäsche. Das ukrainische Recht sieht demgegenüber strenge Sanktionen und obligatorische, auf Einziehung gerichtete Rechtsfolgen vor. Die zukünftige Forschung betrifft hier vermutlich weniger die materiell-rechtliche Kriminalisierung als vielmehr die praktische Durchsetzung: Vermögensaufspürung, Sicherstellung und Einfrieren, Einziehung, grenzüberschreitende Zusammenarbeit sowie das Zusammenspiel geldwäscherechtlicher Pflichten mit dem Strafverfahrensrecht.[10]

Ein weiterer Beitrag befasst sich mit kritischen Infrastrukturen als Ziel von Angriffen, die ebenso gravierende Schäden verursachen können wie physische Sabotageakte. Die strafrechtliche Reaktion auf diese Bedrohung ist jedoch nach wie vor nicht abschließend geklärt, insbesondere im Kontext bewaffneter Konflikte. Der Beitrag vergleicht, wie die Ukraine (Art. 361 uStGB) und Deutschland (§§ 303a, 303b StGB) Computersabotage gegen kritische Infrastrukturen strafrechtlich erfassen. Als Ausgangspunkte dienen der Cyberangriff auf Kyivstar im Jahr 2023 und die Sabotage des Schienennetzes der Deutschen Bahn im Jahr 2022. Untersucht werden die jeweiligen gesetzlichen Rahmenbedingungen und Tatbestandsvoraussetzungen, die praktische Rechtsdurchsetzung sowie die Reformen, die beide Staaten unter dem Einfluss unionsrechtlicher Vorgaben, insbesondere der NIS-2- und der CER-Richtlinie, vorantreiben. Der deutsche Ansatz ist dogmatisch stärker ausdifferenziert und in einen kohärenten

[10] Frömbgen, Silvia/Langweg, Peter/Rößler, Gernot/Höche, Thorsten, 30 Jahre Geldwäschegesetz – Rück- und Ausblick, GWuR 2023, 122–125; Litkevych, Volodymyr, Das ukrainische System zur Bekämpfung der Geldwäsche: Entwicklungsgeschichte und Besonderheiten, GWuR – Geldwäsche & Recht 2025, 131–148.

regulatorischen Rahmen eingebettet. Das ukrainische Recht zeichnet sich demgegenüber durch eine klare, enumerative Definition kritischer Infrastrukturen aus und enthält mit Art. 361-1 uStGB einen eigenständigen Vorbereitungstatbestand, für den das deutsche Recht keine unmittelbare Entsprechung kennt.
Auf Grundlage dieses Rechtsvergleichs entwickelt der Beitrag vier kurze Reformvorschläge für das ukrainische Recht, die sich an der deutschen Regelungspraxis orientieren. Zugleich werden zwei Aspekte herausgearbeitet, bei denen das deutsche Recht vom ukrainischen Ansatz profitieren könnte, insbesondere im Hinblick auf Cyberangriffe, die im Zusammenhang mit bewaffneten Konflikten begangen werden.

Die Beiträge zur Korruption stehen im Zentrum der gegenwärtigen Reformlandschaft. Die Art. 368, 368-3, 368-4, 369 und 369-2 uStGB zeigen, dass die Ukraine einen breiten strafrechtlichen Rahmen zur Bekämpfung der Korruption im öffentlichen wie im privaten Sektor geschaffen hat. In schweren Fällen sind die ukrainischen Sanktionen sogar strenger als diejenigen der §§ 331–335a StGB. Der Reformdruck hat sich jedoch erhöht, weil die Richtlinie (EU) 2026/1021 den PIF-Maßstab verändert hat. Passive und aktive Bestechung im öffentlichen Sektor werden nun neu definiert, hochrangige Amtsträger gewinnen an Bedeutung, und Verjährungsfristen sowie Sanktionen werden verschärft. Daraus ergeben sich für die Ukraine neue Fragen: ob sämtliche Formen pflichtgemäßer und pflichtwidriger Bestechlichkeit und Bestechung mit Bezug zu EU-Mitteln erfasst sind, ob Einflussnahmehandel, Korruption auf hoher Ebene und Korruption bei der öffentlichen Auftragsvergabe wirksam verfolgt werden, und ob die institutionelle Erfolgsbilanz von NABU, SAPO, HACC und NACP nicht nur formal, sondern auch praktisch hinreichend ist.[11]

Auch der Beitrag zur Verantwortlichkeit juristischer Personen zeigt sowohl Fortschritte als auch ungelöste Fragen. Deutschland stützt sich auf Verbandsgeldbußen nach dem OWiG, während die Ukraine im Strafgesetzbuch selbst strafrechtliche Maßnahmen gegen juristische Personen entwickelt hat. Das ukrainische Modell steht damit seiner Form nach der Terminologie der Art. 6 und 9 der PIF-Richtlinie näher. Zugleich bleibt der ukrainische Regelungsrahmen kataloggebunden. Weiterer Forschungsbedarf besteht hinsichtlich der Frage, ob sämtliche PIF-relevanten Straftaten wirksame Maßnahmen gegen juristische Personen auslösen können, ob die Sanktionen in einem angemessenen Verhältnis zur wirtschaftlichen Leistungsfähigkeit der Unternehmen stehen und ob nichtfinanzielle Maßnahmen wie der Ausschluss von öffentlichen Aufträgen, öffentlicher Finanzierung oder internationalen technischen Projekten durchgängig zur Verfügung stehen.

Das Gesamtbild ist daher von einer dynamischen Annäherung, nicht von bereits vollendeter Äquivalenz geprägt.Die Ukraine hat erhebliche Fortschritte erzielt; eine vollständige PIF-Äquivalenz kann jedoch noch nicht angenommen werden.

Verbleibende Forschungslücken betreffen Art. 222 und Art. 212 uStGB, die ausdrückliche Erfassung von EU-Mitteln, die Behandlung der Umsatzsteuer-Eigenmittel, die Verjährungsfristen nach der Reform von 2026, Versuch und Beteiligung, die Verantwortlichkeit juristischer Personen, die Einziehungspraxis sowie die tatsächliche Durchsetzungsbilanz bei Korruption auf hoher Ebene und in Fällen der öffentlichen Auftragsvergabe. Diese Lü-

[11] Zur Frage, wie „tief“ eine Umsetzung reichen sollte, siehe Isfen, Osman, „Überobligatorische Erfüllung von Umsetzungspflichten aus supra- und internationalen Übereinkommen am Beispiel der Strafgewalterstreckung auf Auslandskorruption“, KriPoZ – Kriminalpolitische Zeitschrift 2 (2019), 65–72.

cken rechtfertigen keine Reduzierung der Forschungsanstrengungen. Im Gegenteil zeigen sie, weshalb die strafrechtliche Rechtsvergleichung intensiviert werden sollte.[12]

Im Seminar wurde deutlich, dass das Jahr 2026 für die Betrugsbekämpfungsarchitektur der Europäischen Union von grundlegender Bedeutung ist. [13] Nach der früheren Evaluierung der PIF-Richtlinie durch die Kommission im Jahr 2021[14] und den ersten Jahren praktischer Tätigkeit der Europäischen Staatsanwaltschaft seit dem 1. Juni 2021 verlagert sich der Schwerpunkt der Union von der formalen Harmonisierung auf die tatsächliche Wirksamkeit. Die EUStA-Verordnung bildet das verfahrensrechtliche Gegenstück zur PIF-Richtlinie.[15] Sie stellt einen prozesspluralistischen Kompromiss dar: Eine europäische Strafverfolgung wird ermöglicht, bleibt jedoch in hohem Maße vom nationalen Strafrecht, dem nationalen Strafverfahrensrecht, den nationalen Gerichten und den jeweiligen nationalen Ermittlungstraditionen abhängig.[16] Darin liegen zugleich Stärke und Schwäche dieses Modells. Es wahrt die nationalen Rechtsidentitäten, macht rechtsvergleichende Kenntnisse aber unverzichtbar und ist im Jahr 2026 seinerseits Gegenstand einer Evaluierung.[17]

Für die Ukraine ist dieser Kontext entscheidend. Der EU-Beitrittsprozess, die Diskussion um die Acquis-Cluster, die Roadmap zur Rechtsstaatlichkeit, die Antikorruptions-Benchmarks und die sich entwickelnde ukrainische wissenschaftliche Debatte über eine Europäisierung oder sogar Neukodifikation des Strafgesetzbuchs weisen in dieselbe Richtung: Das materielle Strafrecht muss gemeinsam mit den Strukturen seiner Durchsetzung bewertet werden. Der Schutz des EU-Haushalts ist nicht lediglich eine technische Frage des Finanzstrafrechts. Er ist eine unabdingbare Voraussetzung für den Binnenmarkt, fairen Wettbewerb, regionale Entwicklung, den Wiederaufbau und die Glaubwürdigkeit europäischer Solidarität.[18]

Die Union kann Ressourcen nur dann umverteilen, strukturschwächere Regionen unterstützen und in künftige Entwicklung investieren, wenn ihre eigenen Einnahmen und Ausgaben wirksam gegen Betrug, Korruption, Geldwäsche und Missbrauch geschützt werden. Strafrechtliche Rechtsvergleichung ist daher keine bloße Hilfsdisziplin. Sie ist vielmehr eine notwendige Methode, um gegenseitiges Vertrauen zwischen der Ukraine und der EU aufzubauen, die künftige Zusammenarbeit mit OLAF und der Europäischen Staatsanwaltschaft vorzubereiten und sicherzustellen, dass der Beitritt von einem tatsächlichen, durchsetzbaren und institutionell glaubwürdigen Schutz der finanziellen Interessen der Union begleitet wird.

Ein großer Dank gebührt nun allen Beteiligten des Tandemseminars und den Teilnehmenden für die inspirierenden

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12 American Chamber of Commerce in Ukraine, Policy Win: Parliament Supported the Chamber Proposal to Prevent Implementation of Additional Unreasonable Pressure on Taxpayers during VAT Refund Process, 18.11.2021, abrufbar unter: American Chamber of Commerce in Ukraine (abgerufen am 10.7.2026).

13 Buksa, Sorina Emilia/Roebling, Georg, „The New Union Anti-Fraud Programme“, eucrim – The European Criminal Law Associations' Forum 16 (2021), 175–177.

14 Van Ballegooij, Wouter, „Protecting the EU's Financial Interests through Criminal Law: The Implementation of the 'PIF Directive'“, eucrim – The European Criminal Law Associations' Forum 16 (2021), 177–181.

15 Cavigneaux, Elie, Untapped Potential at the European Public Prosecutor's Office. Expand the Mandate to Include Sanctions Enforcement, SWP Comment 2026/C 23, Stiftung Wissenschaft und Politik (SWP), Berlin 2026, DOI: 10.18449/2026C23v02.

16 Herrnfeld, Hans-Holger/Brodowski, Dominik/Burchard, Christoph (Hrsg.), European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO). Article-by-Article Commentary, 2. Aufl., Nomos, Baden-Baden 2026.

17 Deutscher Anwaltverein (DAV), Nachrichten aus Brüssel, Ausgabe 09/2026 vom 7.5.2026, „Öffentliche Konsultation zur EU Inc.; Sondierungen über den EU-Betrugsbekämpfungsrahmen; Unrechtmäßige Haft und Verurteilung im Fall Yasak; Schulung zu KI, Justiz und Rechtsstaatlichkeit“, abrufbar unter: https://anwaltverein.de/de/newsroom/nab-09-2026 (abgerufen am 5.7.2026).

18 Дослідницька служба Верховної Ради України (Forschungsdienst der Werchowna Rada der Ukraine), Інформаційна довідка щодо імплементації актів права Європейського Союзу (acquis ЄС) у Кримінальний процесуальний кодекс України [Informationsbericht zur Umsetzung von Rechtsakten der Europäischen Union (EU-acquis) in die Strafprozessordnung der Ukraine], April 2026, abrufbar unter: Research Service der Werchowna Rada – PDF (abgerufen am 10.7.2026).

Impulse und Austausch sowie die produktive Zusammenarbeit. Ein besonderer Dank geht an das Organisationsteam und das Dekanat der CHNU Law School als Partnerinstitution für die Kooperation und das Blockseminar. Das gemeinsame Engagement im Tandemseminar ermöglicht nun Einblicke in zwei Rechtsysteme sowie die für den PIF-*Acquis* bedeutsame Rechtslage. Wir wünschen Ihnen nun eine interessante Lektüre des beigefügten Sammelbandes und danken Frau Professorin *Schiemann* und ihrem Team Wiss. Mit. *Franzone*, und Ass. Iur. *Horn* recht herzlich für Möglichkeit der Veröffentlichung in der JuP-Rubrik und freuen uns auf zukünftige gemeinsame Projekte.

Pierre Hauck
Jan-Martin Schneider

PREFACE

These comparative[19] law seminar papers, written by students on a joint criminal law seminar between a German and a Ukrainian university during the summer term of 2026[20] – at a time when Ukraine continues to face daily military attacks – provide an opportunity to reflect on the particular value of university teaching, which can continue even under such conditions. At the same time, they enable students to examine their own legal system through the lens of the requirements of the PIF Directive. The papers written by all participants under these circumstances provide insightful perspectives on Ukrainian legislation relating to the PIF acquis, the alignment of which is being continuously assessed within the framework of the clusters of the EU accession process.[21] The volume is therefore aimed both at readers and researchers with a general interest in this subject and at the bodies, institutions and other agencies of the European Union dealing with this pressing issue, namely the Directorate-General for Justice and Consumers, the European Parliament and the Council of the European Union:[22] Does Ukrainian criminal law on the protection of financial interests already guarantee the harmonised minimum standard (*de minimis*) required within the European Union, where the criminal-law protection of financial interests has been institutionally strengthened by the European Public Prosecutor's Office since 1 June 2021?[23]

The articles in this volume demonstrate that Ukrainian criminal law already comprises a broad and nuanced range of substantive criminal law provisions which are, in principle, capable of protecting the financial interests of the

[19] The continuing potential and need for comparative tandem research are illustrated by the fact that, notwithstanding Directive (EU) 2017/1371, the PIF acquis cannot yet be regarded as a uniformly harmonised field of criminal law across the Member States. Most recently, in November 2025, the European Commission issued a reasoned opinion to Sweden for failing correctly to transpose certain requirements of Directive (EU) 2017/1371 (EU Kommission, November infringements package: key decisions, 21.11.2025, Commission calls on SWEDEN to comply with the rules on the fight against fraud to the Union's financial interests by means of criminal law, https://malta.representation.ec.europa.eu/news/november-infringements-package-key-decisions-2025-11-21_en), noting that shortcomings remained in relation to VAT-related statements. More generally, the criminal offences protecting the Union's financial interests in the Member States continue, in part, to require further approximation where the question is whether national criminal law functionally captures the conduct covered by the PIF Directive. For a complementary substantive-criminal-law, Member-State-specific overview in the form of annotated country reviews designed to facilitate comparative legal analysis, see Hauck/Schneider (eds), The EP-PO/OLAF Compendium of National Procedures: Desktop Codes on the Procedural Law of the Member States with Annotations by National Experts, 27 vols, Berlin 2024–2026. Overviews of the national regulation of 'PIF offences' can be found in Vol. I (AT), Art. 26 para. 55; Vol. II (BE), Art. 26 paras 29 et seq.; Vol. III (BG), Art. 26 paras 39 et seq.; Vol. IV (HR), Art. 26 paras 74 et seq.; Vol. V (CY), p. 71; Hauck/Schneider/Jelínek/Ottová, Vol. VI (CZ), Berlin 2026, Annex II, paras 1–22; Vol. VII (DK), Part D, para. 35; Vol. VIII (EE), Art. 26 para. 32; Vol. IX (FI), Art. 26 para. 38; Hauck/Schneider/Christodoulou, Vol. X (FR), Berlin 2024, Art. 26 para. 46; Hauck/Schneider/Karakocaoğlu/Laird, Vol. XI (DE), Berlin 2025, Art. 26 para. 56; Vol. XII (EL), Art. 26 para. 52; Vol. XIII (HU), Part C, para. 25; Vol. XIV (IE), Part E, paras 166–194; Vol. XV (IT), Art. 26 para. 24; Vol. XVII (LT), Art. 26 para. 30; Vol. XVIII (LU), forthcoming; Vol. XIX (MT), Art. 26 paras 21 et seq.; Vol. XX (NL), Art. 26 para. 43; Vol. XXI (PL), Part E, para. 91; Vol. XXII (PT), Art. 26 para. 58; Vol. XXIII (RO), Art. 26 para. 37; Vol. XXIV (SK), Art. 26 para. 40; Vol. XXV (SI), Art. 26 para. 55; Vol. XXVII (SE), Art. 26 para. 71. See also the Member States' official notifications pursuant to Article 117 of the EPPO Regulation, EPPO, 'Documents – Article 117 Notifications' (last accessed 15 June 2026).

[20] The cooperation took place from 1 March to 26 June 2026 in the form of an online tandem seminar organised by the criminal law chairs at JLU Giessen and the Department of Criminal Law at Yuriy Fedkovych Chernivtsi National University, Ukraine. Comprising several joint sessions as well as dedicated research and writing phases, the seminar brought together Ukrainian and German students for a binational comparative-law project. Participants exchanged and discussed academic literature from both countries relevant to their respective research topics and worked together in English throughout the seminar. Further information on the seminar is available on the [website of Yuriy Fedkovych Chernivtsi National University](https://law.chnu.edu.ua/german-ukrainian-student-online-seminar-cooperation-in-criminal-law/?) and in the [JLU Giessen report on the cooperation](https://www.uni-giessen.de/de/ueber-uns/pressestelle/pm/pm110-26seminarfuerukrainischestudierende?). There is considerable interest in continuing and expanding the cooperation in the future. Following the seminar, participants expressed particular interest in comparative research on further areas of criminal law, including domestic violence and criminal-law measures for the protection of victims of violence in both countries.

[21] Council of the European Union, European Union Common Position – Cluster 1: Fundamentals, AD 18/26, CONF-UA 2/26, Brussels, 12 June 2026, p. 16.

[22] The need for further research is now also being addressed by a study commissioned by OLAF and led by Spark Legal and Policy Consulting in cooperation with CSES (Centre for Strategy & Evaluation Services). Its experts on European and Ukrainian criminal law and criminal procedure include John Vervaele, Mykhaylo Shepitko and Volodymyr Petrakovskyi; see Spark Legal and Policy Consulting, "New Study on Ukraine's Compliance with the PIF Directive and OLAF Regulation". https://www.sparklegalpolicy.eu/news/new-study-on-ukraines-compliance-with-the-pif-directive-and-olaf-regulation/.

[23] This is, in the ongoing war times, an important question, see Урядовий офіс координації європейської та євроатлантичної інтеграції (Regierungsbüro für die Koordinierung der europäischen und euro-atlantischen Integration), Звіт про виконання Угоди про асоціацію між Україною та Європейським Союзом за 2025 рік [Bericht über die Umsetzung des Assoziierungs-abkommens zwischen der Ukraine und der Europäischen Union für das Jahr 2025], Kyjiw 2026.

European Union.[24] At the same time, a comparison with German criminal law and with Directive (EU) 2017/1371 – as consolidated and further developed by Directive (EU) 2026/1021 – makes it clear that mere formal criminalisation is not sufficient.[25]

The comparative legal analysis[26] carried out in this volume ultimately leads to a nuanced conclusion. Ukrainian criminal law does not, for example, lack offences relating to fraud, money laundering, corruption, the misuse of public funds, organised crime or corporate misconduct. On the contrary, the Ukrainian Criminal Code contains a broad and increasingly differentiated range of criminal offences which, in many respects, functionally correspond to the offences required by Directive (EU) 2017/1371 on the criminal-law protection of the Union's financial interests.

Although not examined in detail during the block seminar, the at least functional similarity was certainly discussed, as this is not to be equated with full PIF equivalence. The decisive factor is not merely whether a comparable criminal offence exists, but whether the national system as a whole fulfils the cumulative requirements of Articles 3, 4, 5, 6, 7, 8, 9, 10 and 12 of the PIF Directive: sufficiently specific criminalisation, effective sanctions, the inclusion of attempts and complicity, the liability of legal persons, aggravating circumstances, confiscation, and limitation periods that enable effective criminal prosecution.[27]

The provisions on general fraud under Article 190 of the Ukrainian Criminal Code (UCC) and Section 263 of the German Criminal Code (StGB) show a significant conceptual overlap. Both legal systems protect property against self-inflicted harm resulting from deception, but employ different legal constructs to achieve this. German law is strongly focused on the sequence of events constituting the offence and requires the familiar chain of deception, error, disposal of assets and financial loss as part of the objective elements of the offence. Ukrainian law is more outcome-oriented and focuses on the acquisition of another person's property or property rights through deception or abuse of trust. For Article 3 of the PIF Directive, this is functionally sufficient as a general catch-all provision. However, the comparison also shows that the general offence of fraud alone cannot fully meet the requirements for PIF compliance. The EU's financial interests are often not affected by ordinary fraud under private law, but rather by the misuse of subsidies, irregularities in public procurement, VAT fraud schemes, fraud involving public

[24] See, on the history of financial protection and anti-fraud law, Hauck, Fraud in Europe: From Roman Law to the Implementation of the PIF Directive. Edward Elgar, Cheltenham 2025; also on tax law, Unger, Brigitte, Lucia Rossel, and Joras Ferwerda (eds), 'Introduction', in Brigitte Unger, Lucia Rossel, and Joras Ferwerda (eds), Combating Fiscal Fraud and Empowering Regulators: Bringing Tax Money Back into the Coffers (Oxford, 2021); on the interpretation of the PIF Directive to be implemented by Ukraine, see Hauck, The PIF Directive. A Commentary on the Directive on the Fight against Fraud Affecting the EU's Financial Interests by Means of Criminal Law. Edward Elgar, Cheltenham 2026, where a detailed comparative assessment of the Member States' legal situations regarding the PIF is set out in Articles 1.085–1.561; The legal framework of the PIF Directive is a prerequisite for the substantive investigations conducted by the European Public Prosecutor's Office (EPPO) and the administrative oversight carried out by the European Anti-Fraud Office (OLAF), see, for the interpretation of its investigative powers, inter alia, Hauck, The EPPO Regulation: A Commentary on the Rules on Investigations and Investigation Measures in Relation to the Fight Against Fraud (Articles 26–33). Edward Elgar, Cheltenham 2026; and on the law governing the EPPO in general, see Herrnfeld, Hans-Holger/Brodowski, Dominik/Burchard, Christoph (eds.), European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO). Article-by-Article Commentary, 2nd ed., Nomos, Baden-Baden 2026; and on the current evaluation and proposals from academia, see Brodowski D, Trautmann S (eds) Strengthening the Future of the European Public Prosecutor's Office. Nomos, Baden-Baden.

[25] Gebura, Oleh, Verfahren ohne Ende. Wie Tausende Korruptionsfälle in der Ukraine ergebnislos bleiben, Ukraine-Analysen Nr. 322 (2025), 7–11, DOI: 10.31205/UA.322.02.

[26] For tips how to do legal comparison and assess it, see Eser, Albin, Strafrechtsvergleichung: Entwicklung – Ziele – Methoden, in: Eser, Albin/Perron, Walter (Hrsg.), Strukturvergleich strafrechtlicher Verantwortlichkeit und Sanktionierung in Europa. Zugleich ein Beitrag zur Theorie der Strafrechtsvergleichung, Teil 4, Duncker & Humblot, Berlin 2015.

[27] Busch, Markus, „Negotiation and Transposition of the PIF Directive – The German Perspective", eucrim – The European Criminal Law Associations' Forum 16 (2021), 182–187; Bock, Der Schutz der finanziellen Interessen der Union – Überle-gungen zur Betrugsbekämpfungsrichtlinie 2017/1371, in: Ambos/Bock (Hrsg.), Aktuelle und grundsätzliche Fragen des Wirt-schaftsstrafrechts / Les questions actuelles et essentielles du droit pénal des affaires. 6. Deutsch-Französische Strafrechtsta-gung / 6e rencontre du droit pénal franco-allemand, Duncker & Humblot 2019, S. 155 et seq.

funds, corruption, money laundering and subsequent concealment.

This becomes particularly clear when comparing Section 264 of the German Criminal Code (StGB) with Article 222 of the German Criminal Code on Tax Matters (uStGB). The German offence of subsidy fraud bears a structural resemblance to Article 3 of the PIF Directive, as it covers the provision of false information, omissions in breach of a duty, the misuse of subsidies and benefits financed from EU funds. Ukrainian financial fraud under Article 222 of the Tax Code covers key types of conduct, in particular the submission of false information to obtain subsidies, grants, loans or tax relief. Nevertheless, gaps remain. The Ukrainian offence appears less comprehensive with regard to omissions, the subsequent misuse of funds, an explicit reference to EU funds, and the sanctions applicable in serious PIF cases. This applies even more so to Article 212 of the Ukrainian Criminal Code concerning the evasion of taxes and compulsory levies. In cases of serious VAT fraud to the detriment of the EU's own resources, a provision based primarily on fines risks falling short of the requirements of the PIF acquis, particularly if it does not provide for sufficiently severe custodial sentences, appropriate limitation periods and clear coverage of cross-border VAT systems.

By contrast, a comparison with money laundering paints a more favourable picture. Article 209 of the German Value Added Tax Act (uStGB) and Section 261 of the German Criminal Code (StGB) both criminalise the handling of assets derived from criminal offences and, in principle, may also cover proceeds from predicate offences under the PIF. German law is technically more nuanced, particularly due to the 'all-crimes' approach and specific provisions concerning professional facilitators and self-laundering. Ukrainian law, by contrast, provides for severe sanctions and mandatory legal consequences aimed at confiscation. Future research in this area is likely to focus less on the criminalisation under substantive law and more on practical enforcement: the tracing, seizure and freezing of assets, confiscation, cross-border cooperation, and the interplay between obligations under anti-money laundering legislation and criminal procedure law.[28]

Another article examines critical infrastructure as a target of attacks that can cause damage just as serious as acts of physical sabotage. However, the criminal law response to this threat remains unclear, particularly in the context of armed conflicts. The article compares how Ukraine (Art. 361 of the Criminal Code) and Germany (Sections 303a and 303b of the Criminal Code) criminalise computer sabotage against critical infrastructure. The cyberattack on Kyivstar in 2023 and the sabotage of the Deutsche Bahn rail network in 2022 serve as the starting points. The study examines the respective legal frameworks and elements of the offence, practical law enforcement, and the reforms that both states are driving forward under the influence of EU legal requirements, in particular the NIS 2 and CER Directives. The German approach is more finely differentiated in legal theory and embedded within a coherent regulatory framework. Ukrainian law, by contrast, is characterised by a clear, exhaustive definition of critical infrastructure and, in Article 361-1 of the Criminal Code (uStGB), contains a separate offence of preparation for which German law has no direct equivalent. On the basis of this comparative legal analysis, this article sets out four brief proposals for reforming Ukrainian law, drawing on German regulatory practice. At the same time, it highlights two areas in which German law could benefit from the Ukrainian approach, particularly with regard to cyber-attacks carried out in the context of armed conflicts.

[28] Frömbgen, Silvia/Langweg, Peter/Rößler, Gernot/Höche, Thorsten, 30 Jahre Geldwäschegesetz – Rück- und Ausblick, GWuR 2023, 122–125; Litkevych, Volodymyr, Das ukrainische System zur Bekämpfung der Geldwäsche: Entwicklungsgeschichte und Besonderheiten, GWuR – Geldwäsche & Recht 2025, 131–148.

Measures to tackle corruption are at the heart of the current reform agenda. Articles 368, 368-3, 368-4, 369 and 369-2 of the Criminal Code of Ukraine (uStGB) demonstrate that Ukraine has established a comprehensive criminal law framework to combat corruption in both the public and private sectors. In serious cases, the Ukrainian penalties are even more severe than those set out in Sections 331–335a of the German Criminal Code (StGB). However, the pressure for reform has increased because Directive (EU) 2026/1021 has altered the PIF standard. Passive and active bribery in the public sector are now redefined, high-ranking public officials are given greater prominence, and limitation periods and penalties are being tightened. This raises new questions for Ukraine: whether all forms of bribery – both in the course of duty and contrary to duty – relating to EU funds are covered; whether influence peddling, high-level corruption and corruption in public procurement are effectively prosecuted; and whether the institutional track record of NABU, SAPO, HACC and NACP is sufficient not only in theory but also in practice.[29]

The discussion on the liability of legal persons also reveals both progress and unresolved issues. Germany relies on administrative fines imposed on associations under the OWiG, whilst Ukraine has developed criminal law measures against legal persons within the Criminal Code itself. The Ukrainian model is thus, in form, closer to the terminology of Articles 6 and 9 of the PIF Directive. At the same time, the Ukrainian regulatory framework remains tied to a specific catalogue of offences. Further research is needed to determine whether all PIF-relevant offences can trigger effective measures against legal persons, whether the sanctions are proportionate to the economic capacity of the companies, and whether non-financial measures – such as exclusion from public procurement, public funding or international technical projects – are consistently available.

The overall picture is therefore characterised by a dynamic process of convergence, rather than by equivalence that has already been achieved. Ukraine has made significant progress; however, full PIF equivalence cannot yet be assumed.

Remaining gaps in research relate to Art. 222 and Article 212 of the German Criminal Code (uStGB), the explicit inclusion of EU funds, the treatment of VAT own resources, the limitation periods following the 2026 reform, attempt and complicity, the liability of legal persons, confiscation practices, and the actual enforcement record in cases of high-level corruption and public procurement. These gaps do not justify any reduction in research efforts. On the contrary, they demonstrate why comparative criminal law research should be intensified.[30]

It became clear during the seminar that the year 2026 is of fundamental importance for the European Union's anti-fraud architecture.[31] Following the Commission's earlier evaluation of the PIF Directive in 2021[32] and the European Public Prosecutor's Office's first few years of operational activity since 1 June 2021, the Union's focus is shifting from formal harmonisation to actual effectiveness. The EPPO Regulation forms the procedural counterpart

[29] For the question how "deep" implementation should be, see Isfen, Osman, „Überobligatorische Erfüllung von Umsetzungspflichten aus supra- und internationalen Übereinkommen am Beispiel der Strafgewalterstreckung auf Auslandskorruption", KriPoZ – Kriminalpolitische Zeitschrift 2 (2019), 65–72.

[30] American Chamber of Commerce in Ukraine, Policy Win: Parliament Supported the Chamber Proposal to Prevent Implementation of Additional Unreasonable Pressure on Taxpayers during VAT Refund Process, 18.11.2021, abrufbar unter: American Chamber of Commerce in Ukraine (last accessed 10.7.2026).

[31] Buksa, Sorina Emilia/Roebling, Georg, „The New Union Anti-Fraud Programme", eucrim – The European Criminal Law Associations' Forum 16 (2021), 175–177

[32] Van Ballegooij, Wouter, „Protecting the EU's Financial Interests through Criminal Law: The Implementation of the 'PIF Directive'", eucrim – The European Criminal Law Associations' Forum 16 (2021), 177–181.

to the PIF Directive.[33] It represents a compromise based on procedural pluralism: European criminal prosecution is made possible, yet remains highly dependent on national criminal law, national criminal procedure law, national courts and the respective national investigative traditions.[34] This is both the strength and the weakness of this model. It preserves national legal identities, but makes knowledge of comparative law indispensable, and will itself be subject to an evaluation in 2026.[35]

For Ukraine, this context is crucial. The EU accession process, the discussion on the acquis clusters, the roadmap on the rule of law, the anti-corruption benchmarks and the emerging academic debate in Ukraine on the Europeanisation or even recodification of the Criminal Code all point in the same direction: substantive criminal law must be assessed in conjunction with the structures for its enforcement.[36] The protection of the EU budget is not merely a technical matter of financial criminal law. It is an indispensable prerequisite for the single market, fair competition, regional development, reconstruction and the credibility of European solidarity.

The Union can only redistribute resources, support structurally weaker regions and invest in future development if its own revenue and expenditure are effectively protected against fraud, corruption, money laundering and misuse. Comparative criminal law is therefore not merely a supporting discipline.
Rather, it is a necessary method for building mutual trust between Ukraine and the EU, preparing for future cooperation with OLAF and the European Public Prosecutor's Office, and ensuring that accession is accompanied by genuine, enforceable and institutionally credible protection of the Union's financial interests.

Our sincere thanks go to all those involved in the tandem seminar and to the students and participants for their inspiring contributions, engaging exchanges, and productive collaboration online and offline. Special thanks are due to the organising team and the Dean's Office and *Prof. Diakur* of the CHNU Faculty of Law as our partner institution for their cooperation regarding the block seminar. The shared commitment demonstrated throughout this tandem seminar has provided valuable insights into two distinct legal systems, as well as the legal framework central to the EU-PIF *acquis* harmonization and coming EU Clusters pressed by officials.[37] We hope you find the attached edited volume an interesting and thought-provoking read. Furthermore, we would like to express our heartfelt gratitude to Professor *Schiemann* and her team Wiss. Mit. Mr. *Franzone*, und Mrs. Ass. Iur. *Horn* for generously providing the opportunity to feature our work in the JuP section for young researchers and students. We look forward to embarking on future joint projects.

Pierre Hauck
Jan-Martin Schneider

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33 Cavigneaux, Elie, Untapped Potential at the European Public Prosecutor's Office. Expand the Mandate to Include Sanctions Enforcement, SWP Comment 2026/C 23, Stiftung Wissenschaft und Politik (SWP), Berlin 2026, DOI: 10.18449/2026C23v02

34 Herrnfeld, Hans-Holger/Brodowski, Dominik/Burchard, Christoph (Hrsg.), European Public Prosecutor's Office. Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). Article-by-Article Commentary, 2. Aufl., Nomos, Baden-Baden 2026.

35 Deutscher Anwaltverein (DAV), Nachrichten aus Brüssel, Ausgabe 09/2026 vom 7.5.2026, „Öffentliche Konsultation zur EU Inc.; Sondierungen über den EU-Betrugsbekämpfungsrahmen; Unrechtmäßige Haft und Verurteilung im Fall Yasak; Schulung zu KI, Justiz und Rechtsstaatlichkeit", abrufbar unter: https://anwaltverein.de/de/newsroom/nab-09-2026 (abgerufen am 5.7.2026).

36 Дослідницька служба Верховної Ради України (Forschungsdienst der Werchowna Rada der Ukraine), Інформаційна довідка щодо імплементації актів права Європейського Союзу (acquis ЄС) у Кримінальний процесуальний кодекс України [Informationsbericht zur Umsetzung von Rechtsakten der Europäischen Union (EU-acquis) in die Strafprozessordnung der Ukraine], April 2026, abrufbar unter: Research Service der Werchowna Rada – PDF (abgerufen am 10.7.2026).

37 Regarding the institutional framework, the political negotiation of the EU accession clusters is led by the Chief Negotiator and Head of the Ukrainian Mission to the EU, *Taras Kachka* (formerly Vsevolod Chentsov), alongside the EU Commissioner for Enlargement, *Marta Kos*, while practical economic cluster cooperation is driven by the Ukrainian Cluster Alliance (UCA) and the European Cluster Collaboration Platform (ECCP). Research is pressured by Werchovna Rada, Scientific Community, Ukraine universities and OLAF (EU) programs as well as Independent researchers around the world.

KriPoZ Kriminalpolitische Zeitschrift JuP

„Junges Publizieren“

Seminararbeit von

Dilara Doygun

The General Offense of Fraud under Article 190 of the Ukrainian Criminal Code vs. Section 263 StGB: A Comparative Criminal Law Characteri-zation – German Perspective

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

Betreuer:in: Department of Criminal Law YFC National University, Prof. Halyna Petrivna Zharovska
Justus-Liebig-Universität Gießen, Professur für Straf- und Strafprozessrecht Prof. Dr. Hauck and Dr. Schneider
Abgabedatum: 12.06.2026

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I. Introduction

With the increasing economic interdependence between Germany and Ukraine and the rising number of cross-border business relationships, property crimes with an international dimension are gaining practical significance. In particular, fraudulent activities in digital commerce raise the question of how comparable cases are assessed under German and Ukrainian criminal law. Against this backdrop, this seminar paper examines the fraud offense defined in Section 263 of the GCC in comparison to Article 190 of the Ukrainian Criminal Code (CCU)[1], analysing similarities and differences in structure, protective purpose, and criminal assessment. Specifically, it aims to demonstrate the extent to which both legal provisions pursue comparable criminological objectives and what practical consequences arise from the dogmatic differences.

II. The fraud offense under Section 263 StGB

1. Protected asset (*Rechtsgut*) and historical development

Fraud under Section 263 of the German Criminal Code (StGB, GCC in the following) is one of the most important property offenses in German criminal law. Only assets are protected.[2] This includes both private and public assets, specifically domestic and foreign state assets or assets of the EU.[3] The offense of fraud has its roots in the 19th century and is therefore relatively recent.[4] It is an expression of economic liberalism.[5]

2. Objective elements of the offense under Section 263 I StGB

Section 263 Paragraph 1 of the GCC is the basic offense. Its objective elements are structured as follows: "Deception – Error – Disposition of Property – Pecuniary Loss." [6]

First, Section 263 Paragraph 1 StGB requires deception regarding facts. Deception is any intellectual manipulation of another person's perception in order to create or maintain a false impression about facts.[7]

Facts are concrete events or conditions of the past or present that are susceptible to proof.[8] These include, for example, the authenticity of goods or a person's solvency. Pure value judgments, mere expressions of opinion views, and future events [9] do not constitute factual assertions within the meaning of Section 263 StGB , as they are subjective evaluations and therefore not subject to objective verification and thus not to proof.

Deception can occur through (express or implied) active conduct as well as through omission.[10] Express deception can be oral, written, through signs or gestures, as well as through corresponding forms of technical transmission.[11] A classic example is the sale of a wrecked car under the explicit claim that the vehicle is accident-free. Unless

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1 For the frequently used abbreviations, see above in the list of abbreviations. All non classified § are those of the German Criminal Code, StGB or non classified Art. are Articles of the Ukraine Criminal Code.
2 *Wolter*, SK-StGB-Commentary, § 263 mn. 1.
3 *Eisele*, Tübingen Commentary on the German Criminal Code, § 263 mn. 1.
4 *Erb/Schäfer*, Munich Commentary on the German Criminal Code, § 263 mn. 63.
5 *Kindhäuser/Böse,* Criminal Law SP II, § 26 mn. 6.
6 *Rengier,* Criminal Law SP I, § 13 mn. 1.
7 BGH NJW 2001, 2187.
8 Satzger/Schluckebier/Werner, StGB Commentary, § 263 mn. 15.
9 *Rengier,* Criminal Law SP I, § 13 mn. 4
10 *Renger,* Criminal Law SP I, § 13 mn. 8.
11 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 38.

explicit deception is involved, implied deception must be examined first, before considering deception by omission.[12] Here, the deception occurs not through explicit words, but through conclusive deceptive conduct.[13] The decisive factor is the meaning that common understanding ascribes to the perpetrator's behavior.[14]

For example, someone who boards public transportation implicitly declares that they possess a valid ticket. This type of deception is particularly relevant in practice because many everyday frauds occur through conclusive conduct.

Finally, deception can also occur through omission. Such deception can be committed if there is a duty to disclose information, whether by law, contract, a special relationship of trust, or good faith (§ 242 of the German Civil Code).[15] Deception by omission occurs, for example, when a seller deliberately conceals a significant defect in an item, even though he is obliged to disclose it.

The perpetrator's deception must cause or maintain an error in the victim. An error, as defined in Section 263 of the GCC , is any incorrect perception of facts that does not correspond to reality.[16] A causal link is required between the deception and the error.[17]

According to the prevailing view, doubts on the part of the deceived party regarding the truth of the presented fact do not preclude an error; for an error to exist, it suffices if the deceived party considers the truth of the statement possible and is thereby motivated to act accordingly.[18] According to case law, it is wrong to reject an error simply because of the victim's credulity and the recognizability of the deception.[19] Rather, the offense of fraud is intended to protect inexperienced, superstitious, and other easily seduced individuals from readily apparent deception.

The error must have led to a disposition of assets. A disposition of assets is understood to mean any action, acquiescence, or omission by the deceived party that directly reduces their assets.[20] A defining characteristic of this unwritten element of the offense is that the victim actively participates in their own financial loss. Within this criterion, it is crucial that the disposition is voluntary. While the victim may be mistaken, they nevertheless make a decision about their assets independently. The criterion of voluntariness distinguishes fraud from theft.[21] In theft, the perpetrator takes the property against or without the rightful owner's will, whereas in fraud, the transfer of assets is carried out by the victim themselves. Therefore, fraud is considered a self-harming offense, and theft a harm-inflicted offense, which is why the two offenses are mutually exclusive.[22]

A prerequisite for the person disposing of the assets is that they are identical to the deceived party. However, the victim can also be a third party, which gives rise to the possibility of triangular fraud.[23]

Triangular fraud is a specific form of fraud. It occurs when the victim, the person disposing of the assets, and the victim are not the same person. In cases of triangular fraud, a problematic issue is whether the deceived party's disposition can be attributed to the victim. Various theories have been developed to resolve this problem. The most

12 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 40.
13 *Schmidt*, Criminal Law SP II, mn. 540.
14 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 40.
15 *Weber*, Legal Dictionary, mn. 1a).
16 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, mn. 578.
17 *Kindhäuser/Böse* , Criminal Law SP II, § 27 mn. 36.
18 *BGH* NJW 2003, 1198 f.
19 BGHSt 34, 199, 201 f.
20 BGHSt 14, 170.
21 *Erb/Schäfer*, Munich Commentary on the German Criminal Code, § 263 mn. 453
22 JuS 2024, 308.
23 *Matt/Renzikowski*, German Criminal Code Commentary, § 263 StGB, mn. 111.

important view in jurisprudence and prevailing legal literature is the so-called "storage theory."
According to this theory, it suffices if the disposing party was actually in a position to dispose of the other party's assets, provided that they were already considered part of the victim's "storage" before the offense.[24] This is particularly relevant for cashiers or bank employees. A different view is held by the so-called" authorization theory". According to this view, the disposing party must have been legally authorized to do so under civil law, either expressly, tacitly , or at least ostensibly.[25]
The prevailing opinion does not follow the "authorization theory" because it would fail to cover many fraud cases. Finally, the disposition of assets must result in financial loss. Financial loss is a reduction in assets that is not compensated by an equivalent.[26]
However, what exactly constitutes assets protected under criminal law is disputed. The main point of contention is two concepts of assets: the economic concept, advocated by the Federal Court of Justice (BGH) and some legal scholars, and the legal-economic concept, advocated by the prevailing legal opinion. While the economic concept of assets encompasses all of a person's assets of monetary value, the legal-economic concept protects only those economic assets protected by law.[27] The fraud is complete once the financial loss has occurred.[28]

3. Subjective element of the offense under § 263 I StGB

In addition to the objective elements, Section 263 StGB also requires subjective elements. The perpetrator must act intentionally with regard to all elements of the objective offense; conditional intent is sufficient.[29]
Beyond intent, the offense of fraud requires a specific subjective objective, namely an intent to enrich oneself. Intent to enrich oneself is the intention to obtain an unlawful financial advantage for oneself or a third party.[30]
A financial advantage is defined as any improvement in one's financial situation, at least temporarily.[31] Fraud is a result-oriented crime with an overriding internal intent. Whether the perpetrator actually obtains a financial advantage is therefore irrelevant.[32] The intended financial advantage must also be unlawful. A financial advantage is unlawful if there is no legal entitlement to it.[33] Furthermore, fraud requires the so-called "identity of subject matter" between the financial loss and the financial advantage. This necessitates that the advantage is detrimental to the damaged assets and is directly based on the same disposition of assets.[34]

4. The attempt and the remaining paragraphs

Attempted fraud is punishable under Section 263 Paragraph 2 of the GCC. The perpetrator must have the intent to commit the crime with regard to all objective elements of the offense. The commencement of the act is presumed upon the start of the deceptive act.[35]
Section 263, paragraph 3 of the GCC governs particularly serious cases of fraud and provides for an increased penalty (imprisonment from six months to ten years). This is not an independent criminal offense, but rather a rule

24 *Rengier* , Criminal Law SP I, § 13 mn. 108.
25 *Rengier* , Criminal Law SP I, § 13 mn. 107.
26 *Kindhäuser/Böse* , Criminal Law SP II, § 27 mn. 59.
27 *von Heintschel-Heinegg/Kudlich*, Beck'scher Online-Commentary StGB, § 263 StGB mn. 39.
28 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 310.
29 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 303.
30 *Cirener/Radtke/Rissing-van-Saan/Rönnau/Schluckebier*, Leipziger Commentary, mn. 248.
31 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 311.
32 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 310.
33 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, § 15 mn. 701.
34 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 314.
35 *Wessels/Hillenkamp/Schuhr*, Criminal Law SP II, § 15 mn. 707.

for sentencing. A particularly serious case is generally assumed, due to the indicative effect of the examples provided, if the circumstances listed in numbers 1-5 have objectively materialized and the perpetrator acted intentionally in this regard.[36]

Unlike paragraph 3, section 263 paragraph 5 of the German Criminal Code contains a qualified offense for simple fraud.

Section 263, paragraph 4 of the GCC declares the requirement of a formal criminal complaint pursuant to Sections 247 and 248a of the GCC applicable as a prerequisite for prosecution in cases of domestic and family fraud as well as petty fraud. In cases of petty fraud, the decisive factor is the objective market value; the upper limit is approximately €50.[37]

5. Computer fraud, Section 263a StGB

Section 263a of the GCC was added as a catch-all provision to close loopholes in Section 263 StGB. The offense of fraud requires the deception of a person, meaning it is not applicable if a technical device is deceived instead of a person. Section 263a StGB was introduced to cover these cases.[38]

III. The offense of fraud in Art. 190 CCU

1. Protected asset and historical development

The offense of fraud under Article 190 CCU is one of the most important provisions in Ukraine.

Article 190 CCU protects both assets and property rights.[39] The creation of Article 190 CCU is closely linked to the development of Ukrainian criminal law after independence in 1991.

For centuries until its independence in 1991, Ukraine was part of the Russian Empire and thus had very similar legal systems in its criminal code to those of the former Soviet Union and present-day Russia.[40] The Ukrainian Criminal Code was reformed in April 2001. This reform modernized the offense and extended its protection to state, municipal, and private property. Since then, Article 190 CCU has been further developed several times to better address new forms of economic activity.

2. Objective elements of Article 190 I CCU

Article 190 I CCU is the basic provision. The objective elements of Article 190 I CCU consist of the appropriation of another's property or the acquisition of property rights through deception or abuse of trust.[41]

The objective elements of the offense encompass deception or breach of trust as a means of obtaining another person's assets. Deception is understood as the dissemination of false information or the deliberate concealment of certain circumstances, the disclosure of which was mandatory and of great importance to the victim's conduct.[42] Deception can be both active and passive.[43] Active deception is further subdivided into verbal and action-based deception. Verbal deception can be oral or written. Action-based deception includes the actions, gestures, and

36 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 378.
37 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 StGB mn. 375.
38 *Kindhäuser* /Hilgendorf, LPK-StGB, § 263a StGB mn. 1.
39 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 88.
40 *Zaikina*, Juvenile Criminal Justice in Ukraine, p. XV
41 *Melnyk/Khavronyuk*, Commentary on the Criminal Code of Ukraine, p. 594.
42 *Emelyanov*, PF 2012-3, p. 186.
43 *Serbeniuk*, ibid, op. cit. p. 264.

movements of the deceiver.[44] Passive deception, on the other hand, consists of concealing circumstances that are essential to the victim's decision; the mere exploitation of an error is insufficient.[45]

In addition to deception, the law identifies abuse of trust as a second form of fraud. Abuse of trust is based on exploiting existing relationships of trust between victim and perpetrator.[46] Such relationships can arise through recommendations from acquaintances, the perpetrator's social status, specific aspects of the employment or personal relationship, or familial or friendly connections.[47] In this case, the perpetrator exploits the existing trust to obtain assets or property rights. Typical examples include loan fraud and advance payment fraud.[48]
There must be a causal link between the perpetrator's actions or omissions and the victim's error.[49]
The defining characteristic of fraud is the voluntary transfer of assets by the victim while under a state of deception.[50] The victim mistakenly believes they will suffer no loss. Therefore, the voluntariness is not based on a free, conscious decision, but rather on a flawed perception of reality.
The victim's direct involvement in the asset transfer and the voluntariness of their actions are essential characteristics of fraud, distinguishing it from theft and other property offenses.[51] If the victim, due to age, physical or mental disabilities, or other circumstances, cannot properly assess and understand the content and significance of their actions, the asset transfer cannot be considered voluntary.[52] A causal link must exist between the deception or breach of trust and the asset transfer.[53]
Furthermore, the victim must have suffered a financial loss. This loss refers to material damage, meaning the victim's property is unlawfully removed, destroyed, or damaged.[54] However, the damage caused must exceed at least 0.2 of the citizen's minimum tax-free income. Otherwise, the offense is reclassified from a minor infraction to an administrative offense.[55]

3. Subjective element of Article 190 I CCU

The subjective element of Article 190 I CCU requires intentional conduct. Direct intent is necessary.[56] The perpetrator must recognize and intend that he will obtain another person's property or a property right through deception or by abusing an existing relationship of trust .
Furthermore, Article 190 I CCU requires a self-serving intent.[57] The perpetrator must act with the intention of obtaining an unlawful financial advantage for himself or a third party.

4. Trial and qualifications

Attempted fraud is generally a criminal offense. This follows from Article 15 of the CCU. According to this article, a punishable attempt exists if a person, with direct intent, immediately begins to commit a crime, but the act is not completed for reasons beyond their control.

44 *Emelyanov*, ibid, op. cit., PF 2012-3, p. 186.
45 *Emelyanov*, PF 2012-3, p. 186.
46 *Serbeniuk*, p. 264.
47 *Serbeniuk*, p. 264.
48 *Emelyanov*, PF 2012-3, p. 187.
49 *Emelyanov*, PF 2012-3, p. 187.
50 *Serbeniuk*, p. 265.
51 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.
52 *Melnyk/Khavronyuk*, Commentary on the Criminal Code of Ukraine, p. 594.
53 *Serbeniuk*, p. 262.
54 *Serbeniuk*, p. 262.
55 *Serbeniuk*, p. 263.
56 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.
57 *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.

Article 190, paragraphs 2 to 4, of the CCU contain the aggravating circumstances of fraud.[58] Paragraph 2 of Article 190 CCU applies if the fraud is committed repeatedly, is carried out through prior collusion between several persons, or results in substantial financial loss to the victim. Paragraph 3 of Article 190 CCU applies if the fraud is committed on a large scale or using electronic or information technology systems. Article 190, paragraph 4, CCU applies if the fraud is committed on a particularly large scale or by an organized group.

IV. Comparative law section

1. Similarities

Section 263 of the GCC and Article 190 of the Italian Civil Code (CCU) pursue the same protective purpose: the protection of assets from fraudulent interference. Both provisions cover situations in which the perpetrator, through deception, induces the victim to transfer their assets or property rights to the perpetrator or a third party. Furthermore, in both offenses, the victim's transfer of assets does not occur through taking or coercion, but rather through a decision influenced by deception. Both offenses therefore require the element of "voluntariness."
Furthermore, both legal systems require proof of pecuniary damage. The victim must suffer an economic disadvantage.
Under both German and Ukrainian law, fraud requires intent. The perpetrator must know that their statements are false and that they are therefore creating or maintaining a misunderstanding in the victim, and they must at least intend to transfer assets. Furthermore, both offenses require an objective aimed at gaining financial advantage.
Attempting fraud is also a criminal offense under both German and Ukrainian law.
Furthermore, both offenses include provisions for increased penalties in particularly serious cases, such as repeated offenses or joint commission.

2. Differences

Despite the similarities, the two offenses exhibit significant differences.
Article 190 of the CCU defines fraud as the unlawful acquisition of another's assets or property rights through deception or abuse of trust. The focus is therefore on the fact that the perpetrator obtains assets based on deception or a special relationship of trust. The offense is concisely formulated and includes the manner in which the assets are acquired. Thus, Article 190 CCU is more results-oriented. A key difference is that Article 190 CCU explicitly mentions abuse of trust as a form of fraud. German law does not have such an element of the offense.

Section 263 of the GCC , however, is structured in more detail. According to this section, fraud requires that the perpetrator deceives the victim about facts, thereby creating an error in the victim's mind, and that the victim, based on this error, makes a disposition of assets and consequently suffers financial loss. German law thus places greater emphasis on the chain of causality between the elements of the offense. Section 263 StGB is therefore more process-oriented.

Another difference concerns the legal definition of attempted fraud. Under German law, attempted fraud is punishable under Sections 263 Paragraph 2 and 23 Paragraph 1 of the GCC . Under Ukrainian law, attempted fraud is also a punishable offense. However, this punishability does not arise directly from Article 190 of the Ukrainian

[58] *Popovych/Tomasz/Latkovsky/Babiy*, Criminal Law of Ukraine SP, p. 89.

Criminal Code (CCU), but rather from the general provisions (Article 15 CCU).

The penalties also differ. The basic offense under German Section 263 of the Criminal Code (StGB) provides for a prison sentence of up to five years or a fine. The Ukrainian fraud offense provides for a more lenient prison sentence of three years, as well as other sanctions, such as community service or alternative civilian service. However, in both cases, the maximum penalty is increased in aggravated cases.

Another key difference is that fraud using computer-based systems is regulated as a qualified offense in Article 190 III CCU, whereas in Germany computer fraud is a separate offense under Section 263a of the Criminal Code.

3. Reasons for the differences

The differences between Section 263 StGB and Article 190 CCU are partly due to historical reasons. The German offense of fraud originated in the 19th century. German legal scholarship was characterized by the idea of making the criminal code as concrete and systematic as possible in order to limit state arbitrariness. The historical development of Ukrainian law, on the other hand, was quite different. It follows the tradition of Soviet criminal law, which was less characterized by dogmatic systematization. The focus was on the effective combating of property crimes and the protection of economic interests. Therefore, the offenses were often formulated more generally and less subdivided into individual legal requirements. For criminal liability, the decisive factor was primarily that another person's assets were obtained through deception or breach of trust.

One reason for the differences lies in the differing objectives of criminal policy. German law aims for a clear distinction between criminal and non-criminal conduct in order to offer a high degree of legal certainty. In contrast, Ukrainian law focuses more on the unlawful acquisition of assets or property rights in order to better combat various forms of fraud and protect assets more effectively.

Another possible reason could be the different functions of criminal law. In Germany, criminal law is considered a "last resort" (*ultima ratio*). This principle of *ultima ratio* is understood as one reason why criminal offenses are narrowly defined, as can be clearly seen in the fraud offense under Section 263 of the German Criminal Code. Ukrainian law, on the other hand, is more strongly oriented towards comprehensive protection of assets and property rights, which is why the offense is defined more broadly.

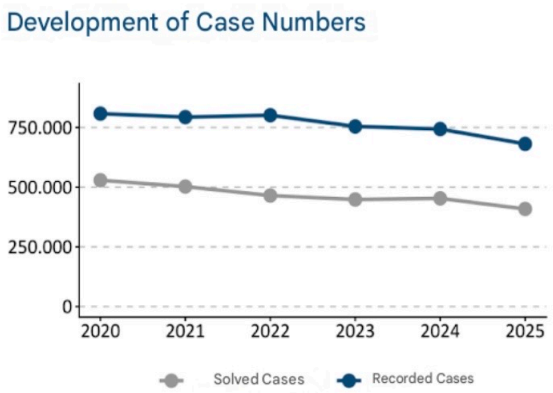
Furthermore, in Germany, many details of the offense of fraud are specified through case law.
For example, the courts have developed the concept of triangular fraud. This makes the offense of fraud complex in modern times. In Ukraine, continuing judicial training plays a rather minor role.

4. Practical implications

Fraud can take many different forms. Besides classic fraud offenses such as goods, services, or insurance fraud, digital forms of fraud are becoming increasingly important. These include phishing attacks, fake online shops, identity theft, and various forms of investment fraud on the internet. At the same time, technological developments

and the emergence of new economic sectors contribute to the development of new fraud methods.[59] This has not only changed the ways in which crimes are committed, but has also significantly increased the challenges for law enforcement agencies.

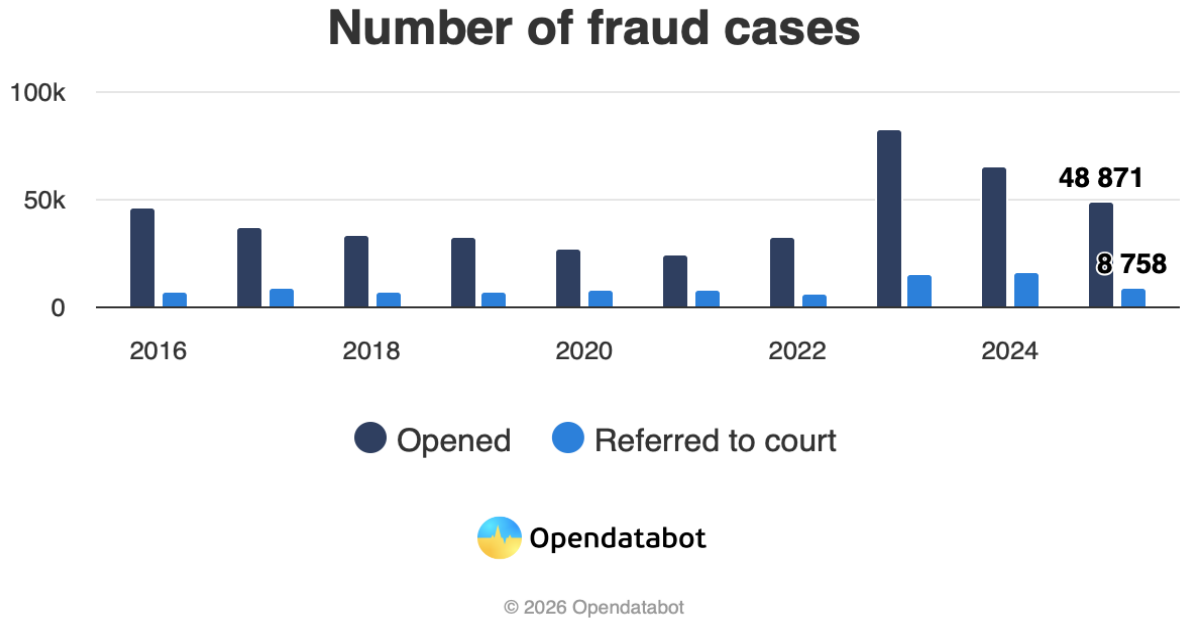
a) In Germany



Year	Cases Recorded	Cases Solved	AQ
2020	808.074	529.031	65,5
2021	793.622	502.506	63,3
2022	801.412	464.971	58,0
2023	754.489	448.359	59,4
2024	743.472	453.137	60,9
2025	681.354	408.705	60,0

The practical relevance of fraud in Germany is particularly evident in the number of cases. According to the Federal Criminal Police Office's crime statistics, a total of 681,354 fraud cases were registered in 2025.[60] While this number is down compared to the peak of 801,412 cases in 2022, it remains at a high level. However, the number has decreased compared to previous years. The clearance rate for this offense is usually between 58 and 65%. Although more than half of the cases have been solved in recent years, fraud still has a significant number of unreported cases.

b) In Ukraine



[59] *Serbeniuk,* p. 258.
[60] Federal Criminal Police Office, Police Crime Statistics 2025.

Fraud is also a common crime in Ukraine. Combating fraud is particularly challenging during times of economic crisis, high inflation, or martial law. [61]The number of fraud cases peaked in 2023, with 82,609 offenses registered. Only 14,838 cases were referred to court. [62]In subsequent years, the number of fraud cases declined. In 2025, only 48,871 cases were registered, of which 8,758 were referred to court.

V. Conclusion

A comparison of Article 190 of the CCU and Section 263 of the German Criminal Code shows that both provisions serve to protect assets from fraudulent acts, but are based on different legal concepts. While German fraud law is characterized by a detailed dogmatic structure, Article 190 focuses more clearly on the unlawful acquisition of assets or property rights through deception or breach of trust.

The differences stem primarily from the differing historical developments and criminal policy objectives of the two countries. German law is more process-oriented and places particular emphasis on the concrete limitation of criminal acts. In contrast, Ukrainian law is more outcome-oriented and focuses primarily on the unlawful transfer of assets.

Against the backdrop of Ukraine's European integration, the protection of the European Union's financial interests is also gaining considerable relevance. The significance of European influence is particularly evident in Directive 2017/1371 on Financial Instruments (PIF), which establishes common minimum standards for the protection of the European Union's financial interests.[63]

The comparison reveals that, despite a shared protected legal interest, different legislative approaches can be taken to criminalize fraud. Both sets of regulations have their own strengths and weaknesses: While the German fraud offense offers a high degree of legal certainty through its dogmatic precision and concrete differentiation, the Ukrainian fraud offense is characterized by its simpler and more flexible application in practice.

61 *Serbeniuk*, p. 258.
62 Opendatabot.ua, The number of fraud cases decreased by a quarter in 2025, January 30, 2026.
63 *Satzger/Schluckebier/Werner*, StGB Commentary, § 263 mn. 6. In this study could not be identified that either the German model or the Ukraine model explicitly refer in their generic fraud offences „by name or wording" to the PIF Directive as both stem from more generic fraud offences aiming at the protection of private gain and money, but Germany and Ukraine have special laws that protect foreign money and subsidies as well as finances, such as in the Abgabenordnung or the State Budget Act as well as in administrative laws.

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Seminararbeit von

Bozhena Kozek

Criminal Law Protection of Critical Infrastructure against Computer Sabotage: A Ukrainian–German Comparative Analysis

Strafrechtlicher Schutz kritischer Infrastruktur vor Computersabotage: Eine deutsch-ukrainische Vergleichsanalyse

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I. Introduction to the Topic

1. Relevance of the Study

Example 1 (Ukraine): On 12 December 2023, Ukraine's largest mobile network operator "Kyivstar" was struck by what is widely considered the most destructive cyberattack against telecommunications infrastructure in European history. More than 24 million subscribers lost mobile and internet services for nearly two days, ATMs and payment terminals stopped functioning, and – most dangerously – the early-warning system of air-raid sirens was rendered partially inoperative in the midst of an active armed conflict. The Security Service of Ukraine attributed the attack to the "Sandworm" group, linked to the Russian military intelligence service (GRU). The incident was registered as criminal proceedings under Article 361 of the CCU.[1]

Example 2 (Germany): On 8 October 2022, two pairs of fibre-optic cables critical for the GSM-R communication system of Deutsche Bahn were deliberately severed at two distinct locations in Northern Germany. Within minutes, all long-distance and regional rail traffic between Berlin and the North Sea coast came to a halt; more than three million passenger journeys were affected. The Generalbundesanwalt opened proceedings on suspicion of computer sabotage and serious interference with public services. In the legal literature, the qualification was debated between § 303b dStGB (Computersabotage) and § 316b dStGB (Disruption of Public Services).[2]

The two examples illustrate two points. First, modern critical infrastructure (CI) is exposed to attacks that can do as much harm to public services and to national security as conventional sabotage. Second, the criminal-law qualification of these attacks is still unsettled, especially in armed conflict, when cybercrime, sabotage and war crime can overlap. The empirical side of the problem is discussed in IV.4.

2. The Concept of Computer Sabotage

In German doctrine, *Computersabotage* (§ 303b dStGB) denotes conduct that significantly disrupts the data processing of another. The functional equivalent in Ukrainian law is Article 361 CCU – *"несанкціоноване втручання в роботу інформаційних (автоматизованих), електронних комунікаційних, інформаційно-комунікаційних систем"* / "unauthorised interference with the operation of information, electronic communication and information-and-communication systems". Both norms protect the *integrity* of data and the *availability* of IT systems and must be distinguished from offences protecting data *confidentiality* (§ 202a dStGB, *Ausspähen von Daten*). The systemic implications of this distinction are explored in III.2. and IV.

3. The Concept of Critical Infrastructure

The contemporary EU framework rests on two pillars – Directive (EU) 2022/2557 on the resilience of critical entities (CER) and Directive (EU) 2022/2555 on a high common level of cybersecurity (NIS2)[3] – complemented by the Council of Europe Convention on Cybercrime (Budapest, 23.11.2001), to which both Germany and Ukraine

[1] On the Kyivstar attack of 12.12.2023 see the official statement of the Security Service of Ukraine of 04.01.2024, ssu.gov.ua; for the criminal-law qualification under Art. 361 CCU see Karchevskyi M., "Кібератаки на об'єкти критичної інфраструктури" [Cyberattacks on Critical Infrastructure Objects], *Інформаційне право* № 1/2024.

[2] "Strafbarkeit der Sabotage des Bahnverkehrs", *Legal Tribune Online* (lto.de), 9 October 2022; Bundesanwaltschaft, press release of 8 October 2022; on the substantive criminal-law qualification cf. Hilgendorf E., "Computersabotage und Verkehrsdelikte – zur Strafbarkeit der Bahnsabotage vom Oktober 2022", *JuS* 2023, p. 105 ff.

[3] Directive (EU) 2022/2557 of 14 December 2022 on the resilience of critical entities, OJ L 333, 27.12.2022, p. 164; Directive (EU) 2022/2555 of 14 December 2022 (NIS2), OJ L 333, 27.12.2022, p. 80.

are parties.[4] Germany operationalizes the concept through *Kritische Infrastrukturen* (KRITIS) and, in criminal law, through the open-textured criterion *"von wesentlicher Bedeutung"* in § 303b(2) dStGB – to be assessed by the court *in concreto*. Ukraine, by contrast, follows a list-based model under the Law of Ukraine "On Critical Infrastructure" No. 1882-IX of 16.11.2021.[5] The legal *technique* of identification differs fundamentally, with consequences explored in IV.

4. Aims, Objectives, and Methodology of the Study

This paper subjects the German and Ukrainian regimes to a *functional comparative analysis* – comparing the two legal orders by reference to the social problem each addresses rather than by surface terminology – (Zweigert/Kötz),[6] supplemented by *Rechtsdogmatik* and statistical analysis, within the theoretical framework of the German *Rechtsgutstheorie*.[7] Under the *Rechtsgutstheorie*, conduct may be criminalised only to the extent that it protects a *Rechtsgut* – a legal interest whose protection justifies the use of a criminal sanction.[8] Ukrainian doctrine has no direct equivalent; a similar role is played by the theory of the object of the offence (*теорія об'єкта злочину*): the object is the system of protected social relations (*суспільні відносини*) that the offence harms, and it is the social danger (*суспільна небезпека*) of the act to those relations that – under Articles 1 and 11 of the CCU – justifies its criminalisation.[9] The reasons for, and the consequences of, this difference are discussed in IV.3. II. sets out the Ukrainian regime, III. the German regime; IV. then makes the comparison (IV.1.–IV.2.), explains the doctrinal, legislative and cultural roots of the divergence (IV.3.), discusses effectiveness based on empirical data (IV.4.) and puts forward proposals for reform (IV.5.).

II. Criminal Law Protection of Critical Infrastructure against Computer Sabotage in Ukraine

1. Legislative Framework

The Ukrainian regime rests on Chapter XVI of the Special Part of the CCU – *"Кримінальні правопорушення у сфері використання електронно-обчислювальних машин (комп'ютерів), систем та комп'ютерних мереж і мереж електрозв'язку"* [Criminal Offences in the Sphere of the Use of Electronic Computing Machines, Systems and Networks]. Three provisions are central: Article 361 CCU (unauthorised interference with the operation of information, electronic communication and information-and-communication systems), Article 361-1 CCU (creation, distribution and sale of malicious software or hardware), and Article 362 CCU (unauthorised actions with information by an insider).[10] Their construction – objective and subjective elements, including the requirement of intent (direct or, in some cases, indirect / *dolus eventualis*) – is set out in II.2.; the comparison with the German *Tatbestand* structure is taken up in IV.1.b).

4 Council of Europe Convention on Cybercrime, Budapest, 23 November 2001, ETS No. 185.
5 Закон України "Про критичну інфраструктуру" [Law of Ukraine "On Critical Infrastructure"] № 1882-IX від 16.11.2021, ст. 8.
6 Zweigert K. / Kötz H., *Einführung in die Rechtsvergleichung*, 3. Aufl. 1996, § 3 (functional comparative method); cf. Хавронюк М. І., *Кримінальне право зарубіжних країн* [Criminal Law of Foreign Countries], Київ 2024.
7 On *Rechtsgutstheorie* see Roxin C., *Strafrecht Allgemeiner Teil*, Band I, 4. Aufl. 2006, § 2 Rn. 1 ff.; in Ukrainian doctrine Тацій В. Я., *Об'єкт і предмет злочину в кримінальному праві* [Object and Subject of the Crime in Criminal Law], Харків 2016.
8 On the *Rechtsgutstheorie* as the dominant theory of legitimate criminalisation in German doctrine see Roxin, *Strafrecht Allgemeiner Teil I* (4th ed. 2006), § 2; M. D. Dubber, "Theories of Crime and Punishment in German Criminal Law", 53 *American Journal of Comparative Law* (2005) 679; T. Hörnle, "Rechtsgut and the Harm Principle", in Dubber/Hörnle (eds.), *The Oxford Handbook of Criminal Law* (2014).
9 On the theory of the object of the offence as protected social relations see Тацій, *Об'єкт і предмет злочину в кримінальному праві* [Object and Subject of the Crime in Criminal Law] (Kharkiv 2016); on the social danger (*суспільна небезпека*) of the act as the material feature of a criminal offence and the protective task of criminal law see Articles 11 and 1 of the CCU respectively.
10 Кримінальний кодекс України [Criminal Code of Ukraine] № 2341-III від 05.04.2001, Розділ XVI Особливої частини, статті 361, 361-1, 362, 363, 363-1, zakon.rada.gov.ua/laws/show/2341-14.

Specialised legislation supplements the Code: the Law of Ukraine *"Про критичну інфраструктуру"* [On Critical Infrastructure] No. 1882-IX of 16.11.2021 – adopting a *list-based* model of identification – and the Law *"Про основні засади забезпечення кібербезпеки України"* [On the Basic Principles of Cybersecurity of Ukraine] No. 2163-VIII of 05.10.2017, which establishes the institutional architecture (CERT-UA, the State Service of Special Communications, the NCCC under the NSDC).[11] Resolution of the Cabinet of Ministers No. 1109 of 09.10.2020 enumerates 25 sectors of critical infrastructure – energy, digital technologies, transport, healthcare, financial services, civil defence, defence-industrial complex, justice and others.[12]

2. Elements of the Offence under Article 361 CCU

According to Karchevskyi, the *generic object* (*родовий об'єкт*) of Chapter XVI offences is the cluster of "informational social relations the means of realisation of which are electronic computing machines, automated systems, computer networks and electronic communication networks".[13] The *direct object* of Article 361 CCU is the relations of property over computer information, complemented after the 2003–2004 amendments by an alternative direct object – the relations of provision and receipt of electronic communication services.[14]

In contrast to the German tradition (where the Bundesgerichtshof (BGH) and academic *Kommentare* have a strongly constitutive role), the elements of the Ukrainian offence are defined primarily by the *legislator*, as the literature consistently emphasises[15] – a feature whose comparative implications are developed in IV. The *objective side* (*об'єктивна сторона*) of Article 361 covers the act of unauthorised interference; its consequences are exhaustively enumerated: *leakage, loss, falsification, blocking of information, distortion of the process of its processing, and breach of the established order of its routing*.[16] The *subject* is general; the *subjective side* is intent (direct or indirect).[17]

The 2022 amendments introduced into Article 361 CCU a *qualified form* directed at critical infrastructure: the same act, if committed against an object of CI, is punishable by ten to fifteen years' imprisonment with confiscation of property – a sanction comparable to § 303b(4) dStGB; the comparative consequences are analysed in IV.1.d).[18]

A distinctive Ukrainian feature is ***Article 361-1 CCU*** (creation, distribution or sale of malicious software or hardware with the purpose of unauthorised interference) – a *formal corpus delicti* completed by the very act of creating or distributing such tools.[19] It is the functional equivalent of § 202c dStGB ("hacker tools") and constitutes one of the points where the Ukrainian-German comparison yields new findings (developed in IV.5.).

3. Challenges in Law Enforcement

Ukrainian practice faces a unique structural difficulty: the *delimitation of computer-sabotage offences from war*

[11] Закон України "Про основні засади забезпечення кібербезпеки України" [Law of Ukraine "On the Basic Principles of Cybersecurity of Ukraine"] № 2163-VIII від 05.10.2017, ст. 1, 8.
[12] Постанова Кабінету Міністрів України № 1109 від 09.10.2020; Пашнєв Д. В. / Черевко К. О., *Вісник Кримінологічної асоціації України* 2024, № 1 (31), с. 209, 213–214.
[13] Карчевський М. В. [Karchevskyi M. V.], *Кримінально-правова охорона інформаційної безпеки України* [Criminal-Legal Protection of Information Security of Ukraine], Луганськ: РВВ ЛДУВС ім. Е. О. Дідоренка, 2010, с. 105.
[14] Karchevskyi M. V., op. cit., с. 113–115.
[15] Тацій В. Я., "Об'єкт злочину" ["The Object of Crime"], *Вісник Асоціації кримінального права України* [Bulletin of the Association of Criminal Law of Ukraine] 2013, № 1(1), с. 126–143; Дудоров О. О. / Хавронюк М. І., *Кримінальне право. Навчальний посібник* [Criminal Law. Textbook], Київ: Ваіте, 2014.
[16] Стаття 361(1) КК України; Karchevskyi M. V., op. cit., с. 117–130.
[17] Karchevskyi M. V., op. cit., с. 132–133.
[18] Стаття 361(5) КК України в редакції 2022 р., прийнятій у зв'язку з введенням воєнного стану; пор. Pashnev / Cherevko, op. cit., с. 215.
[19] Karchevskyi M. V., op. cit., с. 133–138.

crimes and sabotage proper (Article 113 CCU, *диверсія / sabotage*; Article 438 CCU, *порушення законів та звичаїв війни / violation of laws and customs of war*). When a state-sponsored cyberactor attacks Ukrainian critical infrastructure during armed conflict, the prosecutor must choose between qualifying the act under Article 361 (cybercrime), Article 113 (sabotage), or Article 438 (war crime).[20] Since 2022 the Office of the Prosecutor General has registered all three qualifications in parallel proceedings, and in June 2024 prosecutors of the International Criminal Court (ICC) formally announced the investigation of Russian cyberattacks on Ukrainian civilian infrastructure as possible war crimes.[21]

Returning to Example 1 from the Introduction, the December 2023 attack on Kyivstar illustrates this dilemma in concentrated form: registered under Article 361(5) CCU and, in parallel, referred by the SBU to the ICC Prosecutor under Article 438 CCU – a structural choice between cybercrime, sabotage and war-crime regimes that Ukrainian doctrine had hardly contemplated before 2022.[22] [23]

In case No. 735/739/20 of 19 September 2024, the Cassation Criminal Court of the Supreme Court of Ukraine confirmed that the post-2022 reformulation of Article 361 CCU does *not* decriminalise prior conduct: the new statutory term *"інформаційна (автоматизована) система"* / *"information (automated) system"* is broader and encompasses the previously used term *"комп'ютер"* / *"computer"* as a subtype.[24]

4. Legislative Reform under the Influence of European Integration

Ukraine's obligations under Article 9 of the EU-Ukraine Association Agreement and the Cybersecurity Strategy of Ukraine (Decree of the President No. 447/2021 of 26.08.2021) require continuous harmonisation with the contemporary EU framework – Directives (EU) 2022/2555 (NIS2) and 2022/2557 (CER).[25] Legislative initiatives registered in the Verkhovna Rada in 2023–2025 propose an evaluative criterion analogous to the German *"von wesentlicher Bedeutung"*, the expansion of Article 361-1 CCU to cover zero-day vulnerabilities, and a sectoral coordination mechanism functionally equivalent to the German Bundesamt für Sicherheit in der Informationstechnik (BSI). The concrete content of these proposals is analysed in IV.5.

III. Criminal Law Protection of Critical Infrastructure against Computer Sabotage in Germany

1. The Normative Framework: §§ 303a, 303b dStGB

The German regime rests on two tightly drafted dStGB provisions – § 303a (*Datenveränderung* / Data Alteration) and § 303b (*Computersabotage*). Both were introduced by the Second Act on Combating Economic Crime of 1986, substantially reformed by the 41st Criminal Law Amendment Act of 7 August 2007 in transposition of

20 Статті 113 (*Диверсія* / Sabotage), 438 (*Порушення законів та звичаїв війни* / Violation of Laws and Customs of War) КК України.

21 Національний координаційний центр кібербезпеки при Раді національної безпеки і оборони України [National Cybersecurity Coordination Centre at the NSDC of Ukraine], *Річний аналітичний огляд: жовтень 2023 – вересень 2024* [Annual Analytical Review: October 2023 – September 2024], с. 24, 29.

22 Ibid., с. 24.

23 Герасименко О. М. [Herasymenko O. M.], "Критична інфраструктура України як предмет наукового пізнання: теоретичний аспект" ["Critical Infrastructure of Ukraine as a Subject of Scientific Knowledge: Theoretical Aspect"], *Науковий вісник Ужгородського національного університету. Серія Право* [Academic Bulletin of Uzhhorod National University. Law Series] 2024, вип. 85, ч. 4, с. 42–45.

24 Постанова Касаційного кримінального суду Верховного Суду України від 19.09.2024 у справі № 735/739/20, провадження № 51-2737км23 [Decision of the Cassation Criminal Court of the Supreme Court of Ukraine of 19.09.2024, case No. 735/739/20]; reyestr.court.gov.ua/Review/121847592. For first-instance practice cf., e.g., вирок у справі № 397/1473/24 (unauthorised access to a banking information system).

25 Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони [EU–Ukraine Association Agreement], ст. 9; Указ Президента України № 447/2021 від 26.08.2021 "Про рішення Ради національної безпеки і оборони України від 14.05.2021 'Про Стратегію кібербезпеки України'" [Decree of the President of Ukraine No. 447/2021 of 26.08.2021].

Council Framework Decision 2005/222/JHA, and recently amended through the NIS2-Umsetzungsgesetz (2024).[26]

§ 303a dStGB criminalises the unauthorised deletion, suppression, rendering-unusable or alteration of another person's data, with imprisonment of up to two years or a fine; the attempt is punishable, and § 303a(3) refers to § 202c dStGB to extend criminalisation to preparatory acts ("hacker tools"). The protected *Rechtsgut* is – according to the prevailing academic view and the case-law of the Bundesgerichtshof – the **integrity of data** as a specialised property interest, anchored constitutionally in BVerfGE 120, 274 (the *fundamental right to confidentiality and integrity of information-technology systems*).[27]

§ 303b dStGB criminalises the *significant disturbance* of a data processing operation that is *of substantial importance* (*von wesentlicher Bedeutung*) for another person. The provision distinguishes three modes of commission (Abs. 1): (i) data alteration in the sense of § 303a; (ii) the entering or transmission of data with intent to cause disadvantage – the typical DDoS scenario; (iii) destruction, damage, rendering-unusable, removal or alteration of data-processing hardware. The qualified form (Abs. 2) applies where the affected data processing is that of a foreign business, undertaking or public authority – the *de facto* gateway for prosecution of attacks against critical-infrastructure operators. § 303b(4) introduces *Regelbeispiele* – statutorily designated example cases that, while not formally qualifying the offence, trigger an aggravated sentencing range when present – with a penalty range from six months to ten years' imprisonment, including in particular the *endangerment of the supply of the population with vital goods* (Nr. 3 Var. 1) and the *endangerment of the internal or external security of the Federal Republic* (Nr. 3 Var. 2). § 303b(5) extends criminalisation to preparatory acts via § 202c.[28]

2. Systemic Placement and Interaction with Administrative Law

Of particular systemic importance is the placement of these offences within the architecture of the dStGB. §§ 202a–c dStGB (*Ausspähen, Abfangen* and *Vorbereiten des Ausspähens und Abfangens von Daten*) are located in *Abschnitt Fünfzehn* (*Verletzung des persönlichen Lebens- und Geheimbereichs*) and protect the **confidentiality** of data (*Datengeheimnis*). §§ 303a–c dStGB sit in *Abschnitt Siebenundzwanzig* (*Sachbeschädigung*) and protect the **integrity** of data and the **availability** of IT systems. This systemic location determines the addressees of the norm, the locus of the protected *Rechtsgut*, and the structure of the sanction.[29]

The dStGB does not operate in isolation. The Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik*, BSIG), the *KRITIS-Dachgesetz* of 2024, the *IT-Sicherheitsgesetz 2.0* of 2021 and the NIS2UmsuCG of 2024 form a regulatory layer of obligations imposed on critical-infrastructure operators (registration, incident reporting, minimum security standards). This layer interacts with the criminal law through the *"von wesentlicher Bedeutung"* criterion of § 303b(2) and through the *Regelbeispiele* of Abs. 4, with the BSI as the central administrative authority and frequent source of expert opinions in criminal proceedings.[30]

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[26] § 303a, § 303b dStGB; 41. StrÄndG v. 07.08.2007, BGBl. I S. 1786; Council Framework Decision 2005/222/JHA, OJ L 69, 16.03.2005, p. 67; NIS2UmsuCG, RegE BT-Drs. 20/13751 v. 22.07.2024.

[27] § 303a Abs. 1, 3 dStGB; BVerfGE 120, 274 (302 ff.) (*IT-Grundrecht*); BGH NStZ 2022, 43 (44); Hilgendorf, in: Lackner/Kühl/Heger, *dStGB*, 30. Aufl. 2023, § 303a Rn. 1; MK-Wieck-Noodt, § 303a Rn. 4.

[28] § 303b Abs. 1–5 dStGB; on Abs. 2 see MK-Wieck-Noodt, § 303b Rn. 22–23; on the *Regelbeispiele* NK-Kargl, § 303b Rn. 26–27.

[29] On the systemic placement of §§ 202a–c (*Abschnitt 15*) versus §§ 303a–c dStGB (*Abschnitt 27*) and the resulting difference of *Rechtsgüter* (*Datengeheimnis* vs *Datenintegrität / Verfügbarkeit*), see Eisele J., *Computer- und Medienstrafrecht*, 2. Aufl. 2023, § 4 Rn. 1 ff.; Schönke/Schröder–Hecker, *dStGB*, § 303a Rn. 1, § 303b Rn. 1.

[30] Gesetz über das Bundesamt für Sicherheit in der Informationstechnik (BSIG); KRITIS-Dachgesetz (2024); IT-Sicherheitsgesetz 2.0 v. 18.05.2021, BGBl. I S. 1122.

3. Legislative Reform in Response to Contemporary Challenges

The most significant recent development is the NIS2UmsuCG[31], expanding the catalogue of operators subject to reporting obligations and introducing a 24-hour duty to notify significant cyber incidents. The KRITIS-Dachgesetz transposes Directive (EU) 2022/2557 (CER), unifying the physical and cyber dimensions of critical-entity resilience.[32] In parallel, the Federal Ministry of Justice has tabled a Ministerial Draft Bill on the Modernisation of Computer Criminal Law (*Referentenentwurf zur Modernisierung des Computerstrafrechts*) proposing targeted amendments to §§ 202a–c and § 303a dStGB designed to protect legitimate IT-security research without weakening the criminal-law protection of data.[33]

4. Judicial Practice and Doctrinal Debate

Two strands of case law deserve emphasis. On the constitutional foundation, *BVerfGE 120, 274* recognised the *fundamental right to confidentiality and integrity of information-technology systems*, which the BGH treats as the anchor of §§ 303a, 303b dStGB. On the **substantive elements**, the BGH confirmed that § 303a protects data integrity as such and that the *"wesentliche Bedeutung"* criterion of § 303b(2) is fulfilled, in mass-ransomware deployments, where the disturbance is capable of disabling the central organisational functions of the affected entity. On the act of criminal conduct (*Tathandlung*) of DDoS attacks, the BGH and the Landgericht Düsseldorf have established that mass automated requests resulting in the unavailability of the targeted server fall under § 303b(1) Nr. 2 dStGB.[34]

Returning to Example 2 from the Introduction, the Deutsche Bahn fibre-optic sabotage of 8 October 2022 illustrates the practical operation of this regime. The deliberate cutting of the GSM-R cables and the resulting halt of all long-distance and regional rail traffic in Northern Germany was qualified, in the legal commentary, as a textbook application of § 303b(2) dStGB, with potential overlap with § 316b dStGB and, given the geopolitical context, with the criminal sanction relevant example, so-called *Regelbeispiel* of § 303b(4) Nr. 3 (endangerment of the internal or external security of the Federal Republic).[35]

A second illustration is the Bundestag-Hack of May 2015: hackers attributed by the *Bundesamt für Verfassungsschutz* (BfV) to the Russian GRU's Unit 26165 (APT28) exfiltrated ca. 16 GB of parliamentary data, including emails of MPs and Chancellor Merkel. The *Generalbundesanwalt* issued an arrest warrant against D. Badin in May 2020; the EU imposed targeted sanctions in October 2020. The act was qualified as § 202a dStGB (*Ausspähen*) in concurrence with § 303a dStGB – illustrating the systemic interaction between the two non-adjacent sections of the dStGB analysed in III.2.[36]

The German doctrinal debate focuses today on the relationship between important factor i.e. *"wesentliche Bedeutung"* and the administrative concept of critical inastructure, in German called *"kritische Infrastruktur"*; the limits of preparatory criminalisation under §§ 202c, 303a(3), 303b(5) dStGB; and the criminal-law treatment of

31 Government Draft (Regierungsentwurf) of 22 July 2024, BT-Drs. 20/13751.
32 KRITIS-Dachgesetz (2024), transposing Directive (EU) 2022/2557 (CER).
33 Referentenentwurf des Bundesministeriums der Justiz zur Modernisierung des Computerstrafrechts (RefE ComputerStrafR) – Änderung der §§ 202a, 202b, 202c, 303a dStGB.
34 BVerfGE 120, 274 (302 ff.); BGH NStZ 2022, 43 (44 f.); BGH NStZ 2017, 470; LG Düsseldorf MMR 2011, 624 mit Anm. Bär; cf. Wissenschaftliche Dienste des Deutschen Bundestages, *Die Strafbarkeit des "Hackings" – Rechtslage im internationalen Vergleich*, WD 7 - 3000 - 104/23, 23.04.2024.
35 Cf. supra, Footnote 2; Hilgendorf E., "Computersabotage und Verkehrsdelikte – zur Strafbarkeit der Bahnsabotage vom Oktober 2022", *JuS* 2023, p. 105 ff.
36 On the Bundestag-Hack of May 2015 and the indictment of Dmitry Badin (Unit 26165 / APT28), see Federal Foreign Office, press releases of 2020; Council Decision (CFSP) 2020/1537 of 22 October 2020, OJ L 351 I/1; on the criminal-law qualification under §§ 202a, 303a dStGB, see Eisele J., op. cit., § 4 Rn. 8–12, 25 ff.

state-sponsored attacks in armed conflict – a point of convergence with the Ukrainian agenda developed in IV.[37]

IV. Comparative Analysis and Conclusions

1. Comparative Characteristics of the Legal Regulation Systems

a) Architecture of Criminal-Law Regulation

The CCU concentrates the relevant offences in Chapter XVI of its Special Part – a self-standing chapter dedicated to "computer offences" as a unified generic object of protection.[38] The German dStGB, by contrast, distributes the same factual subject matter across two non-adjacent sections: *Abschnitt Fünfzehn* (offences against data confidentiality, §§ 202a–c) and *Abschnitt Siebenundzwanzig* (offences against data integrity and IT-system availability, §§ 303a–c).[39] This architectural difference has substantive consequences: the CCU's single-chapter approach expresses a *unified informational Rechtsgut*; the dStGB's split architecture expresses a *differentiated theory of Rechtsgüter*. The Ukrainian model protects data as a whole; the German model dissects the same reality into specialised legal interests, with the textual location of each offence already implying its dogmatic profile.[40] These architectural choices in turn track the divergent theoretical groundings of criminalisation sketched in I.4.: the German *Rechtsgutstheorie* disaggregates protection by isolating each *Rechtsgut* as a distinct legal interest, whereas the Ukrainian theory of the object of the offence aggregates protection around the cluster of *суспільні відносини* that a single chapter is meant to safeguard.

b) Comparison of the Elements of the Offences (Article 361 CCU vs § 303b dStGB)

Element	**Article 361 CCU**	**§ 303b dStGB**
Rechtsgut	Property over computer information; provision/receipt of communication services	Functional integrity of data processing of substantial importance
Objektiver Tatbestand	Unauthorised interference causing leakage, loss, falsification, blocking, distortion, breach of routing	(i) data alteration as in § 303a; (ii) entering/transmitting data with intent to cause disadvantage (DDoS); (iii) damaging hardware
Subjektiver Tatbestand	Intent (direct or indirect)	Intent; § 303b(1) Nr. 2 requires *Nachteilszufügungsabsicht*
Subject	General – natural person ≥ 16 years	General; insider also covered
Basic sanction	Fine to 3 years' imprisonment	Up to 3 years' imprisonment or fine
Qualified form (CI)	Art. 361(5): 10–15 years + confiscation	§ 303b(2): up to 5 years; § 303b(4) Nr. 3: up to 10 years

[37] See in particular Hilgendorf E., "Computersabotage und Verkehrsdelikte – zur Strafbarkeit der Bahnsabotage vom Oktober 2022", *JuS* 2023, 105; for further contributions to the German doctrinal debate see *NStZ*, *ZStW* and *KripoZ* 2023–2024, as well as the *KripoZ* database on §§ 303a, 303b dStGB (kripoz.de).
[38] Розділ XVI Особливої частини КК України, статті 361, 361-1, 362, 363, 363-1.
[39] Eisele J., *Computer- und Medienstrafrecht*, 2. Aufl. 2023, § 4 Rn. 1 ff.
[40] Карчевський М. В., op. cit., с. 105–115; cf. Тацій В. Я., op. cit., с. 126–143.

Element	Article 361 CCU	§ 303b dStGB
Preparatory acts	Art. 361-1 CCU – autonomous formal *corpus delicti*	§ 202c dStGB (referenced via § 303a(3) and § 303b(5))

Source: Own presentation, based on the CCU (Art. 361) and the German Criminal Code (§ 303b dStGB).

Three substantive differences emerge. **First**, the *definitional source*. In Germany, the elements ("data", *"wesentliche Bedeutung"*) are crystallised through case-law and academic comments in the legal commentaries, German *Kommentare*;[41] in Ukraine, they are defined primarily by the *legislator* through statutory definitions in special laws to which the CCU implicitly refers or below the provision itself, with doctrinal commentary then eventually sporadically interpreting these definitions.[42] **Second**, the *structural openness* of the offence: § 303b dStGB centres on a single open-textured criterion to be applied *in concreto*, whereas Article 361 CCU exhaustively enumerates the consequences and relies on a formal register – the German technique trades predictability for adaptability, the Ukrainian one does the opposite. **Third**, the *placement of preparatory criminalisation*: Article 361-1 CCU is an autonomous offence with its own *corpus delicti*, whereas § 202c dStGB is structurally subordinated via cross-reference – the Ukrainian solution gives somewhat the preparatory offence higher systemic visibility, the German one achieves lower visibility but greater integration from this point-of-view.[43]

c) Approaches to Defining "Critical Infrastructure" – List-Based vs Evaluative

Ukraine follows we can finally say, a *list-based (formal) model*, i.e., the legal qualifier 'object of critical infrastructure' under Article 361(5) CCU is anchored not in a flexible normative criterion but in a closed administrative register that determines, in formal terms, what counts as CI: the Law "On Critical Infrastructure" No. 1882-IX, supplemented by Resolution of the Cabinet of Ministers No. 1109 of 09.10.2020, identifies 25 sectors and assigns CI status through formal inclusion in a sectoral register; the status is then *imported* into criminal law via Article 361(5) CCU. Germany follows an *evaluative (substantive) model*: § 303b(2) dStGB does not refer to a register; protection turns on the open-textured criterion of substantial importance (*"von wesentlicher Bedeutung"*), assessed by the court in light of the actual significance of the data processing. The Ukrainian model offers *predictability*; the German model *flexibility and technological neutrality*. Both orders identify largely the same sectors, but the legal *technique* of identification differs fundamentally.[44]

d) Comparison of Sanctioning Systems

The basic sanctions are roughly equivalent (Article 361(1) CCU: fine to 3 years' imprisonment; § 303b(1) dStGB: up to 3 years or fine). The qualified forms diverge sharply: § 303b(4) Nr. 3 dStGB provides for up to 10 years' imprisonment; Article 361(5) CCU provides for *10 to 15 years' imprisonment with confiscation*. The Ukrainian basic-floor for the qualified form thus *exceeds* the maximum German ceiling of the same form – a gap that reflects both the war-time emergency and a structural Ukrainian commitment to severe sanctions for serious offences

41 Schönke/Schröder–Hecker, *dStGB*, § 303b Rn. 1–10; MK-Wieck-Noodt, § 303b Rn. 9, 22–23; NK-Kargl, § 303b Rn. 17 ff.; LK-Goeckenjan, § 303a Rn. 25–38.
42 Карчевський М. В., op. cit., с. 132–138; Дудоров О. О. / Хавронюк М. І., op. cit.; Тацій В. Я., op. cit., с. 138–143.
43 § 202c dStGB; Article 361-1 CCU; cf. Karchevskyi M. V., op. cit., с. 133–138; Eisele J., op. cit., § 4 Rn. 25 ff.
44 Пашнєв Д. В. / Черевко К. О., op. cit., с. 213–214 (enumeration of 25 sectors per Кабінет Міністрів України № 1109); on the German evaluative criterion MK-Wieck-Noodt, § 303b Rn. 9.

against the State. Whether this severity *deters* state-sponsored attackers operating from outside Ukrainian jurisdiction is a separate empirical question (analysed in IV.4.).[45]

e) Interaction between Criminal and Administrative (Regulatory) Law

The German criminal law operates within a *dense and unified* regulatory ecology: here especially the main laws and regulations such as "BSIG, KRITIS-Dachgesetz, IT-Sicherheitsgesetz 2.0, NIS2UmsuCG"; the BSI is the single central administrative regulator, source of expert opinions in criminal proceedings, and gatekeeper of cybersecurity standards.[46] The Ukrainian regulatory layer is functionally similar but *institutionally distributed* across CERT-UA, the SSSCIP, and the NCCC under the NSDC, without a single equivalent of the BSI. This institutional fragmentation is the most concrete operational difference between the two systems and is reflected in IV.5. below.[47]

2. Common Features and Fundamental Differences

The two systems share four core commitments: criminal-law protection of data integrity and IT-system availability; implementation of the Council of Europe Convention on Cybercrime[48]; alignment with the EU acquis (NIS2, CER); and a separate qualified form for attacks on critical infrastructure. The fundamental differences are well captured by **two** dimensions: (i) the *list-based versus evaluative* identification of CI – a difference in legal *technique* with cascading consequences for predictability, adaptability and the burden of proof; and (ii) the *placement of preparatory criminalisation* – autonomous (Art. 361-1 CCU) versus cross-referenced (§ 202c dStGB) – a difference in *systemic architecture* with consequences for the visibility of the prohibition and the proportionality of preparatory liability.[49]

3. Reasons for the Divergence

The differences between the two systems are not coincidental. They reflect three structural choices, the first of which is doctrinal. As set out in I.4., the German *Rechtsgutstheorie* treats criminalisation as legitimate only when it protects a distinct *Rechtsgut*: where each type of harm – confidentiality, integrity, availability – is treated as a distinct legal interest, the dStGB places each in its own offence and its own section, so §§ 202a–c sit in Abschnitt 15 (*Datengeheimnis*) and §§ 303a–c in Abschnitt 27 (*Datenintegrität, IT-Verfügbarkeit*). Ukrainian doctrine, by contrast, sees the object of the offence as the system of protected social relations (*суспільні відносини*), and the social danger (*суспільна небезпека*) of the act provides the material ground for criminalisation under Articles 1 and 11 CCU. This broader approach appears in Chapter XVI of the Special Part, which treats the informational sphere as a single legal interest and brings all computer-related offences together in one chapter.[50]
The second source of divergence is the legislative technique used by the two parliaments to turn doctrine into rules. The Bundestag legislates through open normative criteria – the *"von wesentlicher Bedeutung"* standard in

[45] Стаття 361(5) КК України; § 303b(4) Nr. 3 dStGB; on sanctions in armed-conflict context see Pashnev / Cherevko, op. cit., c. 215.
[46] See § 1 et seq. BSIG; KRITIS-Dachgesetz (2024); IT-Sicherheitsgesetz 2.0 v. 18.05.2021; NIS2UmsuCG, see as well RegE BT-Drs. 20/13751.
[47] Закон України № 2163-VIII від 05.10.2017; Указ Президента № 447/2021 від 26.08.2021; Національний координаційний центр кібербезпеки при Раді національної безпеки і оборони України, *Річний аналітичний огляд: жовтень 2023 – вересень 2024*, с. 24–26.
[48] See Council of Europe Convention on Cybercrime (Budapest, 23 November 2001), ETS No. 185.
[49] Cf. supra, IV.1.b) and IV.1.c).
[50] On the "*Rechtsgutstheorie*" and the Ukrainian theory of the object of the offence see supra I.4. and the footnotes there.

§ 303b(2) dStGB being the main example – and leaves their application to the BGH and to the academic *Kommentare*. This division of work between courts and academic commentary is typical of post-war German criminal law.[51] The Verkhovna Rada, by contrast, follows the post-Soviet civil-law tradition in which the legislator does most of the work itself. It lists the consequences of Article 361 CCU in full (leakage, loss, falsification, blocking, distortion and breach of the order of routing) and assigns the identification of critical infrastructure to a closed register of 25 sectors set by the Cabinet of Ministers, rather than to a normative criterion.[52] The result is a trade-off between flexibility (the German technique) and predictability (the Ukrainian one), and above all a choice about who shapes the criminal-law rule – the courts or the legislator.

Third, the two systems rest on different ideas of what cybersecurity protects. The German framework developed in peacetime and in conditions of economic stability. It treats *Computersabotage* as a disruption of normal business and infrastructure activity, to be punished in proportion to the economic and organisational harm caused. Even the qualified form under § 303b(4) Nr. 3 dStGB caps imprisonment at ten years and ties its severity to the supply of vital goods and the security of the Federal Republic.[53] The Ukrainian framework has been reshaped by the full-scale invasion of 2022. The same conduct can now be prosecuted in parallel as cybercrime (Article 361 CCU), sabotage (Article 113 CCU) or war crime (Article 438 CCU). The basic sentencing floor of Article 361(5) CCU (ten to fifteen years' imprisonment with confiscation), together with the regular referral of state-sponsored cyberattacks to the ICC, shows a view in which protecting critical infrastructure cannot be separated from protecting the State itself.[54]

The three explanations are connected. A doctrine that separates legal interests works well with a legislator that drafts in open standards, while a stable state can leave the courts to work out how those standards apply in specific cases. The Ukrainian combination of a broader doctrine, a more detailed legislative technique and a wartime security context produces, in turn, a system that is severe, predictable and centred on the State.

4. Assessment of Effectiveness with Empirical Data

Empirical data confirm the comparative diagnoses above. In Germany, the PKS records a *roughly threefold increase* in cases under §§ 303a, 303b dStGB between 2019 and 2023.[55] In Ukraine, between October 2023 and September 2024 the NCCC registered tens of thousands of cyber incidents, ca. 30 percent of which targeted critical-infrastructure objects; the Office of the Prosecutor General reports a manifold increase in proceedings under Articles 361, 361-1, 362 CCU compared with the pre-war period.[56]

The German system's strengths lie in doctrinal maturity because there are decades of refined BGH case-law and dense academic *Kommentare* on §§ 303a, 303b dStGB, by contrast with the still-consolidating Ukrainian doctrine on Article 361 CCU, the flexibility of the term important factor, in German *"von wesentlicher Bedeutung"* criterion, and coordination with the infrastructure protection laws, such as BSIG/KRITIS-Dachgesetz (the fundamental

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51 Eisele J., *Computer- und Medienstrafrecht* (2. Aufl. 2023), § 4 Rn. 1 ff.; on the partnership of BGH and academic *Kommentare* in concretising the *"wesentliche Bedeutung"* criterion see Hilgendorf E., in: Lackner/Kühl/Heger, *StGB* (30. Aufl. 2023), § 303b Rn. 4.

52 Карчевський М. В., *Кримінально-правова охорона інформаційної безпеки України* (Луганськ 2010); Хавронюк М. І., *Кримінальне право зарубіжних країн* (Київ 2024), on Ukrainian legislative technique; cf. Resolution of the Cabinet of Ministers of Ukraine No. 1109 of 09.10.2020 (catalogue of 25 sectors of critical infrastructure).

53 Hilgendorf E., "Computersabotage und Verkehrsdelikte – zur Strafbarkeit der Bahnsabotage vom Oktober 2022", *JuS* 2023, 105; Bundeskriminalamt, *Polizeiliche Kriminalstatistik (PKS) 2019–2023, Bundeslagebild Cybercrime* (bka.de).

54 Пашнєв Д. В. / Черевко К. О., "*Кібератаки на об'єкти критичної інфраструктури в умовах ведення війни: ключові поняття*", Вісник Кримінологічної асоціації України 2024, № 1(31), с. 209 ff.; cf. Office of the Prosecutor General of Ukraine, statistics on offences under Chapter XVI CCU (gp.gov.ua), and CERT-UA, "*Огляд кіберактивності проти України 2022–2024*" (cert.gov.ua).

55 Bundeskriminalamt, *Polizeiliche Kriminalstatistik (PKS) 2019–2023* – Bundeslagebild Cybercrime, Tab. T62 ("Datenveränderung, Computersabotage – §§ 303a, 303b dStGB"), bka.de.

56 НКЦК при Раді національної безпеки і оборони України, *Річний аналітичний огляд: жовтень 2023 – вересень 2024*, с. 24–26, 29; Офіс Генерального прокурора України, статистика за Розділом XVI КК України, gp.gov.ua.

infrastructure laws); its weaknesses, in complexity of application and limited deterrent effect on state-sponsored attackers. The Ukrainian system's strengths lie in the clarity of the list-based approach and rapid legislative adaptation – still or even - in wartime; its weaknesses, in limited judicial practice, the cybercrime/sabotage/war-crime trilemma and institutional fragmentation.[57]

V. Recommendations and Conclusions

Therefore, the comparative analysis suggests four short proposals for Ukrainian legislative development drawing on German experience and EU integration.

First, introduce, alongside the existing register-based identification of CI, an *evaluative criterion* analogous to § 303b(2) dStGB to enable courts to qualify attacks on objects not yet registered.

Second, preserve and strengthen Article 361-1 CCU as an autonomous preparatory offence – extending it to cover the procurement of zero-day vulnerabilities, in alignment with the Federal Ministry of Justice's Ministerial Draft Bill on the Modernisation of Computer Criminal Law (*Referentenentwurf zur Modernisierung des Computerstrafrechts*).

Third, develop a single sectoral coordination mechanism analogous to the BSI – between the SSSCIP, CERT-UA and the NCCC – to consolidate institutional fragmentation.

Fourth, develop *judicial guidelines* for the qualification of cyberattacks in armed conflict, distinguishing Art. 361, Art. 113 and Art. 438 CCU – a question on which Ukrainian doctrine and practice have advanced significantly since 2022.[58]
Conversely, the Ukrainian experience offers Germany two lessons: the autonomous preparatory offence (Art. 361-1 CCU) and the explicit war-crime track (Art. 438 CCU) for state-sponsored cyberattacks in armed conflict.

Neither system, on its own, meets all the demands of modern cybersecurity. The German system offers careful doctrine and a unified regulatory framework. The Ukrainian system offers a clear list-based identification of critical infrastructure and an independent preparatory offence under Article 361-1 CCU.

European law – above all the NIS2 Directive, the CER Directive and the EU–Ukraine Association Agreement – is bringing both systems closer to a common model that combines formal registers with normative criteria. The comparison made above suggests that this convergence should not be left to European harmonisation alone, but developed in a deliberate way, with each system learning from the other.

[57] Cf. supra, Examples 1 and 2 of the Introduction (I.1.) and II.3.
[58] Referentenentwurf des Bundesministeriums der Justiz zur Modernisierung des Computerstrafrechts; Articles 113, 438 КК України; cf. Карчевський М. В., op. cit., с. 133–138 (on Art. 361-1 CCU as autonomous preparatory offence).

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Seminararbeit von

Mark Makedon

The criminal liability of legal persons under Ukrainian and German criminal law: history, regulation, reform

Die strafrechtliche Verantwortlichkeit juristischer Personen im ukrainischen und deutschen Strafrecht: Geschichte, Regelung und Reform

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I. Introduction and Methodological Framework

The question of whether corporate entities should be held criminally responsible for illicit acts committed within their operational spheres remains one of the most conceptually polarizing debates in continental European legal scholarship. For centuries, Western jurisprudence constructed its criminal justice systems around the central archetype of the natural person - a biological individual possessing a conscience, a free will, and the capacity for moral guilt. However, the contemporary globalized economy is dominated not by isolated individuals, but by highly complex corporate structures capable of generating systemic societal and financial harm.

This seminar paper provides a rigorous comparative legal analysis (*Rechtsvergleichung*) of the legal frameworks governing corporate liability in Germany and Ukraine as of 2026. This assessment is highly relevant as both jurisdictions face significant institutional pressures to modernize their punitive mechanisms. Germany continues to refine its unique administrative-regulatory framework to bypass traditional dogmatic obstacles regarding corporate guilt. Meanwhile, Ukraine operates within an evolving transitional regime heavily influenced by Euro-Atlantic integration requirements and strict anti-corruption benchmarks.

1. Statistical Foundations of Corporate and Economic Crime

To understand the empirical necessity of robust corporate sanctions, one must analyze the macroeconomic scale of corporate and economic offenses (*Wirtschaftskriminalität*). While white-collar crime typically accounts for a minor percentage of total registered criminal incidents, it consistently causes the vast majority of aggregate financial damages.

According to the German Police Crime Statistics (*Polizeiliche Kriminalstatistik* – PKS 2024), economic offenses historically comprise less than 1.5% to 2% of all recorded criminal acts nationwide. However, they routinely account for over 50% to 60% of the total financial damages generated by all crimes combined. Corporate entities are frequently used as instruments for sophisticated tax evasion, market manipulation, environmental degradation, and industrial scale corruption. Data from the German Federal Statistical Office (*Statistisches Bundesamt* – Destatis) regarding criminal prosecution statistics (*Strafverfolgungsstatistik*, to be separated from the PKS of the BKA) indicates an increasing trend in investigations involving multiple corporate actors, particularly in cross-border logistical and financial sectors.

In Ukraine, the empirical reality of corporate malfeasance is deeply tied to the historical challenges of institutional corruption, asset diversion, and the shadow economy. Since the events of Revolution of Dignity in 2014 and accelerating through the mid-2020s, data from the National Anti-Corruption Bureau of Ukraine (*Національне антикорупційне бюро України* – NABU) demonstrates that large-scale ensure effective and proportionate accountability mechanisms for corporate entities. The implementation of functional corporate sanctions is therefore not merely an academic exercise, but an absolute necessity for economic stabilization and the preservation of foreign investments.

2. Historical Evolution of Corporate Liability

a) Germany: The Dogmatic Adherence to Societas Delinquere Non Potest

German legal history is deeply anchored in the classical civil law doctrine formulated in the 19th century under

the dominant influence of Friedrich Carl von Savigny. Savigny's "Fiction Theory" (*Fiktionstheorie*) asserted that a corporate entity is a mere legal fiction devoid of physical reality, lacking a biological body to execute physical acts (*Handlungsfähigkeit*) and a soul or mind to experience moral culpability (*Schuldfähigkeit*). Consequently, German criminal law adopted the strict Roman law maxim *societas delinquere non potest* (a corporate body cannot commit a crime).

The post-World War II reconstruction of German criminal dogmatics reaffirmed this view. The Federal Constitutional Court (*Bundesverfassungsgericht* - BVerfG) and the Federal Court of Justice (*Bundesgerichtshof* - BGH) established that the concept of punishment (*Strafe*) is fundamentally tied to the principle of individual human guilt (*Schuldprinzip*), which carries a socio-ethical reproach (*sozialethischer Tadel*).[1] Because a corporation cannot experience moral remorse or exercise free will, it cannot be a direct subject of the German Criminal Code (*Strafgesetzbuch* – StGB).

In addition to the lack of capacity to act, a key obstacle to the implementation of corporate criminal law in Germany is the constitutional principle of individual guilt (*Schuldprinzip*), which derives from human dignity and the rule of law. According to the Court, punishment requires individual culpability and may not be imposed without establishing personal blameworthiness[2]. The maxim *nulla poena sine culpa* (no punishment without guilt) requires a personal moral reproach addressed to the offender, who intentionally or negligently chose the path of violating the law when having the opportunity to act lawfully. Since a company does not possess an individual conscience, it is impossible to address such a moral blame to it.[3] Furthermore, German doctrine rejects corporate punishments due to the legal entity's lack of capacity to experience the distress of punishment (*Straffähigkeit*) for the purpose of subsequent atonement, as well as due to the risk of controversial collective punishment of shareholders who did not personally commit the crime.[4]

To overcome these legal limitations without dismantling classical criminal law institutions, the German legislator in 1968 relegated the liability of associations to the realm of administrative-regulatory law through the Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG).[5] Pursuant to Section 30 of the OWiG, a significant corporate fine (*Verbandsgeldbuße*) can be imposed on a legal entity, which for intentional acts of the management (*Leitungsperson*) amounts to up to 10 million euros, excluding the mechanisms of unlimited skimming of the obtained illicit profits (*Einziehung / Verfall*) under the provisions of the GCC .[6] This model allows Germany to effectively penalize corporations and counter economic crimes while completely preserving its traditional human-centric doctrine of guilt in its criminal law intact – different as its neighbour Austria.[7]

b) Ukraine: The Transition from the Soviet system

Ukraine's legal system belongs to the continental civil law family and was heavily shaped by Soviet legal doctrine during the 20th century.[8] During the Soviet period, criminal law was strictly anthropocentric. The classical Soviet legal doctrine recognized only natural persons as subjects of an offense, firmly rejecting the concept of corporate criminal liability. Criminal responsibility was built entirely upon the concept of personal fault, defined through

1 BGHSt 2, 194 (200); BVerfGE 20, 323 (331). See also: A. J. Mayr, *Die Strafbarkeit juristischer Personen als Strafe für fremde Schuld*, Schriften zum Strafrechtsvergleich, Band 15, Duncker & Humblot, Berlin, 2023, p. 83.
2 Decisions of the Federal Constitutional Court of Germany (BVerfG NJW 2009, 2267; NJW 2016, 1149)
3 Krimphove, D., Unternehmensstrafrecht in der Europäischen Union, Wirtschaftsstrafrecht und Haftung im Unternehmen (ZWH), No. 11, 2023, p. 307
4 Ibid., p. 307
5 German Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG), §§ 30, 130
6 German Criminal Code (*Strafgesetzbuch* StGB), §§ 73b, 73c, 75. See also: Krimphove, D., *op. cit.*, p. 307.
7 Krimphove, D., *op. cit.*, pp. 307-308
8 Streltsov, 6. Part. Ukraine Criminal Law, Strafrecht, in: Wieser/Lazur/Bilaš (Hrsg.), Einführung in das ukrainische Recht, C.H. Beck 2020, pp. 247 et seq.

the psychological prism of intent or negligence. The legal person was viewed exclusively as an instrument of socialist economic planning and an object of administrative control, never as a subject capable of committing a crime.[9] Despite this theoretical stance, the Soviet government in the early stages of the Soviet Union frequently applied severe administrative and quasi-criminal repressive measures, such as total asset confiscation, against collective entities and commercial enterprises for political and economic reasons. [10]Despite strictly rejecting corporate liability domestically, a historical paradox arose during the Nuremberg Tribunal. The Soviet Union supported imposing collective criminal liability on specific Third Reich organizations, such as the SS and Gestapo, and even protested when the Tribunal refused to criminalize other state apparatuses, exposing a sharp contradiction between Soviet legal theory and international practice.[11]

Following its independence, Ukraine inherited this strict anthropocentric paradigm. Although early drafts of the new Ukrainian Criminal Code in 1998 proposed introducing corporate criminal liability, the idea was ultimately rejected, and the 2001 Criminal Code maintained the traditional approach. (*Кримінальний кодекс України* – CCU).[12] However, as Ukraine sought integration into the Euro-Atlantic economic and political architecture, this absolute rejection of corporate liability became a major obstacle. International monitoring bodies, specifically the Council of Europe's Group of States against Corruption (GRECO) and the Organisation for Economic Co-operation and Development (OECD), repeatedly criticized Ukraine for its inability to effectively penalize corporate entities involved in transnational bribery.[13]

To satisfy the prerequisites of the EU Visa Liberalization Action Plan and international anti-corruption conventions, the Ukrainian parliament enacted a major statutory reform on May 23, 2013. This reform introduced Section XIV-1 into the CCU, creating a unique framework of "measures of a criminal-law nature" (*заходи кримінально-правового характеру*) applicable to legal entities, bypassing the dogmatic requirement of traditional corporate "guilt."[14]

3. Current Substantive and Procedural Frameworks

a) The German Model: Administrative Fines under the OWiG

Modern German substantive law maintains a rigorous dogmatic separation between classical criminal punishments (*Strafe*), which are fundamentally predicated on individual moral blameworthiness, and objective measures of correction and safety (*Maßnahmen / Maßregeln*), which aim at crime prevention and regulatory rectification.[15] Because a criminal penalty inherently requires the imputation of personal guilt, German jurisprudence restricts its application exclusively to natural persons. Consequently, the financial and structural liability of corporate associations and commercial entities is relegated to an autonomous system of administrative-delict (regulatory) law,

[9] Pavlova, T. O., Administrative and Criminal Responsibility of Juridical Persons in Ukraine: Historical Aspect, *Herald of Odessa I. I. Mechnikov National University. Jurisprudence*, Vol. 20, Issue 2 (27), 2015, p. 9.
[10] Ibid., pp. 9-10.
[11] Ibid., pp. 12
[12] Ibid., p. 12
[13] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment, *State and Law*, 2018, p. 52
[14] Ibid., pp. 51-52. See also: Law of Ukraine No. 314-VII of May 23, 2013
[15] Alexander Johann Mayr, *Die Strafbarkeit juristischer Personen als Strafe für fremde Schuld*, Schriften zum Strafrechtsvergleich, Band 15, Duncker & Humblot, Berlin, 2023, pp. 92, 119; G. Dannecker, Strafrecht der juristischen Personen, in: U. Sieber et al. (eds.), *Europäisches Strafrecht*, 2nd ed., Nomos, Baden-Baden, 2014, pp. 480-485.

codified within the Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten* OWiG).[16]

The primary substantive anchor of this regulatory regime is Section 30 of the OWiG, which governs the imposition of a corporate fine (*Verbandsgeldbuße*). This framework functions on the doctrine of derivative attribution: to trigger corporate exposure, a management-level individual (*Leitungsperson* such as a board member, director, or designated statutory representative) must commit an underlying criminal or regulatory offense (*Anknüpfungstat*). Crucially, this triggering infraction must either violate specific institutional duties directly incumbent upon the legal entity or result in its direct, unjust enrichment.[17]

To catch corporate wrongdoing where the specific individual perpetrator cannot be easily identified, the legislature utilizes § 130 OWiG. This provision establishes that a corporation can be fined if the management intentionally or negligently fails to implement proper supervisory measures (*Aufsichtspflichtverletzung*) necessary to prevent the commission of offenses within the enterprise. This establishes a powerful statutory incentive for the implementation of Compliance Management Systems (CMS), a mechanism explicitly endorsed by the German Federal Court of Justice (*Bundesgerichtshof*), which established that robust pre-existing compliance systems significantly mitigate corporate fines [18]

The punitive reach of the German model is significantly amplified by substantive criminal law mechanisms,specifically Sections 73b and 73c of the German Criminal Code (*Strafgesetzbuch* StGB),which govern the asset recovery and forfeiture regime (*Einziehung*).[19]Within German legal dogmatics, this instrument is categorized not as a criminal penalty, but as an objective measure of a criminal-law nature under Section 11, Paragraph 1, Number 8 of the StGB. Because asset forfeiture is an objective mechanism rather than a guilt-based punishment, it does not require proving subjective culpability on the part of the corporation itself, thereby seamlessly avoiding any constitutional conflict with the individual guilt principle (*nulla poena sine culpa*). The overarching objective of *Einziehung* is the total skimming (*Abschöpfung*) of all economic advantages derived from the illicit conduct, and the amount of such recovery is entirely unrestricted by statutory caps.

Proceduralllly, corporate offenses under the OWiG are governed by the principle of discretionary prosecution (*Opportunitätsprinzip*) set out in § 47 OWiG. It grants prosecutors wide discretion to pursue or settle corporate infractions based on public interest. Procedurally, the 2021 “all-crimes approach” radically eased the standard of proof (*Beweiserleichterung*), letting authorities confiscate corporate assets by demonstrating a general illicit origin rather than proving a specific predicate offense. This shift vastly expanded corporate compliance duties, mandating immediate reporting to the Financial Intelligence Unit (FIU) under Section 43 of the Money Laundering Act (*GwG*) to avoid structural turnover-based fines.[20] Ultimately, corporate trials are funneled to specialized commercial criminal chambers (*Wirtschaftsstrafkammern*) of Regional Courts pursuant to Section 74c of the GVG, where the corporate entity participates in the proceedings as an associated third party (*Nebenbeteiligte*) with a full suite of defense rights[21].

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16 T. Gürtler in: *Göhler, Ordnungswidrigkeitengesetz (OWiG)*, 18th ed., C.H. Beck, München, 2021, § 30 Rn. 10-15, § 47 Rn. 1-4, § 130 Rn. 5-8.

17 Dieter Krimphove, Unternehmensstrafrecht in der Europäischen Union, *Wirtschaftsstrafrecht und Haftung im Unternehmen (ZWH)*, No. 11, 2023, pp. 306–307.

18 *Bundesgerichtshof* (BGH), Judgment of May 9, 2017 – 1 StR 265/16 (BGHSt 62, 1). *(Landmark decision acknowledging that functional Compliance Management Systems reduce the Verbandsgeldbuße)*

19 W. Joecks and K. Miebach (eds.), *Münchener Kommentar zum Strafgesetzbuch*, Vol. 2, 4th ed., C.H. Beck, München, 2020, § 73b Rn. 15-20.

20 D. Travers and M. Michaelis, Der neue § 261 StGB – die deutsche Umsetzung der EU-Richtlinie über die strafrechtliche Bekämpfung der Geldwäsche, *Neue Zeitschrift für Wirtschafts-, Steuer- und Unternehmensstrafrecht (NZWiSt)*, No. 4, 2021, pp. 125-128.

21 K. Tiedemann, *Wirtschaftsstrafrecht: Einführung und Allgemeiner Teil*, 5th ed., Vahlen, München, 2017, pp. 150-155.

b) The Ukrainian Model: Measures of a Criminal-Law Nature under the CCU

Ukraine's current regulatory framework is codified within Section XIV-1 of the CCU (Articles 96-3 to 96-10).[22] In accordance with the General Part of the Criminal Code, it is established that a legal entity is not a subject of a crime; therefore, if any of the crimes provided for in Article 96-3 of the Criminal Code is committed by an authorized individual acting on behalf of and in the interests of the legal entity, the court may impose on the legal entity not a punishment, but measures of a criminal-law nature.[23]

Although there is ongoing doctrinal debate regarding their exact legal nature, these measures of a criminal-law nature against legal entities are considered a specific form of the implementation of criminal responsibility. Unlike other alternative measures that serve purely medical or educational purposes, the application of measures against legal entities is fundamentally punitive and aimed at preventing the commission of new crimes. Furthermore, these measures are realized strictly through criminal-law methods and can only be imposed on the basis of a court's guilty verdict. Consequently, the Ukrainian legislator has created a novel and specific form of criminal liability exclusively for legal entities, which allows for the imposition of punitive measures even without the presence of the full constituent elements of a crime. [24]

Unlike the universal applicability of the German OWiG regime, which triggers corporate fines for any criminal or regulatory offense, the Ukrainian system operates under a strict principle of specific enumeration. Pursuant to Article 96-3 of the CCU, measures can only be initiated against a legal entity if its authorized representative commits specific, explicitly listed offenses on behalf of and in the interest of the entity. These offenses are categorized into three main blocks:

1. **Corruption and Economic Crimes:** Bribery of public officials, commercial bribery, money laundering, and other offences expressly listed in Article 96-3 CCU.
2. **Security and Public Order:** Terrorism financing, human trafficking, and illegal proliferation of weapons.
3. **International and State Security:** War propaganda, genocide, and aggressive military actions (provisions significantly expanded due to geopolitical realities up to 2026).

The attribution mechanic requires that the authorized representative acts within their institutional mandate, binding the legal entity through their conduct. Procedurally, corporate measures are completely integrated into the criminal process against the natural person. There are no separate administrative tribunals; proceedings concerning the application of criminal-law measures to a legal entity are conducted within the same criminal proceedings, and the measures are issued by a criminal court judge in a unified final verdict.

Procedurally, corporate measures in Ukraine are completely integrated into the criminal process against the natural person, creating a system of total dependent co-prosecution. There are no separate administrative tribunals or distinct corporate trials. According to the Ukrainian Criminal Procedural Code (CPC), the proceeding against a legal entity is conducted simultaneously within the exact same criminal framework where the physical person is notified of suspicion.[25]

This procedural symbiosis means the fate of the corporation is traditionally tied to the fate of the individual. Under

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[22] Criminal Code of Ukraine, Law No. 2341-III of April 5, 2001, Article 18 (defining the subject of a crime exclusively as a natural person) and Section XIV-1, Articles 96-3 to 96-10.

[23] For a doctrinal analysis of this legislative compromise, see also: Павлова Т. О. До питання про кримінально-правовий статус юридичної особи в Україні [Текст] / Т. О. Павлова // Правова держава. 2015. No 20. С. 157–161.

[24] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment [*Заходи кримінально-правового характеру щодо юридичних осіб, як альтернатива покаранню*], *State and Law*, 2018, pp. 51-52, 57.

[25] Ibid. p. 57

Article 284 of the CPC, if the court establishes an absence of grounds, closes the criminal proceeding, or issues an acquittal verdict regarding the authorized physical person, the proceedings against the legal entity must be automatically closed. Conversely, if a guilty verdict is reached, the measures of a criminal-law nature (such as a fine or forced liquidation) are issued by the criminal court judge and explicitly codified within the resolutive part of the unified final verdict against the individual.[26]

Pursuant to Article 96-6 of the Criminal Code of Ukraine, provided procedural requirements are met and the court issues a guilty verdict against the authorized individual, an exhaustive list of three measures of a criminal-law nature may be imposed on the legal entity: a fine, confiscation of property, and liquidation [27]. The **fine** serves as the primary financial measure, and its magnitude must correspond directly to the harm inflicted; it is typically calculated as double the amount of the illegally obtained improper advantage. In instances where no such advantage was obtained or its value cannot be quantified, the court imposes fixed statutory fines based on the gravity of the committed offense. **Liquidation** constitutes the most severe sanction, functionally equated by domestic legal scholars to the "death penalty" for a corporate entity.[28] This measure is reserved as an extreme recourse for grave or particularly grave crimes, entailing the compulsory termination of the enterprise without any succession of its rights and obligations. A critical procedural nuance is that the **confiscation of property**, can only be applied in direct conjunction with the entity's liquidation. Collectively, these mechanisms serve a distinctly punitive function, rendering illicit conduct economically unviable and ensuring robust deterrence against future corporate offenses.

4. Comparative Dogmatic Analysis and Visual Structural Comparison

a) Comparative Structural Analysis: Corporate Fraud Triggers

To demonstrate the practical intersection of these regimes, it is useful to analyze the structure of a foundational economic offense: Fraud (*Шахрайство* under Article 190 CCU vs. *Betrug* under § 263 StGB). When a corporate representative engages in deceptive schemes to enrich the company, the structural composition of the underlying offense dictates how corporate liability attaches.

In the German system, for § 263 StGB to trigger a corporate fine under § 30 OWiG, the prosecutor must prove that a leader (*Leitungsperson*) intentionally deceived a victim (*Täuschung*), causing an error (*Irrtum*), which led to a disposition of assets (*Vermögensverfügung*) resulting in pecuniary damage (*Vermögensschaden*), alongside an intent of unlawful enrichment (*Bereicherungsabsicht*). If these elements are met, the corporate fine attaches automatically.

Under Ukrainian law, ordinary fraud under Article 190 of the Criminal Code does not constitute an independent ground for the application of criminal-law measures to legal entities. Such measures may be imposed only in relation to offences expressly listed in Article 96-3 of the Criminal Code. Therefore, fraudulent conduct may become relevant only where it forms part of, or is connected with, one of the predicate offences specified by that provision.

The following structural table contrasts the elements of fraud as an operational offense across both legal frameworks:

[26] Ibid. p 57
[27] Criminal Code of Ukraine, Law No. 2341-III of April 5, 2001, Article 96-6
[28] Provotorov, O. P., Measures of a Criminal-Law Nature Against Legal Entities as an Alternative to Punishment, *State and Law*, 2018, p. 56.

Structural Element	Ukrainian Criminal Code (Art. 190 CCU)	German Criminal Code (§ 263 StGB)
Objective Act (*Actus Reus*)	Acquisition of property or property rights via deception (*обман*) or breach of trust (*зловживання довірою*).	Deception (*Täuschung*) regarding facts, which causes or maintains an error (*Irrtum*).
Intermediate Causation	Direct link between the deceptive conduct and the voluntary transfer of property by the victim.	The error must induce an act of asset disposition (*Vermögensverfügung*).
Resulting Economic Harm	Direct loss of physical property or actionable legal rights by the victim.	Financial damage to assets (*Vermögensschaden*) calculated by economic market values.
Subjective Mind (*Mens Rea*)	Direct intent (*прямий умисел*) paired with a specific mercenary or possessory motive.	Intent (*Vorsatz*) regarding all objective elements, plus specific intent of unlawful enrichment (*Bereicherungsabsicht*).
Corporate Trigger Link	Only triggers corporate measures if connected to specific economic sabotage or public procurement corruption.	Directly triggers § 30 OWiG corporate fines if committed by any authorized manager or leader.

Source: Own Compilation, Makedon.

b) Comparative Summary Table

Expanding beyond fraud, the global systematic differences between the German administrative fine model and the Ukrainian criminal-procedural measures framework are summarized below:

Comparative Dimension	Ukrainian Law (CCU Regime)	German Law (OWiG Regime)
Primary Statutory Basis	Section XIV-1, Articles 96-3 to 96-10 CCU	§ 30 and § 130 Gesetz über Ordnungswidrigkeiten (OWiG)

Dogmatic Classification	Measures of a criminal-law nature (*заходи кримінально-правового характеру*).	Regulatory / Administrative Offense (*Ordnungswidrigkeit*).
Triggering Actors	Authorized representatives (*уповноважена особа*) acting within corporate scope.	High-level management, board members, or authorized directors (*Leitungspersonen*).
Scope of Predicate Crimes	Limited, strictly enumerated list of statutory crimes (Art. 96-3 CCU).	Broad, universal application to any criminal or regulatory offense.
Standard Sanctions	Fine (*штраф*), confiscation of property, or compulsory liquidation (*ліквідація*).	Corporate fine (*Verbandgeldbuße*) and skimming of economic benefits (*Verfall / Einziehung*).
Maximum Financial Penalty	Scaled to the severity of the predicate crime (up to specific statutory limits).	Statutory limit of €10 million for intentional acts, plus unlimited skimming of profits.
Prosecutorial Discretion	Mandatory prosecution linked to the primary individual criminal case.	Discretionary enforcement (*Opportunitätsprinzip*) under § 47 OWiG.

Source: Own Compilation, Makedon.

5. Recent Legislative Reforms and Future Outlooks

a) Germany: The Verbandssanktionengesetz Debate and Modern Compliance

The structural limitation of the German OWiG model specifically the €10 million statutory maximum cap for corporate fines and the high levels of prosecutorial discretion prompted an intense legislative effort to overhaul the system. This culminated in the draft Corporate Sanctions Act (*Verbandssanktionengesetz* – VerSanG).
The proposed *VerSanG* aimed to fundamentally reform corporate enforcement by introducing:

- The principle of mandatory prosecution (*Legalitätsprinzip*) for corporate misconduct, eliminating arbitrary regional prosecutorial passivity.
- Severe financial penalties scaled directly to corporate scale, allowing fines up to 10% of the total global annual turnover for large companies with annual revenues exceeding €100 million.

- Detailed statutory frameworks to incentivize internal compliance investigations (*interne Untersuchungen*), offering significant reductions in penalties if companies voluntarily cooperated and disclosed compliance breaches.

Although intense political lobbying and dogmatic disagreements regarding the definition of corporate "guilt" (*Schuldtheorie* in the German legal system) prevented the *VerSanG* from passing in its full original format, the structural elements of this reform debate continue to shape German judicial practice up to 2026. German criminal courts routinely utilize the BGH's landmark jurisprudence to reduce or increase corporate fines under § 30 OWiG depending on the verified quality of the company's Compliance Management System (CMS) at the time of the offense.[29]

b) Ukraine: EU Integration, Post-Conflict Reconstruction, and Anti-Corruption Pressures

Looking toward the future, criminal liability for legal entities is undergoing a profound conceptual transformation, driven by the operational practice of anti-corruption agencies and the necessity to align with OECD and EU standards. A critical impending reform involves separation of the corporate measures from the absolute prerequisite of a finalized criminal conviction of a natural person. Under evolving procedural mechanisms, recent legislative proposals seek to facilitate the application of measures even where proceedings against the natural person cannot be completed, particularly when the individual perpetrator evades justice, flees the jurisdiction, or when proceedings are closed on non-rehabilitating grounds.[30] This shift eliminates a major loophole that historically allowed companies to escape liability by hiding complicit directors.

Furthermore, the legislative horizon indicates a significant expansion of corporate sanctions. Recognizing that financial fines and total liquidation are often too rigid, proposed legislative amendments aim to introduce additional non-financial measures.[31] These flexible tools include the temporary prohibition of specific business activities, the revocation of operational licenses, and mandatory debarment from public and defense procurement. Concurrently, to combat transnational economic crime, Ukraine is actively expanding its jurisdiction to strictly penalize domestic legal entities involved in the bribery of foreign public officials, thereby satisfying rigorous OECD anti-bribery benchmarks.[32]

Ultimately, the future efficacy of Section XIV-1 of the Criminal Code relies heavily on the evolving jurisprudence of the High Anti-Corruption Court (HACC). Legal practitioners and scholars anticipate a structural shift in the standards of proof, closely mirroring the German compliance defense model.[33] Some scholars argue that a corporation can mitigate or avoid severe criminal measures if it can irrefutably demonstrate the implementation of a robust, independent Anti-Corruption Compliance Management System (CMS) prior to the offense. Thus, corporate liability in Ukraine is transitioning from a purely theoretical punitive concept into a dynamic regulatory mechanism that forces businesses to proactively self-regulate.

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29 Most notable BGH, Urteil vom 09.05.2017 - 1 StR 265/16; BGH, 27.04.2022 - 5 StR 278/21 (not available in Ukraine, but here https://dejure.org/dienste/vernetzung/rechtsprechung?Text=5%20StR%20278/21); https://www.ccompliance.de/runder-tisch-unternehmenssanktionenrecht-eckpunkte/.

30 Golaw, Corporate 'Criminal Liability' Without a Suspect: Key Business Risks [*Кримінальна відповідальність юридичної особи без підозрюваного: ключові бізнес-ризики*], Legal Insight, October 2025

31 Transparency International Ukraine, Criminal Liability of Legal Entities for Corruption: Legislative Proposals [*Кримінальна відповідальність юридичних осіб за корупцію: що пропонують нардепи*], Policy Brief, 2024

32 Durova, O., The New Law on Criminal Liability of Legal Entities: Implications for Transnational Bribery [*Новий закон про кримінальну відповідальність юридичних осіб: що за ним стоїть*], *Yurydychna Hazeta*, December 2024

33 Benchers Law Firm, Measures of a Criminal-Law Nature Against Legal Entities: The Problem of Efficiency in Corruption Cases [*Заходи кримінально-правового характеру щодо юридичних осіб: проблема ефективності в корупційних справах*], Analytical Report, Kyiv, 2025.

II. Relevance to the Protection of the European Union's Financial Interests

Under Article 325 of the Treaty on the Functioning of the European Union (TFEU), member states must take proactive, equivalent measures to counter fraud affecting the financial interests of the Union. This mandate is legally defined by the PIF Directive (Directive (EU) 2017/1371), which explicitly commands member states to establish robust systems ensuring that legal persons can be held liable for fraud, misappropriation, money laundering, and corruption affecting EU budget resources.

Germany fulfills these European obligations through a combination of traditional StGB individual prosecution and corporate fine applications via § 30 OWiG. However, European institutions frequently criticize the German reliance on the discretionary (*Opportunitätsprinzip*) model, arguing it can lead to under-enforcement in complex transnational subsidy fraud cases.

For Ukraine, as an official candidate country integrating deeply into EU financial networks and managing substantial macro-financial assistance packages, establishing a functional corporate liability regime is a strict prerequisites for accession. Transnational fraud and the misuse of EU humanitarian or developmental funds are rarely executed by isolated individuals; they almost universally involve networks of legal entities operating across international borders.

If a corporate vehicle is used to falsify tender applications, embezzle infrastructure subsidies, or launder illicit funds, the state must have the immediate capacity to freeze corporate assets, apply severe financial sanctions, and execute mandatory liquidation (*ліквідація*) under Article 96-3 of the CCU. Ensuring that both German and Ukrainian legal frameworks can swiftly pierce the corporate shield to eliminate the economic profitability of organizational fraud is essential to maintaining a transparent, secure, and resilient European financial space.

III. Conclusion

The comparative analysis of German and Ukrainian law demonstrates that while both nations – whilst Ukraine not yet being EU member- proceed from different dogmatic traditions, they face identical socio-economic threats from corporate wrongdoing. Germany continues to successfully protect its traditional, human-centric criminal guilt principle (*Schuldprinzip*) by relegating corporate sanctions to the highly organized and sophisticated realm of administrative regulatory law under the OWiG.[34] Conversely, Ukraine chose to integrate corporate sanctions directly into its Criminal Code as "measures of a criminal-law nature", driven by international anti-corruption mandates and urgent EU integration requirements.

As economic crimes become increasingly transnational, the operational differences between the German discretionary enforcement model and the Ukrainian specific-enumeration model must be harmonized, particularly to satisfy the strict requirements of the PIF Directive. Ultimately, the effective containment of economic crime and the protection of European public resources depend on the capacity of both legal systems to look past individual human actors and ensure effective and proportionate accountability mechanisms for corporate entities.

[34] *Groß* and *Krause-Ablaß,* in: Chapter 2, A.; *Kruse*, in: Chapter 4, B.; *Henn and Sperber*, in: Chapter 10 on special things for corruption; Jürss and *Schwerdtfeger,* in: Chapter 11 on fraud and subsidy fraud; for the complete view *Allahverdiyev* and *Othman* 2022'"Verbandssanktionengesetz" Corporate Liability for Germany?', German Law Journal, 23(4), pp. 637–649. doi:10.1017/glj.2022.37.

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The Offense of Money Laundering according to Art. 209, 209-1 Ukrainian Criminal Code vs. § 261 StGB

Der Straftatbestand der Geldwäsche nach Art. 209, 209-1 ukrainisches Strafgesetzbuch im Vergleich zu § 261 StGB

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I. Introduction

Money laundering sits at the intersection of criminal law, financial regulation, and constitutional principle. By reintroducing criminally obtained assets into the legitimate economy, it sustains organized crime, distorts market competition, and degrades public institutions - effects that both Ukrainian and German criminal law seek to prevent through dedicated substantive offenses.[1] Yet the two systems differ substantially in how they define the offense, who they hold liable, and what risks of overcriminalization they are prepared to accept.

Instead of an abstract, i will shortly outline the aim of the paper. This paper is part of a larger German Ukraine Criminal Law Tandem Seminar of Prof. Hauck and Prof Dyakur advances a specific comparative argument: the German all-crimes model adopted in the 2021 reform of § 261 StGB achieves broad enforcement coverage but at a disproportionate constitutional cost - particularly when combined with recklessness liability - while the Ukrainian catalogue-based approach preserves legal certainty and proportionality but leaves exploitable gaps. Neither model, taken wholesale, is appropriate for the other jurisdiction, what will be outlined. But Ukraine's path toward EU harmonization, lately forced in the EU Cluster I in June 2026 should draw selectively on the German experience, adopting its structural clarity on self-laundering and innocent prior acquisition while resisting the temptation to replicate the all-crimes/recklessness combination that remains constitutionally contested in Germany itself.

The comparison is grounded in the following research question: to what extent does the 2021 German reform of § 261 StGB offer a normative template for Ukrainian AML reform, and what are the specific elements that should or should not be transposed? This question matters urgently because Ukraine's EU accession candidacy, granted in June 2022, imposes concrete obligations to align AML legislation with EU Directive 2018/1673 - the same instrument that Germany implemented, and went beyond, in 2021.[2]

The paper proceeds comparatively rather than merely descriptively. Chapter 1 analyzes the Ukrainian provisions with critical attention to doctrinal problems and enforcement gaps. Chapter 2 examines the German norm, including the contested aspects of the reform. Chapter 3 provides a systematic comparative analysis and derives concrete reform recommendations. The comparison is primarily doctrinal - it examines the normative structure and interpretive debates in both systems - but attends where relevant to functional enforcement considerations. The principal limitation is the absence of empirical data on prosecution outcomes in both jurisdictions, which would be necessary to assess the practical deterrent effect of the respective models.[3]

1. Chapter 1. Criminal Law Characteristics Of Money Laundering Under Ukrainian Law

a) Article 209 CCU: The Offense of Money Laundering

Protected Legal Interest. The primary protected legal interest under Article 209 CCU is the lawful functioning of Ukraine's financial and credit system - specifically the established legal order governing the circulation of property

[1] Кузнєцов В.В., Савченко А.В. Кримінальне право України. Особлива частина. Київ: Юрінком Інтер, 2019. S. 412.
[2] Угода про асоціацію між Україною та Європейським Союзом від 27 червня 2014 р. // Офіційний вісник України. 2014. № 75. Ст. 2125.
[3] Travers D., Michaelis M. Der neue § 261 StGB // NZWiSt 2021. S. 125.

derived from criminal activity.[4] A secondary interest, widely recognized in Ukrainian doctrine, is the proper functioning of justice: money laundering conceals the traces of predicate offenses and frustrates law enforcement.[5] Some scholars identify a third protected interest in the property rights of victims of predicate offenses, drawing an explicit analogy with the prevailing German so-called "*Rechtsgut* doctrine" on § 261 StGB.[6]

The traditional Ukrainian doctrinal formulation - that the offense protects "the set of social relations ensuring the lawful functioning of the financial system" - accurately captures the underlying idea but employs a conceptual idiom rooted in Soviet criminal law theory that creates stylistic dissonance in comparative analysis. For the purposes of this paper, the protected interest is understood functionally: the integrity of legitimate financial circulation and the state's interest in recovering criminal proceeds.

Subject Matter. The subject matter of Article 209 CCU is property constituting the proceeds of crime - a concept encompassing cash and non-cash funds, movable and immovable property, securities, corporate rights, and any other objects of civil rights with monetary value.[7] Ukrainian law follows the standard of the Vienna Convention (1988) and the Palermo Convention (2000) in including both direct and indirect proceeds and surrogates - property that replaced the original criminal proceeds through exchange, investment, or transformation.[8]

A structurally defining feature of Article 209 CCU is the predicate offense catalogue. The offense applies only when property derives from an offense expressly recognized as a predicate offense under the CCU. The catalogue is broad - covering most serious offenses against property, economic offenses, drug and arms trafficking, corruption, and organized crime - but it does not extend to all offenses.[9] This deliberate legislative choice reflects a judgment that minor offenses should not trigger full AML criminal liability. As Section 3.1 below demonstrates, this choice has both advantages and costs that the German experience illuminates.

Conduct Element. The conduct element of Article 209 CCU encompasses a broad range of alternative acts directed at the legalization of criminal proceeds: conducting financial or other transactions involving such property; using it for entrepreneurial or economic activity; transferring it to another person under any transaction; acquiring, possessing, or using it; and creating the appearance of legally obtained rights to property.[10] The norm does not provide an exhaustive enumeration but a general formula covering any action designed to conceal criminal origin or to give criminal proceeds the appearance of lawfully obtained property.

In terms of its formal structure, Article 209 CCU is a conduct offense: it is complete upon performance of the relevant act with the criminal property, regardless of whether actual concealment succeeded.[11] This corresponds to the international standard of the Vienna Convention and FATF Recommendation 3.
Mental Element. Money laundering under Article 209 CCU requires direct intent: the perpetrator must be aware

4 Науково-практичний коментар Кримінального кодексу України / За ред. М.І. Мельника, М.І. Хавронюка. 10-те вид. Київ: Юридична думка, 2018. С. 648.
5 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 413
6 Гуторова Н.О. Кримінально-правова охорона державних фінансів України. Харків: Рубікон, 2001. С. 178.
7 Науково-практичний коментар КК України. С. 649.
8 Конвенція ООН проти незаконного обігу наркотичних засобів і психотропних речовин від 20 грудня 1988 р.; Палермська конвенція ООН від 15 листопада 2000 р.
9 КК України, ст. 209 ч. 1 приміт. // Відомості Верховної Ради України. 2001. № 25–26. Ст. 131.
10 Там само.
11 Вітвіцька С.С. Кримінальна відповідальність за легалізацію (відмивання) доходів, одержаних злочинним шляхом: дис. … канд. юрид. наук. Харків, 2003. С. 94.

that the property derives from criminal activity and must affirmatively wish to legalize it.[12] Awareness of criminal origin is a constitutive element of liability; its absence precludes conviction. The special purpose of concealing criminal origin or giving the property a lawful appearance is also required.[13]

Critically, Ukrainian law does not extend criminal liability to reckless conduct. Only knowing, intentional participation in the laundering process attracts liability under Article 209 CCU - a position consistent with the minimum standard of EU Directive 2018/1673, which requires criminalization of knowing conduct but does not mandate recklessness liability.[14] The implications of this choice for enforcement against professional facilitators are examined in Sections 3.2 and 3.3.

Perpetrators. Article 209 CCU establishes general perpetrator liability: any sane natural person aged 16 or over may commit the offense. Legal entities bear no criminal liability in Ukraine, though they are subject to administrative and financial sanctions under the Law on Prevention and Counteraction of Legalization of Proceeds from Crime.[15]

Qualifying Circumstances and Sanctions. Article 209 CCU is structured in three parts. The basic offense (Part 1) carries imprisonment from three to six years with or without confiscation. The qualified offense (Part 2) - covering repetition, group commission by prior conspiracy, or especially large amounts (exceeding 6,000 non-taxable minimum incomes) - provides for seven to twelve years imprisonment with confiscation. The especially aggravated offense (Part 3) - applicable to public officials acting in their official capacity, organized groups, or amounts exceeding 18,000 non-taxable minimum incomes - carries eight to fifteen years imprisonment with confiscation.[16] The severity of these sanctions reflects the legislature's treatment of money laundering as a grave economic offense. However, critics have noted that the absence of a fine as an alternative sanction for the basic offense creates a rigidity that may be disproportionate for borderline cases, and that the threshold amounts defining "especially large" have not been updated to reflect inflation.[17]

b) Doctrinal Problems and Enforcement Gaps

The descriptive picture above conceals significant doctrinal difficulties that have been identified in Ukrainian scholarship and that the comparison with German law helps to sharpen.

The first problem concerns proof of the mental element. Establishing that the perpetrator was aware of the criminal origin of the property is persistently difficult in practice. Unlike Germany, where recklessness liability provides a prosecutorial fallback, Ukrainian law offers no intermediate ground between full knowledge and non-liability. Prosecutors must establish actual awareness - a demanding standard when defendants can credibly claim ignorance of their counterparty's affairs. Ukrainian courts have addressed this problem inconsistently, sometimes inferring awareness from objective circumstances (the scale of the transaction, the absence of apparent legitimate explanation, the professional context of the parties) but without a clear statutory basis for doing so.[18]

12 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 415.
13 Там само.
14 Richtlinie (EU) 2018/1673, Art. 3 // ABl. EU L 284/22 від 12.11.2018.
15 Закон України «Про запобігання та протидію легалізації...» від 6 серпня 2014 р. № 1702-VII.
16 КК України, ст. 209.
17 Дудоров О.О., Хавронюк М.І. Кримінальне право. Навч. посіб. Київ: Ваіте, 2014. С. 561.
18 Вітвіцька С.С. Зазначена праця. С. 97–98.

The second problem concerns the boundary of the predicate offense catalogue. The Note to Article 209 CCU defines which offenses qualify as predicates, but interpretation of this Note has generated controversy. The Supreme Court of Ukraine has clarified in its case law that the list of predicate offenses should be interpreted strictly, not extended by analogy - a position that creates coverage gaps when criminal organizations structure predicate activity to fall outside the catalogue.[19]

A third problem is the underutilization of Article 209 CCU in practice. Statistical data from the SFMS and the Office of the Prosecutor General show that the number of convictions under Article 209 CCU remains low relative to the scale of the underlying financial crime problem. Commentators attribute this partly to evidentiary difficulties, partly to institutional coordination failures between the SFMS, the National Police, and the prosecution, and partly to the complexity of financial investigations relative to institutional capacity.[20]

c) Article 209-1 CCU: Deliberate Violation of AML Obligations

Article 209-1 CCU, introduced in 2010, criminalizes a qualitatively distinct type of conduct: not money laundering itself, but deliberate violation of the obligations imposed by AML legislation on reporting entities - banks, financial institutions, notaries, lawyers, and other obligated persons.

Protected Interest and Conduct Element. The protected interest is the established procedure for financial monitoring - the system of preventive measures in the AML and counter-terrorism financing sphere. The conduct element covers: deliberate failure to submit information on financial transactions to the SFMS; deliberate distortion of such information in a submitted report; and deliberate concealment of information about a person conducting financial transactions.[21] Article 209-1 CCU thus criminalizes violations of the preventive, rather than the substantive, component of the AML system. Unlike Article 209 CCU, no predicate offense or actual criminal proceeds are required.
Mental Element and Sanctions. The requirement of "deliberateness" *(umysnist*) indicates that only direct intent suffices: the reporting entity must be aware of its obligation and deliberately choose to violate it.[22] The sanction is relatively modest: a fine from 17,000 to 51,000 hryvnias, or restriction of liberty for up to two years, or imprisonment for up to two years, with or without a professional prohibition for up to three years.

Doctrinal Criticism. Article 209-1 CCU has attracted sustained criticism on several grounds. First, the sanction level is inadequate as a deterrent: for a financial institution processing large-volume transactions, the economic benefit of non-compliance may substantially exceed the maximum penalty.[23] This creates a rational-choice incentive to violate AML obligations and absorb the fine as a cost of business - the opposite of the deterrent effect the provision is meant to achieve.
Second, the separation of professional-facilitator liability into a distinct, lighter provision is structurally incoherent. A lawyer or banker who deliberately conceals a client's money laundering from the SFMS is not committing a lesser offense than one who actively participates in the laundering transaction under Article 209 CCU - in many

[19] Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 562.
[20] Гуторова Н.О. Зазначена праця. С. 182.
[21] КК України, ст. 209-1.
[22] Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 563.
[23] Вітвіцька С.С. Зазначена праця. С. 102.

cases, the professional cover is what makes the laundering possible. The German approach, which integrates professional liability into the main offense through a qualification (§ 261 Abs. 4 StGB), is more honest about the severity of the conduct.[24]

Third, there is a gap between Article 209-1 CCU and the administrative liability framework under the Law on Prevention and Counteraction: the boundary between conduct that constitutes an administrative violation and conduct that rises to the level of criminal offense under Article 209-1 CCU is not clearly drawn in either the legislation or the case law.[25] The practical consequence is that prosecutors have discretion to charge the same conduct either administratively or criminally, without principled guidance on when the threshold is crossed.
Effectiveness of Criminalization. The rationale for criminalizing AML-obligation violations separately from substantive money laundering rests on the proposition that preventive obligations are sufficiently important to warrant criminal, rather than merely administrative, sanction. This proposition is defensible in principle - the effectiveness of the entire AML system depends on reporting entities complying with their monitoring obligations - but it requires a penalty regime calibrated to actually deter non-compliance. The current sanctions under Article 209-1 CCU do not meet this standard.[26]

d) International Legal Context and FATF/EU Compliance

Ukraine's AML criminal law framework operates within layered international obligations. Ukraine is party to the Vienna Convention (1988), the Palermo Convention (2000), and the Council of Europe Warsaw Convention (2005). As a member of MONEYVAL - the Council of Europe's AML evaluation body - Ukraine undergoes periodic peer assessments against FATF standards.[27]

MONEYVAL's evaluations of Ukraine have consistently identified structural weaknesses in the AML framework, including: insufficient technical compliance with FATF Recommendations on predicate offense scope; persistent difficulties in prosecuting complex financial crime; underdevelopment of beneficial ownership transparency mechanisms; and coordination failures between the multiple agencies involved in AML enforcement.[28] These findings give concrete content to the doctrinal criticisms identified above: the enforcement gaps are not merely theoretical but have been documented by the relevant international body.

Ukraine's Association Agreement with the EU (2014) commits Ukraine to alignment with EU AML legislation. With EU accession candidacy granted in June 2022, this commitment has acquired binding force as a pre-accession reform requirement. The transposition of EU Directive 2018/1673 - which Germany implemented in 2021, and in some respects exceeded - will eventually be required in Ukrainian law.[29] This makes the German transposition experience directly instructive: it illustrates both what the Directive requires and what optional additions Germany chose to make, providing Ukraine with a template for identifying mandatory versus discretionary reform choices. The practical importance of EU harmonization extends beyond formal compliance. Ukraine's integration into EU

[24] Fels T. Der Geldwäsche-Straftatbestand des § 261 StGB und die Anwaltspraxis // AnwBl Online 2022. S. 622.
[25] Науково-практичний коментар КК України / За ред. М.І. Мельника, М.І. Хавронюка. С. 655.
[26] Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 416.
[27] Гуторова Н.О. Зазначена праця. С. 65
[28] MONEYVAL Report on Ukraine, Fifth Round Mutual Evaluation, 2017 (cited via Гуторова Н.О. Зазначена праця. С. 68).
[29] Угода про асоціацію між Україною та ЄС, ст. 251, Додаток XLIII.

financial markets - itself a strategic objective - requires mutual recognition of AML standards and effective cooperation in cross-border investigations. Divergence between Ukrainian and EU AML frameworks creates barriers to this integration and provides money launderers with opportunities to exploit the gap.[30]

II. Chapter 2. Criminal Law Characteristics Of Money Laundering Under German Law

1. The 2021 Reform of § 261 StGB: Context and Overview

§ 261 StGB was introduced in 1992 as part of the Act on the Combating of Organized Crime. Its original form featured a selective predicate offense catalogue limited to serious crimes. Over three decades, the provision was amended repeatedly - the catalogue expanded, act variants refined, and the subjective element clarified.[31]

The 2021 reform was the most fundamental overhaul. The Law to Improve the Criminal Law Prosecution of Money Laundering (*Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche*) of March 9, 2021 completely replaced the previous provision. As Böhme and Busch - two officials involved in drafting the legislation - document, the reform pursued transposition of EU Directive 2018/1673 but went considerably beyond the Directive's minimum requirements through structural changes that represent an independent German policy choice.[32]

The central innovation was abandonment of the predicate offense catalogue in favour of the all-crimes approach (All-Crimes-Ansatz): under § 261 Abs. 1 StGB, any object deriving from any unlawful act (*rechtswidrige Tat*) is a potential money laundering object.[33] The parliamentary materials (BT-Drs. 19/24180) justify this primarily by the need to simplify the evidentiary burden: prosecutors need no longer identify and prove the specific category of predicate offense.[34]

2. The Protected Legal Interest (Rechtsgut-Debate)

The Rechtsgut of § 261 StGB is itself contested - a debate that the 2021 reform has sharpened rather than resolved. The prevailing view as far as can be judged from the materials holds that the norm protects primarily the function of domestic law enforcement (*staatliche Rechtspflege*) in eliminating the effects of criminal offenses - specifically the state's interest in recovering and tracing criminal proceed.[35] Secondarily, it protects the property interests of victims of predicate offenses, whose recovery prospects are frustrated by the laundering process.[36]

A competing position - advanced with increasing force after the 2021 reform - argues that the all-crimes approach has effectively destroyed any coherent German term *Rechtsgut* for § 261 StGB. If any unlawful act can generate money laundering liability, then the norm no longer protects a specific legal interest but functions as a general catch-all provision for anything connected to crime, which, critics argue, cannot satisfy the constitutional requirement of a determinate protected legal interest (*Bestimmtheitsgebot*).[37] Neumann makes this point explicitly: the combination of the all-crimes approach with recklessness liability means that § 261 StGB no longer performs the function of targeted protection of a specific interest but rather creates a diffuse secondary criminalization of conduct already covered by other provisions.[38]

30 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 419.
31 Jäger Ch. § 49 Geldwäsche // Kindhäuser/Neumann/Paeffgen, Nomos Kommentar StGB, 5. Aufl. Baden-Baden: Nomos, 2017. Rn. 1 ff.
32 Böhme F., Busch M. Das Gesetz zur Verbesserung der strafrechtlichen Bekämpfung der Geldwäsche // wistra 2021. S. 169.
33 StGB, § 261 Abs. 1 S. 1 in der Fassung vom 18.3.2021 // BGBl. I 2021, S. 327.
34 BT-Drs. 19/24180, S. 13.
35 BGHSt 55, 36 (48).
36 Jäger. Rn. 1; Böhme/Busch. S. 170.
37 Neumann L. Der reformierte Geldwäschetatbestand – Teil 1 // ZJS 5/2022. S. 683.
38 Neumann. S. 684.

This legal-good, termed above the *Rechtsgut* debate has direct practical implications. If the norm lacks a coherent protected legal interest, proportionality review of individual applications becomes impossible - courts cannot assess whether the severity of the sanction is proportionate to the harm prevented when the harm itself is undefined. The BVerfG has not yet ruled on the constitutionality of the 2021 reform, leaving this question open.

3. Subject Matter: Tainted Object and "Herrühren"

The subject matter of § 261 StGB is any item, so-called "*Gegenstand*" – thus, any object, whether tangible or intangible, deriving (*herrührt*) from an unlawful act. German courts and commentators interpret Gegenstand broadly: it encompasses not only physical objects and money but also claims, securities, and - as explicitly confirmed after the 2021 reform - virtual currencies such as Bitcoin.[39]

The concept of the verb "*herrühren*" is equally expansive: it covers not only objects directly obtained from the predicate offense but also surrogates - objects replacing the original criminal proceeds through exchange, investment, or transformation.[40] Repeated transformation does not sever the nexus; an economic causal connection suffices.[41] The BGH has allowed contamination even at a 5.9% criminal-origin proportion, though objects whose criminal-proceeds component constitutes an economically negligible share may in principle be excluded.[42]

Innocent Prior Acquisition (called *Strafloser Vorerwerb*). § 261 Abs. 1 S. 2 StGB introduces an important limitation: the acts of obtaining (Nr. 3) and keeping or using (Nr. 4) the object do not constitute money laundering if the object was previously acquired by a third party without committing an unlawful act. This mechanism severs the chain of potential criminal liability at the point of a clean break, preventing endless cascade liability for each subsequent holder of tainted property.[43] The absence of any equivalent mechanism in Ukrainian law is a concrete gap identified in Chapter 3.

4. The Criminal Acts (Tathandlungen)

§ 261 StGB provides a structured set of alternative criminal acts in three functional categories.[44]
The first - concealment (Abs. 1 Nr. 1) - covers the act of concealing (*Verbergen*) the object: manipulative conduct specifically aimed at making detection of criminal origin more difficult, such as storing tainted assets with a third party or physically hiding them. No actual success in concealment is required; the provision operates as an abstract endangerment offense.[45]
The second - frustration acts (Abs. 1 Nr. 2) - covers exchange, transfer, or removal of the object with specific intent to frustrate its discovery, confiscation, or tracing. The subjective requirement of frustration intent (*Vereitelungsabsicht*) distinguishes these variants from the isolation acts below. It also means these variants apply to criminal defence attorneys who act with such intent, notwithstanding the privilege discussed below.[46]
The third - isolation acts (Abs. 1 Nr. 3 and Nr. 4) - covers obtaining the object for oneself or a third party, and

[39] Böhme/Busch. S. 171; BT-Drs. 19/24180, S. 28.
[40] BGH wistra 2001, 379 (383).
[41] BT-Drs. 19/24180, S. 29.
[42] BGH NJW 2015, 3254.
[43] BT-Drs. 19/26602, S. 8.
[44] Jäger. Rn. 9–13.
[45] BT-Drs. 19/24180, S. 30
[46] Böhme/Busch. S. 172.

keeping or using it. These are the broadest variants, capturing ordinary financial transactions through which criminal proceeds circulate. They are most relevant to professional facilitators - banks, lawyers, real estate agents - whose exposure to money laundering liability expanded dramatically under the 2021 reform.[47]
Abs. 2 separately criminalizes concealing or disguising (*Verheimlichen/Verschleiern*) facts relevant to discovery, confiscation, or tracing of criminal origin - covering active deception of law enforcement.[48]

5. The Subjective Element: Intent and Recklessness

The paper takes a view at further requirements. As General rule, it is known that all variants of § 261 StGB require at minimum conditional intent (*bedingter Vorsatz*, *dolus eventualis*) regarding both the act and the criminal origin: the perpetrator must consider it possible and accept that the object derives from some unlawful act.[49]
Recklessness (*Leichtfertigkeit*). § 261 Abs. 6 StGB extends criminal liability to conduct under Abs. 1 and Abs. 2 where the perpetrator recklessly fails to recognize that the object derives from an unlawful act. "*Leichtfertigkeit*" corresponds to gross negligence: criminal origin must be objectively apparent given the circumstances, and the perpetrator must have disregarded the obvious risk through particular indifference.[50]

Retention of recklessness liability was the most contested aspect of the 2021 reform. The Federal Ministry of Justice's draft (*Referentenentwurf*) had proposed abolishing it as a necessary counterbalance to the all-crimes approach: if every unlawful act generates a tainted object, retaining recklessness creates potentially limitless criminal exposure for any commercial participant who could hypothetically have suspected that their counterparty had at some point been connected to any minor criminal activity.[51] The final legislative text retained recklessness without any explanation for departing from the ministry's position - a legislative silence that commentators have treated as damning evidence of insufficient constitutional consideration.[52]

The result, in Travers and Michaelis's assessment, is a norm that is constitutionally vulnerable on two independent grounds: the all-crimes approach may violate the principle of legal certainty (*Bestimmtheitsgrundsatz*), and the recklessness extension may violate the guilt principle (*Schuldprinzip*) as interpreted in BVerfGE 20, 323.[53] These are not abstract concerns: they affect how courts should apply the provision and whether challenged convictions will survive appellate review.
Criminal defence attorney privilege. § 261 Abs. 1 S. 3 StGB provides that a criminal defence attorney accepting a fee acts intentionally under Nr. 3 and Nr. 4 only if she had certain knowledge (*sichere Kenntnis*) of the tainted origin at the time of acceptance - a heightened standard required by the German Federal Constitutional Court, judgement BVerfGE 110, 226 to protect the constitutional right to effective criminal defence.[54] The privilege does not extend to civil lawyers, notaries, or tax advisors, creating - as Fels documents - significant practical risks for these professional groups operating under the all-crimes/recklessness combination.[55]

47 Travers/Michaelis. S. 127.
48 BT-Drs. 19/24180, S. 31.
49 Jäger. Rn. 18.
50 BGH NJW 2008, 2516 (2517); Fels T. Der Geldwäsche-Straftatbestand des § 261 StGB und die Anwaltspraxis // AnwBl Online 2022. S. 621.
51 Referentenentwurf des BMJV vom 11.8.2020, S. 19.
52 Neumann. S. 684; Travers/Michaelis. S. 130.
53 Travers/Michaelis. S. 131.
54 BVerfGE 110, 226 = NJW 2004, 1305.
55 Fels. S. 622.

6. Self-Money Laundering, Sanctions, and Procedural Aspects

Self-money laundering. § 261 Abs. 7 StGB provides that a perpetrator or participant in the predicate offense is generally not punishable for laundering the proceeds of that same offense - reflecting the doctrine of mitbestrafte Nachtat (co-punished subsequent act). The exception applies where the perpetrator actively brings the object into circulation while concealing its unlawful origin, thereby creating independent additional harm beyond the predicate offense itself.[56]

Sanctions. The 2021 reform lowered the minimum sentence for the basic offense from three months imprisonment to an alternative of fine or imprisonment up to five years. The reduction was explicitly justified as a proportionality counterweight to the dramatic expansion of predicate offenses.[57] The qualified offense under Abs. 4 - applicable to obligated persons under § 2 GwG, including banks, lawyers, and notaries - preserves a minimum of three months imprisonment, maintaining effective deterrence for professional participants who have the greatest capacity to facilitate large-scale laundering.[58]

Procedural safeguards. To prevent the all-crimes expansion from inadvertently expanding surveillance powers, the legislature restricted the availability of telecommunications surveillance (§ 100a StPO) to money laundering cases whose predicate offense itself qualifies as a catalogue offense under that provision.[59] This structural safeguard illustrates a considered attempt to balance enforcement effectiveness against civil liberties - a balance that Ukrainian law has not addressed with comparable precision.

III. Chapter 3. Comparative Legal Analysis

1. Scope of Predicate Offenses: Catalog vs. All-Crimes

The most fundamental divergence between the two systems is the scope of predicate offenses. Art. 209 CCU operates on a catalogue model: only property from offenses expressly designated as predicates qualifies as the subject matter. § 261 StGB (2021) eliminates all such limits through the all-crimes approach.

The Ukrainian catalogue model offers genuine advantages. It ensures legal certainty - perpetrators can determine in advance whether a specific predicate offense triggers AML liability - and maintains proportionality by excluding minor offenses from the heavy burden of money laundering prosecution. But these advantages come at a cost. Criminal organizations can deliberately structure predicate activity to fall outside the catalogue, and prosecutors must prove not just that criminal proceeds were laundered but that they derived from a specific category of offense - a significantly heavier evidential burden.[60]

The German all-crimes approach eliminates these problems but creates others that the parliamentary process failed to adequately address. Böhme and Busch note that the all-crimes model was not required by EU Directive 2018/1673 - the Directive mandates a specific list of "Euro-crime" as predicates, not a universal approach - making it an independent German policy choice whose constitutional justification remains incomplete.[61]

Neumann demonstrates that the all-crimes approach, without recklessness liability, would have been defensible; combined with recklessness, it creates exposure for ordinary commercial participants that cannot be justified by

[56] BT-Drs. 19/24180, S. 34; Jäger. Rn. 4.
[57] Böhme/Busch. S. 173; Travers/Michaelis. S. 128.
[58] StGB, § 261 Abs. 4; BT-Drs. 19/24180, S. 33.
[59] Böhme/Busch. S. 173.
[60] Вітвіцька С.С. Зазначена праця. С. 85.
[61] Böhme/Busch. S. 170.

reference to any coherent protected legal interest.[62]

The appropriate model for Ukraine lies between these poles. A broad catalogue covering all serious and medium-gravity offenses - approaching but not reaching the all-crimes model - would close the most significant coverage gaps while preserving proportionality. EU Directive 2018/1673's list of mandatory predicate offenses provides a useful minimum floor.[63]

2. Mental Element: Intent vs. Recklessness

Art. 209 CCU requires direct intent, including awareness of criminal origin. § 261 Abs. 6 StGB extends liability to reckless conduct. Both choices reflect defensible underlying values; neither is without cost.
The Ukrainian intent-only standard is legally certain and liberty-protective. But it creates a structural gap: professional facilitators who carefully avoid acquiring actual knowledge of criminal origin escape liability even when they take commercially inexplicable risks that any reasonable professional would have investigated. This "wilful blindness" problem is not adequately addressed by Ukrainian law.[64]

The German recklessness standard closes this gap but opens a more serious one. As the BGH itself recognized as early as 1997, the recklessness concept requires "a restrictive and intent-near interpretation" to remain compatible with the guilt principle.[65] Post-2021, this interpretive constraint must do even heavier work: with the all-crimes approach removing any predicate-offense specificity, the concept of "objectively apparent criminal origin" is nearly meaningless - almost any large commercial transaction could, under favourable circumstances for the prosecution, be characterized as involving an objectively recognizable risk of criminal origin.[66]

The German experience shows clearly what Ukraine should not do: introduce recklessness liability simultaneously with a dramatic expansion of predicate offense scope. If Ukraine were to introduce a recklessness variant - which this paper cautiously supports - it should do so with statutory safeguards absent from the German model: a clear definition of "objectively apparent" criminal origin keyed to specific objective circumstances; explicit safe harbours for regulated entities that have complied with due diligence obligations; and maintenance of the predicate offense catalogue as a limiting principle.[67]

3. Professional Facilitators: Art. 209-1 CCU vs. § 261 Abs. 4 StGB

Ukrainian and German law adopt structurally different approaches to criminal liability for professional facilitators. Ukraine uses a separate, lighter provision - Art. 209-1 CCU - carrying a maximum of two years imprisonment or a modest fine. Germany integrates professional-facilitator liability into the main offense through § 261 Abs. 4 StGB, applying the same base sanction as for any other perpetrator, with a mandatory minimum of three months' imprisonment.

The German approach is structurally more coherent. A lawyer or banker who deliberately conceals a client's

62 Neumann. S. 683.
63 Гуторова Н.О. Зазначена праця. С. 182.
64 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 562.
65 BGH NJW 1997, 3323 (3325).
66 Travers/Michaelis. S. 131.
67 Кузнєцов В.В., Савченко А.В. Зазначена праця. С. 418.

money laundering does not commit a qualitatively lesser offense than a direct launderer - in many cases, the professional cover is precisely what makes the laundering viable. Treating this conduct as a substantially lesser crime understates its seriousness and undermines deterrence.[68] The Ukrainian bifurcation between Art. 209 and Art. 209-1 CCU reflects a legislative history in which AML-obligation violations were initially addressed through administrative law and only subsequently criminalized, without adequate rethinking of whether a separate criminal provision with reduced sanctions is the appropriate structure.[69]

However, the German Abs. 4 model is not without risk when combined with the all-crimes/recklessness approach: professional participants face criminal liability for conduct that may be commercially ordinary and whose connection to criminal proceeds may be objectively difficult to detect. The procedural safeguard of the criminal defence attorney privilege (Abs. 1 S. 3) addresses part of this risk but leaves civil lawyers and notaries fully exposed. Ukrainian reform should adopt the principle of integration - raising professional-facilitator liability to the level of Art. 209 CCU itself - while building in the due diligence safe harbour that German law lacks.[70]

4. Self-Money Laundering

Both systems confront the question whether the predicate offender may be additionally convicted for laundering his own proceeds. Their answers differ sharply in clarity, if not entirely in substance.

Germany addresses this explicitly in § 261 Abs. 7 StGB: the predicate offender is generally exempt from additional money laundering liability (mitbestrafte Nachtat doctrine), except where she actively brings proceeds into circulation while concealing their origin. This exception covers the most dangerous forms of self-laundering - deliberate layering of proceeds through the financial system - while excluding double punishment for mere possession or use of criminal gains.[71]

Ukraine has no equivalent express provision. General criminal law principles of concurrence and post-offence conduct apply, but their application to self-money laundering is unsettled in both doctrine and case law. This creates legal uncertainty on a practically significant question: the ne bis in idem principle, constitutionally guaranteed in Ukraine, requires clarity about when a perpetrator may be convicted of both the predicate offense and money laundering.[72] A provision modelled on § 261 Abs. 7 StGB - including the deliberate-concealment exception - would resolve this uncertainty with minimal disruption to the existing framework.[73]

5. Cross-Border Money Laundering

Both systems apply double criminality requirements to foreign predicate offenses, but with important differences. Ukrainian law applies general double criminality: foreign predicate offenses generate AML liability only if the conduct is criminalized under both Ukrainian law and the law of the country where the offense was committed.[74] § 261 Abs. 9 StGB retains double criminality as the general rule but waives it for EU-harmonized "Euro-crimes"

68 Fels. S. 622; Böhme/Busch. S. 172.
69 Науково-практичний коментар КК України. С. 656.
70 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 563.
71 BT-Drs. 19/24180, S. 34; Jäger. Rn. 4.
72 Вітвіцька С.С. Зазначена праця. С. 97.
73 Дудоров О.О., Хавронюк М.І. Зазначена праця. С. 564.
74 КК України, ст. 7–8.

- including terrorism, drug trafficking, and corruption - where it suffices that the predicate offense would constitute an unlawful act under German law, regardless of its classification in the country of commission.[75] This partial waiver was required by EU Directive 2018/1673 for harmonized offenses.

As Ukraine advances toward EU accession, an equivalent adjustment - at minimum for EU-harmonized Euro-crimes - will be required. The German model provides a direct template.

6. Structural Comparison Table

Feature	**Art. 209/209-1 CCU (Ukraine)**	**§ 261 StGB (Germany, 2021)**
Predicate offenses	Catalog (broad but not universal)	All crimes (any unlawful act)
Subject matter	Property from catalogued crime	Any object from any unlawful act
Surrogates covered	Yes	Yes
Innocent prior acquisition	Not explicit	Explicit (Abs. 1 S. 2)
Intent required	Direct intent only	Conditional intent (+ recklessness)
Recklessness liability	No	Yes (Abs. 6)
Professional facilitators	Separate lighter provision (Art. 209-1)	Qualification within main offense (Abs. 4)
Self-money laundering	No express rule	Express exemption with exceptions (Abs. 7)
Foreign predicate offenses	Double criminality required	Waived for Euro-crimes (Abs. 9 Nr. 2)
Base sanction	3–15 years' imprisonment	Fine or up to 5 years imprisonment
Qualified sanction	Up to 15 years (organized group)	3 months–5 years for GwG obligated persons

Source: Own Compilation from German and Ukraine Material in the Seminar, cf. Bibliography.

IV. Conclusions

This paper set out in the beginning to answer a specific question: to what extent does the 2021 German reform of

[75] Böhme/Busch. S. 171.

§ 261 StGB offer a normative template for Ukrainian AML reform, and what elements should or should not be transposed? The answer that emerges from the comparative analysis is both encouraging and cautionary.

The encouraging part is that the German reform has produced structural clarity in several areas where Ukrainian law is genuinely deficient. The explicit treatment of self-money laundering in § 261 Abs. 7 StGB resolves a question that Ukrainian law leaves dangerously open. The mechanism of innocent prior acquisition in Abs. 1 S. 2 addresses a gap that could otherwise produce disproportionate cascade liability. The integration of professional-facilitator liability into the main offense, rather than a separate lighter provision, reflects a more accurate assessment of the seriousness of professional complicity. And the partial waiver of double criminality for Euro-crimes provides Ukraine with a direct template for the adjustment that EU accession will require.

The cautionary part concerns the all-crimes approach and recklessness liability - the signature innovations of the 2021 reform. These elements should not be transplanted into Ukrainian law. The all-crimes approach, as the German scholarly debate has demonstrated, sacrifices legal certainty without a constitutional justification adequate to the scope of the expansion. Recklessness liability, when combined with an unlimited predicate offense scope, creates potential criminal exposure for ordinary commercial conduct that cannot be reconciled with the guilt principle. The fact that these elements remain constitutionally contested in Germany itself - the German Constitutional Court, the BVerfG has not yet ruled on the 2021 reform - is sufficient reason for Ukraine not to replicate them during a period of ambitious legislative reform where the priority should be workable, proportionate, and durable norms rather than maximum coverage at any constitutional cost.

The concrete reform agenda for Ukrainian law that this comparison identifies is therefore selective rather than wholesale: expand the predicate offense catalogue toward but not to the all-crimes model, drawing on the EU Directive's list of mandatory predicates; introduce explicit provisions on self-money laundering and innocent prior acquisition modelled on the German text; integrate professional-facilitator liability into Art. 209 CCU while building in statutory safe harbours for entities that have complied with due diligence obligations; and adjust the double criminality rule for Euro-crimes in line with EU accession requirements. These targeted reforms would substantially improve the effectiveness and coherence of Ukrainian AML law while preserving the proportionality and legal certainty that the German experience shows may be sacrificed when legislative ambition outruns constitutional discipline.

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Seminararbeit von

Olha Perdeiko

Fraud with Financial Resources under Article 222 of the Criminal Code of Ukraine vs. §§ 264, 265b of the Criminal Code of Germany

Betrug mit finanziellen Mitteln nach Art. 222 des Strafgesetzbuches der Ukraine im Vergleich zu §§ 264, 265b des deutschen Strafgesetzbuches

Betreuer:in/ Korrektor:in: Prof. M. Dyakur; Prof. Dr. Pierre Hauck, Dr. Schneider
YFC Chernivtsi / Justus-Liebig-Universität Gießen
Abgabedatum: 12.06.2026

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I. Fraud with Financial Resources under Ukrainian Criminal Law

1. The Legal Nature of Fraud with Financial Resources

At present, financial fraud is one of the most widespread and socially dangerous economic crimes, as it causes significant harm to the state's financial system, as well as to businesses and citizens. This problem is particularly acute in the context of the digitalisation of financial services, remote lending and the development of online banking, which creates new opportunities for abuse and the unlawful appropriation of funds. Furthermore, the rise in the number of fraudulent schemes in the areas of lending and taxation highlights the need to improve the mechanisms for the criminal law protection of financial relations.

Under Article 222 of the Criminal Code of Ukraine, fraud involving financial resources is defined as 'the provision of knowingly false information to state authorities, authorities of the Autonomous Republic of Crimea or local authorities, banks or other creditors with the aim of obtaining subsidies, grants, subsidies, loans or tax concessions in the absence of evidence of a property offence".[1]

Fraud involving financial resources, as provided for in Article 222 of the Criminal Code of Ukraine, constitutes a specific form of criminal offence that requires a clear distinction from the general offence of fraud (Article 190 of the Criminal Code of Ukraine) for correct criminal classification. The main difference lies in the specific subject matter of the criminal offence, for whilst the subject matter of general fraud is any property belonging to another person or a right to property, in the case of fraud involving financial resources, it consists of clearly defined types of financial resources: loans, grants, subventions, subsidies, other budgetary funds, as well as refunds of fees (compulsory payments). This specification of the subject matter of the criminal offence also determines the characteristics of the objective aspect, where the deception is directed specifically at obtaining the aforementioned financial resources, for example, by submitting false documents, or at their misuse. Thus, Article 222 of the Criminal Code of Ukraine takes precedence in cases where the offence concerns financial resources of a specific nature, as it details the conditions and object of the criminal offence not covered by the general provision.[2]

2. Elements of the Criminal Offence under Article 222 of the Criminal Code of Ukraine

The criminal law definition of fraud includes elements such as the object, the objective and subjective aspects, and the perpetrator of the offence, as well as aggravating factors that increase criminal liability for committing this type of offence.

As regards the primary direct object, this consists of social relations in the sphere of financial resources and tax concessions. An additional direct object is relations in the sphere of taxation and property relations. The subject of this offence is false information provided to the addressees specified in this article with the aim of obtaining subsidies, subventions, grants, loans or tax concessions. Article 222 of the Criminal Code refers to information

[1] Кримінальний кодекс України : Закон України від 05.04.2001 № 2341-III. База даних «Законодавство України». Верховна Рада України. URL: zakon.rada.gov.ua (дата звернення: 10.05.2026).

[2] Оксентюк А.М. Шахрайство з фінансовими ресурсами. *Київський часопис права*. 2025. № 3. С. 283–288. DOI: 10.32782/klj/2025.3.40.

which, in a specific case, has legal significance as a basis for making a positive decision regarding the provision of financial resources or tax concessions.[3]

Fraud involving financial resources constitutes a specific category of criminal offence, distinguished from general fraud by its specific subject matter – clearly defined types of financial resources, such as loans, grants, subventions, subsidies and other budgetary funds.[4]

The objective element of fraud involving financial resources consists of active conduct – the provision of knowingly false information to the relevant authorities.[5] Providing knowingly false information constitutes fraud against the state or creditors; this usually takes the form of a written statement and involves the use of falsified documents.[6] Consequently, the elements of this criminal offence are formal in nature, meaning that the offence is complete upon the provision of knowingly false information.[7]

Consequently, the objective aspect of this criminal offence is taking on new, more complex forms that exploit the possibilities of digitalisation to conceal criminal activity and facilitate access to funds.[8]

The provision of false information is intended to mislead state authorities, authorities of the Autonomous Republic of Crimea or local authorities, banks or other creditors, with a view to unlawfully obtaining subsidies, subventions, grants, loans or tax concessions in this manner. The actual receipt of these resources or benefits is not a necessary element of this offence.[9] What exactly do these financial resources refer to?

The term ‘subsidy’ refers to ‘funds provided free of charge from the budget’. In Ukraine, subsidies are used not only as a method of budgetary regulation when the expenditure of lower-level budgets exceeds their revenue, but also as aid provided to enterprises, in particular to cover losses arising from their economic activities.[10]

A subsidy is defined as assistance, whether in cash or in kind, provided by the state to local authorities, natural or legal persons, including business entities, and intended to finance specific measures or areas of economic and social activity.[11]

‘A loan is the provision by one party (the lender) of funds or goods to another party (the borrower) on the condition that they are repaid within a specified period and, as a general rule, accompanied by the payment of interest’.[12]

A tax relief is an exemption provided for under tax and customs legislation, whereby a taxpayer is relieved of the obligation to calculate and pay tax and duties, or is required to pay tax and duties at a reduced rate where the

[3] Науково-практичний коментар до ст. 222 КК України «Шахрайство з фінансовими ресурсами». MEGO.info. URL: https://mego.info (дата звернення: 18.05.2026).
[4] Савченко А.В. Кримінальне право України. Загальна та Особлива частини (у схематичних діаграмаг) : навч. посібник. К. : «Центр учбової літератури», 2015. С. 226.
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[12] Науково-практичний коментар до ст. 222 Кримінального кодексу України. *Юристи України* URL: https://www.jurists.org.ua/criminal-law/1873 (дата звернення: 25.05.2026).

relevant conditions are met.[13] Tax reliefs are divided into: 1) exemptions (characterised by the exclusion of specific items or objects from taxation); 2) deductions (involving a reduction in the tax base); 3) relief (in the form of a reduction in the tax rate, tax holidays, deferrals or instalment plans for tax liabilities, etc.).[14]

The subjective element of this offence is direct intent, characterised by knowledge - that is, the perpetrator's awareness that the information is false even before it is actually communicated to the recipient. Furthermore, a mandatory element is the intention to obtain subsidies, grants, subsidies, loans or tax concessions.[15] In this criminal offence, the offender's intent is to obtain credit funds on a temporary basis, with a view to possibly failing to repay them on time.[16]

The subject of the offence is specific: 1) a citizen who carries out registered business activities as a sole trader, without establishing a legal entity; 2) the founder or owner of a business entity; 3) an official of a legal entity that is a business entity. A natural person who is actually engaged in business activities without proper state registration is not a subject of the offence provided for in Article 222.[17]

3. Statistical Indicators and Dynamics of Criminal Proceedings under Article 222

During the reporting period from January to December 2025, 25 criminal offences were recorded under Article 222 of the Criminal Code of Ukraine ('Fraud involving financial resources'). An analysis of the statistical indicators shows a fairly high level of procedural activity on the part of the pre-trial investigation authorities, as in 27 cases, individuals were served with notices of suspicion. In 2025, the number of recorded criminal offences under Article 222 of the Criminal Code of Ukraine rose to 39, which is 56% more than in 2024 (25). The number of notices of suspicion also increased significantly in 2025 to 44 cases, compared with 11 in 2024. The number of indictments sent to court rose from 3 in 2024 to 31 in 2025, indicating an intensification of pre-trial investigations and judicial prosecution of such offences.[18]

In 2025, the number of recorded criminal offences under Article 222 of the Criminal Code of Ukraine rose to 39, which is 56% more than in 2024 (25). The number of notices of suspicion also increased significantly in 2025 – to 44 cases, compared with 11 in 2024. The number of indictments sent to court rose from 3 in 2024 to 31 in 2025, indicating an intensification of pre-trial investigations and judicial prosecution of such offences.[19]

The highest number of established material losses was recorded in 2023 – 49 cases, whereas in 2025 this figure stood at 15. In 2025, the number of closed criminal proceedings increased significantly – 17, whereas in 2023 and 2024 only one proceeding was closed in each year. Fraud committed by a group of individuals also became more

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13 Податковий кодекс України від 02.12.2010 № 2755-VI. Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2755-17 (дата звернення: 18.05.2026).

14 Постанова Пленуму Верховного Суду України у справі № 4733. ЛІГА:ЗАКОН.

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16 Ярошенко І. М. Відмежування шахрайства від інших суміжних складів злочинів за Кримінальним Кодексом України. *Молодий вчений*. 2017. № 11. С. 1039–1042.

17 Науково-практичний коментар до ст. 222 Кримінального кодексу України. *Юристи України*. URL: https://www.jurists.org.ua/criminal-law/1873 (дата звернення: 27.05.2026).

18 Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. Офіс Генерального прокурора України. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 19.05.2026).

19 Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. Офіс Генерального прокурора України. URL: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 19.05.2026).

prevalent in 2025 (5 cases) compared to previous years. No cases of offences committed by minors or by organised groups were recorded during the period under review.

4. Judicial Practice in Cases of Fraud with Financial Resources

It is worth noting a few examples from Ukrainian case law.

In case No. 82716471, on 10 February 2018, a person, using a computer with internet access and with the intention of fraudulently obtaining a loan of 1,000 UAH from Maniveo Quick Financial Assistance LLC, knowing the mandatory conditions for obtaining it, provided the financial institution with personal details and documents belonging to another person without that person's knowledge. On the basis of Part 1 of Article 70 of the Criminal Code of Ukraine, the court imposed a penalty in the form of a fine amounting to three thousand non-taxable minimum incomes (UAH 51,000), with deprivation of the right to engage in financial and economic activities for a period of two years.[20]

Case No. 91618372: In June 2019, the defendant took out two loans from microfinance institutions by providing knowingly false information about the borrower, using another person's passport details and taxpayer identification number without that person's consent. The court found the defendant guilty of fraud involving financial resources under Part 1 of Article 222 of the Criminal Code of Ukraine and of repeated fraud involving financial resources under Part 2 of Article 222 of the Criminal Code of Ukraine, imposing a final penalty in the form of a fine of 51,000 UAH.[21]

Case No. 100830479: On 19 July 2019, the individual, acting repeatedly and with the intent to obtain a loan unlawfully, submitted knowingly false information about the borrower to FC Diner LLC via the internet, using another person's passport details and identification code without their consent. The court concluded that the defendant had committed fraud involving financial resources under Part 2 of Article 222 of the Criminal Code of Ukraine, imposing a fine as punishment.[22]

II. Criminal Liability for Financial Fraud in Germany

1. The System of Criminal Law Protection against Financial Fraud in Germany

The Saxon Development Bank (Sächsische Aufbaubank) approved and disbursed subsidies totaling approximately 3.4 million euros. It later emerged that the data on investment costs was partially false or incomplete: fictitious invoices were issued through general contractors and subcontractors without any actual services rendered in order to obtain a larger amount of funding. The defendant, who was involved in submitting the application, was convicted of subsidy fraud under § 264(1)(1) of the GCC.[23]

[20] Єдиний державний реєстр судових рішень. Судове рішення № 82716471. URL: https://reyestr.court.gov.ua/Review/82716471 (дата звернення: 25.05.2026).
[21] Єдиний державний реєстр судових рішень. Судове рішення № 91618372. URL: https://reyestr.court.gov.ua/Review/91618372 (дата звернення: 25.05.2026).
[22] Єдиний державний реєстр судових рішень. Судове рішення № 100830479. URL: https://reyestr.court.gov.ua/Review/100830479 (дата звернення: 25.05.2026).
[23] Ferner J. Subventionsbetrug: BGH zur Reichweite des Vermögensschadens nach § 264 StGB // Anwaltskanzlei Ferner Alsdorf. URL: https://www.ferner-alsdorf.de (дата звернення: 25.05.2026).

The Federal Administrative Court (BGG) partially overturned the decision, noting that the actual damage consisted only of the inflated construction costs, not the entire amount of the subsidies. In Example 2, as the head of a company, the defendant entered into a contract with a supplier of solar products worth €42 million and applied for subsidies, receiving an advance payment of approximately €5 million. The Federal Court of Justice (BGH) overturned the verdict, as negligence (*Leichtfertigkeit*), according to established case law, requires particular indifference or gross inattention and the court had not sufficiently proven this.[24]

Germany maintains one of the most comprehensive and structured systems of criminal law protection against financial fraud in the world. Rooted in the traditions of Roman law and shaped by centuries of legal development, the German criminal justice system addresses financial fraud through a multi-layered framework of substantive criminal law, procedural mechanisms, and institutional enforcement structures.[25]

§ 264 StGB Subsidy Fraud (Subventionsbetrug)

Section 264 of the German Criminal Code (Strafgesetzbuch, StGB) establishes criminal liability for subsidy fraud (Subventionsbetrug). The provision protects the integrity of public funding systems at both the national and European Union levels, safeguarding public financial resources from abuse through deception, misappropriation, and the concealment of material information.[26]

Unlike classical fraud under § 263 StGB, subsidy fraud is structured as an abstract endangerment offense (abstraktes Gefährdungsdelikt) - criminal liability attaches upon the commission of the prohibited conduct itself, without requiring proof of actual financial damage or a causal link between the deception and the granting of the subsidy.

The basic offense carries a penalty of imprisonment of up to five years or a fine and encompasses four distinct modes of criminal conduct.

The first and most frequently prosecuted variant criminalizes the making of incorrect or incomplete statements regarding facts material to a subsidy (*subventionserhebliche Tatsachen*) to a subsidy-granting authority. The offense requires, first, that the statement concern facts designated as subsidy-relevant; second, that the statement be factually false or materially incomplete; and third, that the statement be capable of producing a benefit for the perpetrator or another person.[27]

The second variant targets conduct occurring after a subsidy has been lawfully granted. It criminalizes the use of an object or monetary benefit in a manner that contravenes the applicable use restriction. This variant is distinct in that it captures misappropriation rather than deception. The third variant constitutes an omission offense (*Unterlassungsdelikt*). Criminal liability arises where the perpetrator, contrary to statutory obligations, allows the subsidy grantor to remain unaware of facts material to the subsidy.[28]

[24] Der leichtfertige Subventionsbetrug iSd § 264 StGB // Strafrecht bundesweit. URL: https://www.strafrecht-bundesweit.de (дата звернення: 25.05.2026).
[25] Bundesministerium der Justiz. Strafgesetzbuch (StGB). URL: https://www.gesetze-im-internet.de/stgb/ (Datum des Zugriffs: 02.06.2026); Satzger H., Schluckebier W., Widmaier G. Strafgesetzbuch Kommentar. 5. Aufl. Heymanns, 2021. § 264 Rn. 1–5.
[26] Strafgesetzbuch (StGB) vom 15. Mai 1871. § 264 Subventionsbetrug. URL: https://www.gesetze-im-internet.de/stgb/__264.html (Datum des Zugriffs: 02.06.2026); Haug F. Subventionsbetrug bei Fördermitteln. URL: https://haug.law (Datum des Zugriffs: 02.06.2026).
[27] Schünemann B. § 264 Subventionsbetrug // Strafgesetzbuch. Leipziger Kommentar. URL: https://datenbank.nwb.de/Dokument/136684_264/ (дата звернення: 07.06.2026).
[28] § 264 Subventionsbetrug // Strafgesetzbuch (StGB). Buzer.de. URL: https://www.buzer.de/264_StGB.htm (дата звернення: 07.06.2026).

The fourth variant criminalizes the active use in a subsidy procedure of a certificate confirming either subsidy eligibility or facts material to a subsidy, where that certificate was obtained through false or incomplete statements.[29]

2. § 265b StGB - Credit Fraud (Kreditbetrug)

§ 265b Abs. 1 StGB establishes criminal liability for credit fraud. Any person who, in connection with an application for the granting, continuation or amendment of the terms of a loan to a business or undertaking, (1) submits incorrect or incomplete documents – namely balance sheets, profit and loss accounts, statements of assets and liabilities or expert reports - or provides incorrect or incomplete written information; or (2) fails to disclose, at the time of submission, any deterioration in the financial circumstances set out in the documents which is relevant to the decision on such an application, shall be punished with imprisonment for up to three years or a fine.[30]

3. Judicial Practice and Statistical Data in Germany

The primary source of aggregate crime data in Germany is the Polizeiliche Kriminalstatistik (PKS) – the Federal Police Crime Statistics - published annually by the Federal Criminal Police Office (Bundeskriminalamt, BKA). The PKS categorizes economic crime (Wirtschaftskriminalität) as a distinct category, encompassing fraud-related offenses including subsidy fraud, credit fraud, capital investment fraud, and related financial offenses.[31]

According to PKS data, economic crime consistently accounts for a disproportionate share of total financial damage relative to its numerical incidence. While economic crime offenses typically represent only around 1–2% of all recorded criminal offenses in Germany in terms of case numbers, the financial damage attributable to them regularly constitutes 40–50% or more of total recorded criminal damage.[32]

In recent reporting periods, German police recorded between 70,000 and 85,000 cases of economic crime annually, with total damages in the range of several billion euros per year. The BKA's periodic situation reports on economic crime (see *Lagebild Wirtschaftskriminalität*) have consistently identified fraud offenses – particularly in the areas of investment, subsidy misuse, and credit – as the numerically and financially dominant subcategories.[33]

One notable court case concerned a defendant convicted by the Regional Court of Düsseldorf of multiple offenses, including document forgery (*Urkundenfälschung*), fraud (*Betrug*), credit fraud (*Kreditbetrug* under § 265b StGB), and subsidy fraud (*Subventionsbetrug* under § 264 StGB). The defendant had obtained a *KfW-Schnellkredit* – a rapid-disbursement emergency loan program introduced during the COVID-19 pandemic – by submitting falsified data in support of his application. The BGH confirmed the conviction, finding no legal error in treating these offenses as being in ideal concurrence.[34]

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29 Strafgesetzbuch (StGB) vom 15. Mai 1871. § 264 Abs. 3 i.V.m. § 263 Abs. 5 StGB. URL: https://www.gesetze-im-internet.de/stgb/__264.html (Datum des Zugriffs: 02.06.2026); Kanzlei Kujus Strafverteidigung. URL: https://kujus-strafverteidigung.de/strafrecht/subventionsbetrug/ (Datum des Zugriffs: 02.06.2026).

30 § 265b Strafgesetzbuch (StGB). Kreditbetrug. URL: https://dejure.org/gesetze/StGB/265b.html (дата звернення: 25.05.2026).

31 Bundeskriminalamt (BKA). Support of Investigation and Prevention. 2015. Available at: BKA Official Website (accessed 27 May 2026).

32 Küllmer M. Lage und Bekämpfung der Wirtschaftskriminalität aus Sicht des Bundeskriminalamtes // VEKO Online. 2015. URL: https://www.veko-online.de (accessed 27 May 2026).

33 Bundeskriminalamt (BKA). Bundeslagebild Wirtschaftskriminalität (various annual reports). URL: https://www.bka.de (accessed 27 May 2026).

34 Bundesgerichtshof (BGH). Beschluss vom 18.03.2026. Az.: 3 StR 434/25. URL: https://www.hrr-strafrecht.de/3/25/3-434-25.php, dejure.org (дата звернення: 27.05.2026).

A particularly noteworthy second case arose from the COVID-19 pandemic emergency subsidy programs (see Neustarthilfe, Neustarthilfe Plus, Neustarthilfe 2022) administered by the State of North Rhine-Westphalia. The court's explicit invocation of § 264(1)(1) StGB as a source of a heightened duty of care is doctrinally significant – it establishes an explicit interface between § 264 StGB and administrative subsidy law.[35]

III. Comparative Legal Analysis of Ukraine and Germany

1. A comparative analysis of the elements of criminal offences

Article 222 of the Criminal Code of Ukraine provides for criminal liability for fraud involving financial resources, that is, the provision of knowingly false information to public authorities, banks or other creditors with the aim of unlawfully obtaining subsidies, subventions, grants, loans or tax relief. In legal terms, this offence is similar to Sections 264 and 265b of the German Criminal Code (Strafgesetzbuch, StGB), which regulate liability for subsidy and credit fraud.[36]

Section 264 of the GCC (*Subventionsbetrug*) establishes liability for subsidy fraud. The objective element of this offence consists in providing false or incomplete information regarding facts relevant to the receipt of a subsidy, using a subsidy for purposes other than those for which it was intended, or concealing information relevant to its provision.

§ 265b StGB („Kreditbetrug») regulates liability for credit fraud. This refers to the submission of false or incomplete financial documents, balance sheets, reports or written information when applying for a business loan. Furthermore, it is a criminal offence to conceal a deterioration in financial circumstances that is of material significance to the lender's decision.[37]

Article 222 of the Criminal Code of Ukraine ('Fraud involving financial resources') is contained in Section VII of the Special Part of the Criminal Code ('Criminal offences in the sphere of economic activity') and provides for liability for providing knowingly false information to state authorities, authorities of the Autonomous Republic of Crimea or local self-government bodies, banks or other creditors with the aim of obtaining subsidies, subventions, grants, loans or tax concessions.[38]

§ 264 StGB regulating subsidy fraud and § 265b StGB (*Kreditbetrug*) are set out in Section 22 of the Special Part of the German Criminal Code. Both provisions are so-called „*betrugsähnliche abstrakte Gefährdungsdelikte*"– that is, offences similar to fraud, which constitute abstract offences involving the creation of a risk at the stage preceding the fraud (Vorfeld des Betruges). Unlike the general definition of fraud under Section 263 of the GCC, these provisions include the element of deception, whereas misleading conduct, disposal of property and financial loss are not mandatory elements.[39]

[35] Verwaltungsgericht Düsseldorf (VG Düsseldorf). Urteil vom 24.03.2026. Az.: 16 K 1890/25. URL: vg-duesseldorf.nrw.de (дата звернення: 27.05.2026).
[36] German Criminal Code (Strafgesetzbuch) – Section 264 Subsidy Fraud, 2015.
[37] Кримінальний кодекс України: ст. 222. Кодекси України. URL: https://kodeksy.com.ua/kriminal_nij_kodeks_ukraini/statja-222.htm (дата звернення: 01.06.2026).
[38] Universität Trier. Kapitalanlage und Kreditbetrug. URL: https://www.uni-trier.de/fileadmin/fb5/prof/STR001/Schwerpunkt/kapitalanlage_und_kreditbetrug.doc (дата звернення: 01.06.2026).
[39] THOLL Rechtsanwalt. Subventionsbetrug § 264 StGB. URL: https://kanzlei-tholl.de/strafrecht/subventionsbetrug.html (дата звернення: 01.06.2026).

All three provisions share a common objective – to ensure the proper functioning and protection of the financial and credit system; however, each regulates a separate segment of the relevant legal relationships. Article 222 of the Criminal Code of Ukraine is characterised by the broadest scope of legal protection, as it applies to relations connected with the receipt of subsidies, grants, loans, subventions and tax concessions. In contrast, § 264 StGB is aimed at protecting only relations in the sphere of the provision and use of state subsidies, whilst § 265b StGB covers exclusively relations arising in the course of commercial lending between business entities.[40]

From an objective point of view, the offence is characterised by active conduct – the provision by the persons in question, in any form, of knowingly false information to public authorities. In this context, the provision of knowingly false information constitutes a deception of the state or creditors, which takes written form and is accompanied by the use of forged or otherwise falsified documents.[41]

Under Part 1 of Article 222, the offence is a formal one – the offence is deemed to have been committed at the moment false information is provided with the relevant intent. Under Part 2, if the act has caused significant financial loss, fraud involving financial resources constitutes a material element of the offence and is deemed to have been committed from the moment such loss is actually caused.[42]

Section 264(1) of the GCC provides for four alternative forms of the offence: 1) providing false or incomplete information regarding facts relevant to the grant; 2) misusing the grant; 3) failing to disclose changes in circumstances relevant to the grant; 4) using false supporting documents.[43]

A key feature of Section 264 of the GCC is that the offence is complete as soon as the listed acts are committed. For alternatives 1, 3 and 4, unlike in the case of general fraud, the occurrence of a result in the form of damage is not required. Thus, Section 264 of the GCC is an offence of strict liability, which distinguishes it significantly from general fraud (Section 263 StGB) and brings it closer to Part 1 of Article 222 of the Criminal Code of Ukraine.[44]

Section 265b(1 of the GCC establishes criminal liability for three specific forms of intentional fraud in connection with an application for a ‘business loan’: the submission of false or incomplete documents (balance sheets, reports); the provision of false or incomplete information in writing by the applicant themselves; and the concealment of a significant deterioration in the economic situation.[45]

With regard to the perpetrator of the offence, Article 222 of the Criminal Code of Ukraine provides for a specific perpetrator: this may be a citizen who is the founder or a participant in a business entity, or an official of such an

40 Streifler & Kollegen Rechtsanwälte. Kreditbetrug (§ 265b StGB). URL: https://www.streifler.de/lexikon/kreditbetrug-c2-a7-265b-stgb (дата звернення: 01.06.2026).
41 Постатейний коментар до Кримінального кодексу України. URL: http://ukrkniga.org.ua/ukrkniga-text/699/223/ (дата звернення: 01.06.2026).
42 Науково-практичний коментар до ст. 222 Кримінального кодексу України. *Юристи України* (дата звернення: 17.05.2026).
43 Haug F. Subventionsbetrug bei Fördermitteln. URL: https://haug.law/glossar/subventionsbetrug-bei-foerdermitteln/ (дата звернення: 01.06.2026).
44 Strafgesetzbuch (StGB) vom 15. Mai 1871. § 264 Subventionsbetrug. URL: https://www.gesetze-im-internet.de/stgb/__264.html (дата звернення: 01.06.2026).
45 Streifler & Kollegen Rechtsanwälte. Kreditbetrug (§ 265b StGB). URL: https://www.streifler.de/lexikon/kreditbetrug-c2-a7-265b-stgb (дата звернення: 01.06.2026).

entity. Section 264 of the GCC has a general subject ('jedermann'). Section 265b of the GCC covers only loans from a business to a business.[464748]

As regards the subjective element, any fraud, including that provided for in Article 222 of the Criminal Code, is committed intentionally. As a general rule, for the basic offence under Section 264 of the GCC, intent in any form is sufficient, including indirect intent (dolus eventualis). However, § 264 StGB has a fundamental feature: in the case of offences committed in the forms set out in Nos. 1–3, negligence in the form of gross carelessness (Leichtfertigkeit) is also sufficient. Unlike § 263 StGB, the intention to enrich oneself (Bereicherungsabsicht) is not required.[4950]

Article 222 of the Criminal Code of Ukraine and § 265b of the GCC recognise only intent, whereas § 264 StGB is unique in that it also provides for a form of negligence (gross negligence). The mandatory objective of enrichment or obtaining a benefit as an element of the offence is enshrined only in Article 222 of the Criminal Code of Ukraine (the specific objective of obtaining financial resources); in §§ 264 and 265b of the StGB, it is not required.[51]

2. A comparative analysis of criminal law sanctions

Under Article 222(1) of the Criminal Code of Ukraine, the penalty is a fine of between 1,000 and 4,000 non-taxable minimum incomes, together with disqualification from holding certain positions or engaging in certain activities for a period of up to three years; under Part 2 – a fine of between 3,000 and 10,000 non-taxable minimum incomes, with a similar additional penalty.[52]

Subsidy fraud (§ 264 StGB) is generally punishable by imprisonment for up to five years or a fine. Credit fraud (§ 265b StGB) is punishable by imprisonment for up to three years or a fine. In particularly serious cases, a more severe penalty may be imposed.[53]

Another difference is that, unlike Sections 264 and 265b of the GCC, Article 222 of the Criminal Code of Ukraine does not provide for a specific mechanism for exemption from criminal liability in connection with the voluntary prevention of harm following the commission of a crime.

3. A comparative analysis of case law

Case law is one of the most important tools for clarifying criminal law provisions. A comparison of the approaches of the Supreme Court of Ukraine and the Federal Court of Germany (BGH) to the classification and proof of

46 Кримінальний кодекс України: ст. 222. Кодекси України. URL: https://kodeksy.com.ua/kriminal_nij_kodeks_ukraini/statja-222.htm (дата звернення: 01.06.2026).
47 Kujus T. Subventionsbetrug – § 264 StGB. URL: https://kujus-strafverteidigung.de/strafrecht/subventionsbetrug/ (дата звернення: 01.06.2026).
48 Strafgesetzbuch (StGB) vom 15. Mai 1871. § 265b Kreditbetrug. URL: https://www.gesetze-im-internet.de/stgb/__265b.html (дата звернення: 01.06.2026).
49 Кримінальний кодекс України від 05.04.2001 № 2341-III. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text (дата звернення: 02.06.2026).
50 THOLL Rechtsanwalt. Subventionsbetrug. URL: https://kanzlei-tholl.de/strafrecht/subventionsbetrug.html (дата звернення: 02.06.2026).
51 Streifler & Kollegen Rechtsanwälte. Kreditbetrug (§ 265b StGB). URL: https://www.streifler.de/lexikon/kreditbetrug-c2-a7-265b-stgb (дата звернення: 02.06.2026).
52 Кримінальний кодекс України від 05.04.2001 № 2341-III. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text (дата звернення: 02.06.2026).
53 Ferner J. Subventionsbetrug: BGH zur Reichweite des Vermögensschadens nach § 264 StGB. URL: https://www.ferner-alsdorf.de (дата звернення: 25.05.2026).

financial fraud reveals both common trends, resulting from the similar nature of the provisions, and fundamental differences, reflecting different legal traditions and procedural standards.[54]

The main guideline for lower courts is Resolution No. 3 of the Plenum of the Supreme Court of Ukraine of 25 April 2003 'On the practice of application by courts of legislation on liability for certain offences in the sphere of economic activity'. The Plenum of the Supreme Court of Ukraine clarified that the offence provided for in Part 1 of Article 222 of the Criminal Code is deemed to have been committed from the moment the guilty person provides knowingly false information, regardless of whether the objective is achieved.

The most challenging issue for Ukrainian courts is distinguishing between fraud involving financial resources (Article 222 of the Criminal Code) and fraud (Article 190 of the Criminal Code). The Criminal Cassation Chamber of the Supreme Court has set out the legal position: the key criteria for distinguishing between the two are the direction of intent and the point at which it arose.[55]

The Supreme Court, sitting as the Criminal Cassation Court in Case No. 509/1836/14-k, noted: that if a person did not intend to permanently appropriate the loan funds, but received them with the intention of using and subsequently repaying them, even if false information was provided, such actions should be classified under Article 222 of the Criminal Code of Ukraine.[56]

4. A comparison of financial fraud statistics

A comparative analysis of the statistics reveals significant differences between the two systems. In Ukraine, 39 criminal offences under Article 222 of the Criminal Code were recorded in 2025, which is a significantly lower figure compared to Germany, where between 70,000 and 85,000 cases of economic crime are recorded annually. This difference is explained by both the size of the economies and differences in accounting methods and law enforcement.

5. Conclusions and recommendations for improving Ukrainian legislation

We have carried out a comparative analysis of the elements of offences, case law and statistics relating to Article 222 of the Criminal Code of Ukraine and Sections 264 and 265b of the GCC, which allows us to draw the following general conclusions.

Firstly, both legal systems are based on a shared principle, namely that financial fraud in the area of obtaining loans and subsidies is so harmful to society that it is appropriate to bring criminal liability into play at the stage when the fraudulent act is committed, without waiting for actual financial consequences to materialise. Both the Ukrainian and German models are based on the formal elements of a criminal offence.

Secondly, there are significant differences between the two models, both in terms of the level at which standards are set, the system of qualifying criteria, and the approaches to the subjective element and the role of judicial

[54] Постанова Пленуму Верховного Суду України від 25.04.2003 № 3 «Про практику застосування судами законодавства про відповідальність за окремі злочини у сфері господарської діяльності». URL: https://zakon.rada.gov.ua/laws/show/va003700-03 (дата звернення: 02.06.2026).

[55] Верховний Суд України. Огляд судової практики Касаційного кримінального суду. URL: https://supreme.court.gov.ua (дата звернення: 02.06.2026).

[56] Верховний Суд у складі Касаційного кримінального суду. Постанова від 28.10.2020 у справі № 509/1836/14-к. URL: https://reyestr.court.gov.ua (дата звернення: 02.06.2026).

precedent in defining the elements of an offence. These differences provide a basis for proposals to improve both Ukrainian and German legislation.

Regarding the shortcomings of Article 222 of the Criminal Code of Ukraine: one of the problems with this provision is that the distinction between Article 222 and Article 190 of the Criminal Code is made solely by establishing the intent at the time the false information was provided.[57]

The issue with Article 222 of the Criminal Code of Ukraine is that the provision is outdated; it was adopted in 2001 and has undergone only minor amendments in 2026. Over the past 25 years, the credit and financial system, forms of state support for entrepreneurship, and financial fraud techniques have undergone radical changes**.**

The lack of differentiation between forms of fraudulent conduct presents a further problem, as the provision of Article 222 of the Criminal Code of Ukraine describes such conduct using a single, generalised phrase: 'providing knowingly false information'. The provision does not distinguish between: the active provision of false information; the provision of incomplete information that is misleading; or the concealment of circumstances which there is a duty to disclose.[58]

The experience in Germany shows that a significant proportion of subsidy-related offences take the form of gross negligence. In Ukraine, however, such offences are not subject to criminal prosecution unless intent is proven.

One of the proposals is to broaden the scope of persons liable for the offence. In particular, we believe it would be appropriate to include sole traders and authorised representatives who sign and submit the relevant applications. Such a distinction between perpetrators is in line with the model set out in Section 264 of the GCC, where the perpetrator may be any natural or legal person involved in commercial transactions.

Article 222 of the Criminal Code of Ukraine requires a systematic update, and the German experience with Sections 264 and 265b of the GCC provides a valuable conceptual basis for such reform. The key areas are: detailing the forms of fraudulent conduct and expanding the scope of persons liable for this offence. Such changes will not only enhance the effectiveness of the criminal law provision but also bring Ukrainian legislation closer to European Union standards, which is particularly relevant in the context of current European integration.

[57] Науково-практичний коментар до ст. 222 Кримінального кодексу України. *Юристи України* (дата звернення: 02.06.2026).
[58] Науково-практичний коментар до ст. 222 Кримінального кодексу України. *Юристи України* (дата звернення: 02.06.2026).

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Satzger H., Schluckebier W., Widmaier G. Strafgesetzbuch Kommentar. 5. Aufl. Heymanns, 2021.

Schünemann B. § 264 Subventionsbetrug. Leipziger Kommentar zum Strafgesetzbuch. URL: https://datenbank.nwb.de/Dokument/136684_264/ (Datum des Zugriffs: 07.06.2026).

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Seminararbeit von

Iryna Sema

Analysis of Articles 354, 368-3, 368-4, 370 uStGB vs. Sections 299, 331 et seq. StGB

Analyse der Artikel 354, 368-3, 368-4, 370 des ukrainischen Strafgesetzbuches im Vergleich zu §§ 299, 331 ff. StGB

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I. Introduction

Corruption today represents one of the greatest challenges for any legal system. While we frequently hear about bribes within courts, ministries, or the police, the modern economy demonstrates that corruption has long transcended the boundaries of state institutions. It actively infiltrates private business, distorting fair competition and undermining trust in market institutions.

For Ukraine, studying this topic is of paramount importance. As a candidate for accession to the European Union, our country has undertaken serious obligations to harmonize its criminal legislation with European standards. This particularly concerns the adaptation of our legal norms to EU Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the so-called PIF Directive). To successfully integrate, we must not simply adopt European laws, but thoroughly understand how they operate in practice.

A comparative legal analysis between the Criminal Code of Ukraine (CCU) and the Criminal Code of Germany (*Strafgesetzbuch* – StGB) serves as an ideal tool for such a study. Both countries belong to the Romano-Germanic legal family; however, their approaches to the punishment of corruption differ slightly. While Ukrainian anti-corruption legislation has been changing rapidly and often chaotically under the pressure of reforms in recent years, the German system relies on a long, clear dogmatic tradition where every element of the *corpus delicti* has been refined by decades of judicial practice[1].

The object of research is the Criminal-law relations in the sphere of countering corruption offenses within the private and public sectors in Ukraine and Germany.

And subject is here the specific legislative acts, namely Articles 354, 368-3, 368-4, and 370 of the CCU in comparison with Paragraphs (§§) 299, 331, and subsequent sections of the German StGB.

This paper will therefore aim at a comprehensive comparative legal analysis of the legislation of Ukraine and Germany regarding criminal liability for corruption offenses in the private sector and the sphere of public services, as well as defining the procedural and substantive features of such instruments as the provocation of bribery and corporate liability.

To achieve the stated aim, the following objectives must be addressed:

Firstly, to analyse how bribery is penalized in Ukrainian business: examine Articles 354 and 368-3 of the CCU and clearly demonstrate the criteria by which the law separates the liability of rank-and-file employees from company directors.

Next, to study the German approach to business corruption: investigate Paragraph (§) 299 of the StGB and determine why private-sector bribery in Germany is primarily considered a crime against fair market competition.

In the third place to evaluate the status of "independent professions": clarify why Ukraine allocated a distinct article (Art. 368-4 of the CCU) for the bribery of notaries, auditors, and experts, and how this segment is regulated in Germany.

Furthermore to compare the rules governing the provocation of bribery: analyse Ukrainian Article 370 of the CCU (provocation of bribery) and the German doctrine of *Tatprovokation*, relying on the strict standards of the European Court of Human Rights (ECtHR) regarding police traps[2].

And last but not least to compare the penalties imposed on companies: investigate how a legal entity (firm) is penalized for the corruption of its directors in Ukraine (measures of a criminal-law character) versus Germany

[1] Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 45.
[2] Справа «Раманаускас проти Литви» (Ramanauskas v. Lithuania), Заява № 74420/01, Рішення ЄСПЛ від 5 лютого 2008 року.

(heavy administrative fines under the OWiG act)[3].

II. Chapter 1. Criminal Law Analysis Of Corruption Offenses In Ukraine

1. Bribery in the Private Sector: Articles 354 and 368-3 of the CCU

Corruption is traditionally associated with state officials, yet modern business suffers from it no less. For a long time in Ukraine, criminal law predominantly protected the state apparatus from bribery. However, with the commencement of European integration processes and the adaptation of our legislation to international standards, explicit norms penalizing bribery within private business appeared in the Criminal Code of Ukraine. Currently, this block is mainly represented by Articles 354 and 368-3 of the CCU[4].

The main feature of the Ukrainian approach is a clear division of criminal liability based on the specific professional status held by the private company employee. If we speak about the generic object of these crimes, it is not the authority of state power, but the established legal order of private law enterprise functioning, fair business practices, and internal labour discipline.

The Ukrainian legislator divided liability in the private sector based on the scope of the subject's authority. Put simply, the law clearly distinguishes whom exactly is being bribed an ordinary executor or a director who makes decisions.

Let us first analyse Article 354 of the CCU. It penalizes the bribery of an employee of an enterprise, institution, or organization who is not a public official[5].

Subject of the crime is either general (if we talk about the person offering or giving the money) or special (a rank-and-file hired employee of an enterprise who takes the money and does not possess subordinates or managerial functions)[6]. This could be an ordinary procurement manager, a courier, a cashier, a secretary, or a rank-and-file IT specialist[7].

On the objective side it consists of two independent forms: active bribery (offering, promising, or providing a benefit) and passive bribery (demanding or receiving a benefit).

The subject matter of the crime is an "illegal benefit." In practice, this is understood as money, property, advantages, services, or privileges that a person receives without any legal grounds.

A completely different level of liability is envisaged by Article 368-3 of the CCU[8]. It regulates the bribery of an official of a legal entity of private law. Here we are already talking about serious figures directors, board members, chief accountants, heads of financial departments, or company liquidators.

To clearly understand who exactly qualifies as an official in the private sector, we must refer to Note 1 to Article 364-1 of the CCU. It teaches us that private sector officials are persons who perform the following specific duties:

1. Organizational and managerial duties (leading a team, staff allocation, the right to issue binding orders to subordinates).
2. Administrative and economic duties (management and disposal of property, signing financial agreements,

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3 Ordnungswidrigkeitengesetz (OWiG) Закон Німеччини про адміністративні правопорушення в редакції від 19 лютого 1987 року (зі змінами).

4 Конвенція Організації Об'єднаних Націй проти корупції від 31 жовтня 2003 року. Ратифікована Законом України № 740-V від 18.10.2006.

5 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 354.

6 Науково-практичний коментар до Кримінального кодексу України / За ред. В. Я. Тація, В. П. Пшонки. Х.: Право, 2013. С. 844.

7 Постанова Пленуму Верховного Сусу України «Про судову практику у справах про хабарництво» № 5 від 26.04.2002 року (із наступними змінами).

8 Кримінальний кодекс України, *supra* примітка 11, Стаття 368-3.

controlling company bank accounts)[9].

The objective side of Article 368-3 of the CCU is structurally similar to Article 354 (possessing both active and passive forms), but the punishments are significantly harsher, up to actual imprisonment for a term of 3 to 7 years. Since a director holds more power, their betrayal of company interests causes far greater damage to the market.

The main problem in Ukrainian judicial practice regarding this article is that, in reality, it is difficult to prove the director's intent to act specifically *against* the interests of their company[10]. If a director took a "kickback" for signing a contract that still brought the firm some profit, the defense in court often tries to reclassify it as a mere violation of corporate ethics or a civil dispute, which is why there are relatively few actual convictions under Art. 368-3 of the CCU in Ukraine.

2. Bribery of Public Service Providers (Article 368-4 of the CCU)

Article 368-4 of the CCU is a rather unique and specific norm of our code. It covers so-called "hybrid" subjects. To simplify, these people are not classic state officials (like ministers or police officers), but they cannot be called ordinary private business either. They possess a special status: the state has officially authorized them to perform important public functions on its behalf[11].

To avoid confusion, the legislator clearly identified four main groups of such professionals, which are indicated in the scheme below:

- Notaries and auditors (who control the legality of transactions and financial reporting);
- Experts and appraisers (who provide official conclusions for courts or assess property value);
- Bankruptcy managers / liquidators (key figures who manage the property of enterprises during bankruptcy proceedings);
- Arbitrators, as well as members of panels or certified subjects performing state functions defined by law[12].

When someone bribes a notary, expert, or auditor, damage is caused to two things simultaneously. First, public trust in these professions is damaged, as society expects absolute honesty and independence from a notary or a forensic expert. Second, such bribery completely destroys fair procedure for instance, instead of a lawful division of property during bankruptcy or an honest real estate appraisal, everything is decided through money, which strikes at the interests of ordinary citizens[13].

On the objective side, the familiar model applies here: both giving a bribe for the right decision (active bribery) and its extortion or receipt by this specialist (passive bribery) are criminalized.

However, proving guilt under this article in Ukrainian judicial practice is very difficult. The defense in court almost always uses the same loophole: they claim that the money received by, for example, an expert or an appraiser, was not a bribe for a "needed" conclusion, but simply an unofficial fee for "urgency," "complexity of work", or additional consultation. Because of this, they often attempt to shift the case from the criminal plane into an ordinary civil honorarium, or at most, a disciplinary violation to strip the individual of their license rather than imprisoning them[14].

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9 Кримінальний кодекс України, *supra* примітка 11, Стаття 364-1 (Примітка 1).

10 Дудоров О. О. Кримінально-правова протидія комерційному підкупу: проблеми теорії та практики // Вісник Луганського державного університету внутрішніх справ. 2021. № 2. С. 45–58.

11 Науково-практичний коментар до Кримінального кодексу України / За ред. М. І. Хавронюка. Київ: ФОП Маслаков, 2024. С. 1024.

12 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 368-4.

13 Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 341.

14 Узагальнення судової практики розгляду кримінальних проваджень про корупційні кримінальні правопорушення Касаційного кримінального суду у складі Верховного Суду від 12.05.2023.

3. Provocation of Bribery (Article 370 of the CCU)

Article 370 of the CCU is perhaps the most controversial norm in all of our anti-corruption legislation. It penalizes officials (most often law enforcement officers: police officers or detectives) who intentionally and artificially create conditions to compel a person to take or give a bribe in order to subsequently arrest them for it[15].
To clearly differentiate this, Ukrainian doctrine utilizes two criteria, which I have combined into the comparative table below:
Table: Investigative Experiment (NSRD) vs. Provocation of a Crime (Art. 370 CCU)

Distinction Criterion	Lawful Investigative Experiment	Provocation of Bribery (Crime)
Behavior of the Agent / Police	Passive. The police do not push toward the crime; they simply observe or record the person's actions.	Active. The agent initiates the conversation about money, persuades, pressures, complains, or threatens.
Intent of the Suspect	Already existed. The person was searching for an opportunity to take or give a bribe prior to the appearance of the police[16].	Created artificially. The person had no intention of breaking the law until they were actively induced to do so[17].

Source: Own Compilation.

The Ukrainian legislator established strict criminal liability for provocation (up to 7 years in prison), since such police actions completely negate the European principle of a fair trial.
Today, the Supreme Court of Ukraine approaches this strictly. If the defense proves that law enforcement officers "helped" the intent to arise even slightly, the court will declare all gathered evidence (money, hidden camera recordings) inadmissible, fully acquit the defendant, and a case may be opened against the detectives themselves under Article 370 of the CCU[18].

4. Measures of a Criminal Law Character Regarding Legal Entities

The classic doctrine of Ukrainian criminal law is based on the principle of individual guilt and recognizes exclusively a sane natural person as the subject of a crime[19]. However, the specific nature of modern commercial corruption lies in the fact that the unlawful actions of a natural person (for example, a director) are frequently committed not for personal enrichment, but to obtain excess profits or competitive advantages for a specific company. In order to fulfill the recommendations of European institutions and implement international standards, large-scale

15 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Стаття 370.
16 Науково-практичний коментар до Кримінального кодексу України / За ред. В. Я. Тація, В. П. Пшонки. Х.: Право, 2013. С. 860.
17 Мельник М. І. Кримінально-правова протидія корупції: теорія та практика. Київ: Атіка, 2021. С. 402.
18 Постанова Великої Палати Верховного Суду у справі № 208/5548/15-к від 11.12.2019 року // Єдиний державний реєстр судових рішень.
19 Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III (зі змінами та доповненнями). Статті 19, 22.

amendments were introduced to the CCU in 2014, establishing a special institute Section XIV-1 "Measures of a Criminal Law Character Regarding Legal Entities." This step made it possible to hold enterprises, institutions, or organizations financially liable for corruption offenses committed by their leaders.

To apply measures of a criminal-law character to an enterprise, the simultaneous presence of clearly defined substantive legal grounds is required. First, the law requires a special status of the natural person: the crime, notably commercial bribery under Articles 368-3 or 368-4 or active bribery under Article 369 of the CCU, must be committed not by an ordinary employee, but by an authorized person of the legal entity, which includes directors, members of collegial bodies, or persons acting on the basis of a power of attorney[20]. Second, a functional link is a mandatory condition, meaning that the unlawful actions of this authorized person must be committed directly on behalf of or in the interests of the company for example, to ensure victory in public procurement or to avoid tax audits[21].

If these grounds are proven during a trial, the criminal court has the right to apply three types of measures of a criminal-law character to the legal entity. The primary financial measure is a fine, the amount of which is differentiated based on the severity of the crime committed by the authorized person and can be calculated in fixed sums or in a twofold amount of the illegal benefit received by the company[22]. The next measure is the confiscation of property, which involves the forced, uncompensated seizure into state ownership of property that was the subject matter of the crime or obtained as a result of its commission. The exceptional and harshest measure of coercion is the liquidation of the legal entity, which effectively terminates the company's activities and is applied by the court in cases of serious or especially serious crimes if the entire activity of the firm was directed toward the realization of criminal or corrupt schemes.

Despite the progressive nature of this institute, its practical implementation in Ukraine remains ineffective. An analysis of judicial practice indicates a critically low number of verdicts where actual coercive measures were applied directly to companies. In the vast majority of cases, criminal prosecution is limited to the conviction of the specific director. The legal entity itself frequently continues to function, often undergoing a procedure of rebranding or changing its founders, which allows it to evade material sanctions and continue participating in economic turnover.

III. Chapter 2. Comparative Analysis With German Criminal Law (StGB)

1. Bribery in the Private Sector under § 299 StGB: Protection of Fair Competition

Unlike the Ukrainian anti-corruption model, which splits private sector bribery based on the organizational hierarchy and authority of the subject (Articles 354 and 368-3 of the CCU), the German approach is anchored in an entirely different dogmatic tradition[23]. Under the German Criminal Code (*Strafgesetzbuch* – StGB), corruption within commercial transactions is fundamentally regulated by Paragraph 299 StGB (*Bestechlichkeit und Bestechung im geschäftlichen Verkehr*)[24].

The defining structural characteristic of § 299 StGB is its underlying protective purpose (*Schutzzweck*). While the Ukrainian legislator protects internal labor discipline and the distinct corporate duties of directors versus rank-

[20] Кримінальний кодекс України, *supra* примітка 29, Стаття 96-3.
[21] Науково-практичний коментар до Кримінального кодексу України / За ред. М. І. Хавронюка. Київ: ФОП Маслаков, 2024. С. 284.
[22] Кримінальний кодекс України, *supra* примітка 29, Стаття 96-7.
[23] See *Simonis* CCZ 2026. S. 99–101.
[24] Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), § 299 (Bestechlichkeit und Bestechung im geschäftlichen Verkehr).

and-file employees, the German doctrine interprets commercial bribery first and foremost as a crime against fair market competition. The German legal framework views corruption in the private sector as a severe distortion of competitive market forces, because economic decisions should be driven exclusively by quality, price, and merit, rather than illicit backroom financial incentives.

Furthermore, corporate governance in Germany heavily utilizes structured Compliance Management Systems (CMS) based on recognized audit guidelines such as IDW PS 980[25]. According to these frameworks, corporate compliance relies on a fundamental seven-element cycle where everything initiates with the internal compliance culture, shaped heavily by the *"tone at the top"* set by the executive management[26]. A core practical element of this culture is the corporate Code of Conduct. Under German corporate practice, an internal policy such as a gifts and hospitality guide is designed to clearly outline to employees what they are legally permitted to do and what they must strictly avoid.

German corporate compliance programs frequently use the provisions of Paragraph 299 StGB as a benchmark to assess legal risk. In practice, rather than attempting to outline abstract background information regarding the exact technical elements of § 299 StGB or how it delineates from other statutory norms, effective internal guidelines are condensed to provide straightforward operational rules for employees. This creates a sharp analytical contrast with the Ukrainian private sector model, shifting the focus from individual employee status under the CCU to the broader systemic protection of fair market rules and risk-based preventive compliance procedures under German law.

2. Corruption in Public Services and the Status of Independent Professionals in Germany

The criminal law processing of corruption in public services represents a complex intersection of administrative and penal dogmatics in both legal systems. In Ukraine, the legislator introduced a specialized, standalone norm Article 368-4 of the CCU to penalize the bribery of "hybrid" non-state professionals who provide public services under official state authorization, such as notaries, auditors, forensic experts, and bankruptcy liquidators.

In German criminal law, this sphere is fundamentally governed by the core official corruption offense of Paragraph 331 StGB (*Vorteilsannahme* – acceptance of a benefit). The primary protective purpose of § 331 StGB is to preserve public confidence in the absolute integrity, objectivity, and "non-purchasability" (*Nichtkäuflichkeit*) of public service providers and state functionaries. The offense is classified as an abstract endangerment crime (*abstraktes Gefährdungsdelikt*), meaning that the protected legal interest is compromised the moment a public actor creates even the mere appearance of being susceptible to outside financial influence.

The statutory elements under § 331 StGB require a specific structural alignment:

1. Eligible Subject (*Tauglicher Täter*): The perpetrator must hold the status of a public official (*Amtsträger*), a European public official, or a person specially bound to public service (*für den öffentlichen Dienst besonders Verpflichteter*)[27].
2. The Benefit (*Vorteil*): Defined broadly as any material or immaterial transfer or award that lacks a legally enforceable right and objectively improves the legal, economic, or personal position of the recipient or a third party[28].
3. Relationship to Public Service (*für die Dienstausübung*): The benefit must be linked to the performance

[25] IDW Prüfungsstandard 980 des Instituts für Wirtschaftsprüfer in Deutschland: Grundsätze ordnungsmäßiger Prüfung von Compliance Management Systemen (September 2022).
[26] See *Simonis,* CCZ 2026. S. 100–101.
[27] *Kindhäuser / Hilgendorf.* Strafgesetzbuch, 2025. § 331 (Vorteilsannahme). Rn. 1–10.
[28] See *Böttger / Böttger.* Wirtschaftsstrafrecht, Kapitel 5: Korruption. a) Sozialadäquanz. Rn. 87–89.

of the recipient's public duties.

This relationship forms the core dogmatic element known as the unlawful agreement (*Unrechtsvereinbarung*), which establishes the causal or teleological link between the public service execution and the receipt of the illicit benefit. Unlike the harsher offense of bribery (*Bestechlichkeit* under § 332 StGB), § 331 StGB does not require the public servant to perform an *unlawful* or non-compliant act; even a fully lawful exercise of public duties or general "goodwill cultivation" is criminalized if it signals a dependency on external financial sponsorship.

A major point of comparison arises from the landmark School Photographer Case (*Schulfotografen-Fall*), adjudicated by the Federal Supreme Court of Germany[29].. In this case, professional photographers entered into agreements with school principals to take student portraits on school grounds. In exchange, the photographers provided financial contributions directly to the schools, framed as "sponsoring", "rebates", or "expense compensations". The 3rd Criminal Senate of the BGH held that even if these payments represented a financially reasonable and proportionate exchange for the school's organizational efforts, they could still constitute an illicit *Vorteil* and trigger an *Unrechtsvereinbarung* under §§ 331 et seq. StGB[30].

The BGH established that because a civil contract between a public institution and a private entity does not automatically erase the corruptive character of a transaction, a strict administrative legality review (*verwaltungsrechtliche Rechtmäßigkeitsprüfung*) must be conducted. Under the principle of the unity of the legal order (*Einheit der Rechtsordnung*), a public administration cannot demand or contractually agree to a financial reward or fee for its services unless it possesses an explicit, normative statutory authorization under the principle of the statutory reservation of law (*Gesetzesvorbehalt*)[31].

This creates a highly refined analytical contrast between the two nations:

Systemic Element	Ukrainian Framework (Art. 368-4 CCU)	German Framework (§ 331 StGB & BGH Jurisprudence)
Statutory Mechanism	Separate, standalone article explicitly enumerating specific independent professions (notaries, liquidators, auditors).	Unified official corruption offenses (§§ 331–333 StGB) applied through the expansive functional status of *Amtsträger*.
Core Dogmatic Test	Determination of whether the subject falls within the listed authorized groups or possesses delegated state functions.	Structural evaluation of the *Unrechtsvereinbarung* and an administrative legality review of the transaction under the *Gesetzesvorbehalt*.

[29] *BGH*, Judgment of May 26, 2011 - 3 StR 492/10.
[30] *BGH*, Urteil vom 26. Mai 2011 – 3 StR 492/10, wistra 2011, 391 ff.; see also *Schlöser J.*, NZWiSt 2013, 11 (12).
[31] *Rönnau* JuS. 2011. S. 311–313.

Exemptions / Safe Harbors	Often handled loosely via defense arguments reclassifying payments into civil honorariums or disciplinary licensing disputes.	Formally restricted through strict doctrines of social acceptability (*Sozialadäquanz*) and specialized third-party funding regulations (*Drittmittelforschung*).

Source: Own Compilation.

Under German law, small, customary courtesies are deemed eventually in certain circumstances socially "acceptable" (so-called "*sozialadäquat*") and therefore excluded from the statutory definition of an illicit benefit, provided they are minor, customary, and rooted in standard social politeness (such as a token holiday tip or minor refreshments). Generally, German legal practice recognizes a baseline financial threshold of ca. €35 to €50 as socially acceptable (depending on inflation), balancing criminal law with tax and civil law standards[32]. However, substantial commercial arrangements such as the sponsoring of public entities, educational fundraisers, or university research require strict compliance with administrative protocols.

For instance, the BGH recognizes a specialized exception for third-party university research funding (*Drittmittelforschung*). To prevent a structural collision between the anti-corruption laws and the statutory academic duty of university professors to secure research sponsorships, the courts exclude these payments from the scope of § 331 StGB only if the formal university notification and approval procedures (*Anzeige- und Genehmungsverfahren*) are meticulously observed[33]. This system demands a high degree of transparency and documentation, directly shifting the anti-corruption focus in Germany from a simple list of professions to a deep, administrative and dogmatic analysis of institutional transparency.

3. Statutory Treatment of State Incitement and Corporate Regulatory Liability under German Law

The structural approach of German jurisprudence toward state-engineered investigative interference and corporate misconduct highlights a fundamental commitment to the constitutional principles of a fair trial and the limits of individual criminal culpability. Rather than introducing separate criminal prohibitions within the core penal framework, the German legal system processes these phenomena through procedural bars, substantive sentence mitigation remedies, and highly structured administrative-regulatory fine mechanisms. This reveals a sharp dogmatic tradition that prioritizes systemic institutional corrections over the creation of overlapping statutory crimes[34].

Under German criminal dogmatics, when a state agent, an undercover law enforcement investigator, or a state-directed confidential informant (*V-Mann*) actively induces, pressures, or manipulates an un-predisposed target into committing an offense that they otherwise would not have contemplated, the situation is managed via the specialized doctrine of state incitement (*Tatprovokation*)[35]. German jurisprudence explicitly rejects the model of defining this state overreach as an independent criminal offense within its penal code. Instead, such state-engineered traps are recognized by judicial organs as a severe, structural violation of the constitutional principle of a fair trial (*faires*

[32] See only *Reiff* CCZ. 2018. S. 194–196.
[33] *Kindhäuser / Hilgendorf.* Strafgesetzbuch: Lehr- und Praxiskommentar (LPK-StGB). 10. Auflage. Baden-Baden: Nomos, 2025. § 331 (Vorteilsannahme). Rn. 1–10.
[34] IDW-Prüfungsstandard 980 des Instituts für Wirtschaftsprüfer in Deutschland: Grundsätze ordnungsmäßiger Prüfung von Compliance Management Systemen (September 2022).
[35] See *Simonis,* CCZ, 2026, S. 99.

Verfahren), which is strictly protected under Article 6 of the European Convention on Human Rights (ECHR)[36]. The legal remedies applied by the German courts focus entirely on the procedural and material position of the incited individua. Under the established and long-standing practice of the Federal Court of Justice (*Bundesgerichtshof* – BGH), a verified *Tatprovokation* demands immediate judicial intervention. Depending on the intensity of the state's active pressure and the degree of deception employed by the police apparatus, the court must either implement a mandatory, drastic mitigation of the individual's criminal sentence or, in cases of flagrant and unconstitutional manipulation, declare a formal procedural bar to prosecution (*Verfahrenshindernis*). The imposition of a *Verfahrenshindernis* effectively neutralizes the state's right to proceed with the case, resulting in the immediate and mandatory dismissal of the entire criminal prosecution against the defendant[37].

In complete alignment with this individualistic philosophy, German legal doctrine also rejects the concept of formal corporate criminal liability, maintaining the strict traditional view that a legal entity, such as a company, firm, or institution, lacks the capacity to act with human-like criminal guilt (*Schuld*). Consequently, corporate involvement in bribery, market corruption, or institutional misconduct cannot be prosecuted under the standard criminal code. Instead, when an executive director, board member, or authorized manager commits a commercial corruption offense such as private sector bribery under Paragraph 299 of the StGB the corporate entity is held strictly accountable through administrative regulatory channels[38].

This corporate administrative liability is structurally governed by the German Regulatory Offenses Act (*Ordnungswidrigkeitengesetz* – OWiG), specifically leveraging the extensive provisions of Paragraph 30 OWiG[39]. Under this framework, a criminal or administrative court is authorized to impose a heavy corporate administrative fine (*Verbandgeldbuße*) directly upon the enterprise. To ensure absolute economic fairness and deterrence, the financial penalty under § 30 OWiG is meticulously divided by the authorities into two distinct operational components. The first component is a punitive element designed to penalize the enterprise for its organizational leadership failure and internal compliance deficits. The second, and often more severe, component is a mandatory economic skimming element (*Abschöpfungsteil*)[40]. This skimming mechanism is designed to strip the legal entity of 100% of the financial profits, competitive market advantages, or excess commercial yields gained as a result of the underlying corruption scheme, ensuring that corporate malfeasance remains completely unprofitable[41].

IV. Comparative Synthesis Of Ukrainian And German Anti-Corruption Frameworks

The structural and comparative analysis of the anti-corruption mechanisms of Ukraine and Germany reveals entirely distinct legislative methodologies, systemic priorities, and dogmatic traditions. While the Ukrainian model favors explicit substantive criminalization to target specific actors and deter state overreach, the German legal framework operates through constitutional-procedural remedies and highly developed administrative regulatory channels.

The primary systemic divergences between the two legal frameworks can be synthesized through the following

36 See European Convention on Human Rights (ECHR), opened for signature 4 November 1950, Art. 6 (*Right to a fair trial*) referencing it *Fischer*, Strafgesetzbuch, 73 edn., § 46, Mn. 66, 67 ff. and § 26, Mn. 12, which was developed by BGH Senats after revision by the ECtHR judgements.
37 See *Schlöser* NZWiSt 2013, 11 (12).
38 *Sommer / Tsambikakis.* Münchener Anwaltshandbuch Medizinrecht § 3, Rn. 168–170.
39 Gesetz über Ordnungswidrigkeiten (OWiG) in der Fassung der Bekanntmachung vom 19. Februar 1987 (BGBl. I S. 602), § 30.
40 *Böttger / Brockhaus.* Wirtschaftsstrafrecht, Kapitel 14: Medizin- und Arzneimittelstrafrecht. III. Die Bedeutung des Medizin- und Arzneimittelstrafrechts in der Praxis. Rn. 4.
41 Gesetz zur Bekämpfung der Korruption im Gesundheitswesen vom 30. Mai 2016 (BGBl. 2016 I Nr. 25).

core comparative areas:

Ukraine enforces a status-based division of commercial bribery under Articles 354 and 368-3 of the CCU, explicitly separating the liability of rank-and-file employees from executive directors who wield organizational authority. Conversely, Germany employs a unified approach in Paragraph 299 StGB[42]. The German system filters commercial corruption primarily through the lens of market functionalism, interpreting private-sector bribery as a severe distortion of fair market competition rather than a mere breach of internal corporate hierarchy.

The Ukrainian legislator relies on narrow statutory categorization, isolating non-state professionals such as notaries, auditors, and bankruptcy managers under a distinct, specialized provision (Article 368-4 of the CCU)[43]. Germany processes these same professional actors through its core official corruption offenses under Paragraph 331 StGB (*Vorteilsannahme*) by applying an expansive functional definition of a public official (*Amtsträger*). Furthermore, German jurisprudence filters these public service transactions through a strict administrative review under the *Gesetzesvorbehalt* and relies on established dogmatic safe harbors like social acceptability (*Sozialadäquanz*) and highly structured third-party research regulations (*Drittmittelforschung*)[44].

Ukraine controls investigative entrapment through direct substantive criminalization under Article 370 of the CCU, exposing law enforcement officers who artificially engineer a bribery trap to independent penal prosecution of up to 7 years in prison. Germany entirely rejects the substantive criminalization of investigators, opting instead for constitutional remedies focused on the target under the doctrine of *Tatprovokation*[45]. Grounded in Article 6 of the ECtHR, German courts neutralize police entrapment by granting a severe mitigation of the defendant's sentence or by declaring an absolute procedural bar to prosecution (*Verfahrenshindernis*), which results in the immediate, mandatory dismissal of the criminal case[46].

The Architecture of Corporate Liability shows Ukraine adapts to international standards by housing quasi-criminal "measures of a criminal-law character" within Section XIV-1 of its core penal framework, allowing criminal courts to directly impose fines, property confiscation, or mandatory liquidation on corporate entities. Germany rigidly maintains the individualistic principle of criminal guilt (*Schuld*), holding that legal entities lack the capacity to act with human-like blameworthiness Corporate misconduct is therefore strictly processed outside the core penal code via Paragraph 30 of the OWiG act. The German system relies on heavy administrative organizational fines combined with a mandatory economic skimming mechanism (*Abschöpfungsteil*) designed to strip the legal entity of 100% of the illicit profits and commercial advantages yielded by the corruption scheme.

V. Conclusion

Finally, the comparative analysis of private and public corruption offenses under Ukrainian and German law carries profound structural relevance for the protection of the European Union's financial interests and the combating of EU fraud. As Ukraine actively pursues its integration into the European legal and economic space, aligning domestic anti-corruption frameworks with international instruments specifically EU Directive 2017/1371 (the PIF

[42] Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), § 299 (Bestechlichkeit und Bestechung im geschäftlichen Verkehr).
[43] Зіставлення диспозиції ст. 368-4 КК України та системи посадових деліктів німецького кримінального права.
[44] *Schlöser,* NZWiSt. 2013. S. 11–12.
[45] *Rönnau,* JuS. 2011. S. 311–312.
[46] European Convention on Human Rights (ECHR), opened for signature 4 November 1950, Art. 6 (Right to a fair trial) and see *Fischer*, Strafgesezbuch, 73 edn., § 46, Mn. 66, 67 ff. and § 26, Mn. 12, which was developed by BGH after revision by the ECtHR judgements.

Directive) becomes crucial. Ensuring rigorous penal and regulatory liability for bribery within public service providers and commercial transactions directly safeguards incoming EU integration funds, structural assistance, and humanitarian resources from systemic diversion. Implementing transparent compliance boundaries modelled on the German *OWiG* system and reinforcing strict procedural protections against state-engineered incitement serve as essential benchmarks to guarantee that both public and private institutional sectors operate with the absolute transparency required to defend the financial integrity of the Union.

In conclusion, Ukraine's anti-corruption strategy is characterized by explicit statutory typification, placing highly specific professional roles and investigator behaviours under individual articles of the CCU. Germany, by contrast, manages both public service corruption and investigative boundaries by relying on broad, foundational statutory norms backed by robust administrative-regulatory frameworks and dynamic constitutional jurisprudence.

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„Junges Publizieren“

Seminararbeit von

Yelyzaveta Yavorska

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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