

**Excerpt from the German Criminal Code
and the Subsidies Act**

A) German Criminal Code

Section 264 Subsidy Fraud

(1) Whoever:

1. makes incorrect or incomplete statements about facts relevant to a subsidy for himself or another, that are advantageous for himself or the other, to a public authority competent to approve a subsidy or to another agency or person (subsidy giver) which has intervened in the subsidy procedure;
2. uses an object or cash benefit, the use of which is limited by legal provisions or by the subsidy giver in relation to a subsidy, contrary to the use-limitation;
3. leaves the subsidy giver, contrary to legal provisions relating to the subsidy grant, in ignorance about facts relevant to the subsidy; or
4. uses a certificate of subsidy entitlement or of facts relevant to a subsidy which was acquired by reason of incorrect or incomplete statements in a subsidy proceeding,

shall be punished with imprisonment for not more than five years or a fine.

(2) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. acquires, out of gross selfishness or by using counterfeit or falsified documentation, an unjustified subsidy of great magnitude for himself or another;
2. abuses his powers or his position as a public official; or
3. exploits the assistance of a public official who abuses his powers or his position.

(3) Section 263 subsection (5), shall apply accordingly.

(4) Whoever acts recklessly in cases under subsection (1), numbers 1 to 3, shall be punished with imprisonment for not more than three years or a fine.

(5) Whoever voluntarily prevents the subsidy being granted as a result of the action, shall not be punished pursuant to subsections (1) and (4). If the subsidy is not granted due in no part to the contribution of the perpetrator, then he will be exempt from punishment if he voluntarily and earnestly makes efforts to prevent the granting of the subsidy.

(6) Collateral to imprisonment of at least one year for a crime under subsections (1) to (3), the court may deprive the person of the capacity to hold public office and the capacity to attain public electoral rights (Section 45 subsection (2)). Objects to which the action relates may be confiscated; Section 74a shall be applicable.

(7) A subsidy within the meaning of this provision shall be:

1. a benefit from public funds under federal or Land law for businesses or enterprises, which, at least in part: a) is granted without market-related consideration; and b) should serve to stimulate the economy;
2. a benefit from public funds under the law of the European Communities, which is granted, at least in part, without market-related consideration. A public enterprise shall also be deemed to be a business or enterprise within the meaning of sentence 1, number 1.

(8) Relevant to a subsidy within the meaning of subsection (1) shall be facts:

1. which are designated as being relevant to a subsidy by law or by the subsidy giver on the basis of a statute; or
2. upon which the approval, grant, reclaiming, renewal or continuation of a subsidy are statutorily dependent.

B) Subsidies Act

Section 3 Requirement of disclosure of information for recipients of subsidies

- (1) The recipient of a subsidy is required to inform the subsidy giver of any facts that may preclude the approval, granting, renewal or continuation, use or the retention of the subsidy, or of advantages associated with the subsidy, or any facts that are relevant to a reclaiming of the subsidy or of advantages associated with the subsidy. This provision shall be without prejudice to any specific requirements to disclose information that may apply.
- (2) Whoever uses an object or cash benefit, the use of which is limited by legal provisions or by the subsidy giver in relation to a subsidy, in a way that is contrary to the use-limitation; shall notify the subsidy giver in good time in advance.

Section 4 Bogus transactions, abuse of scope to act

- (1) Bogus transactions and bogus actions shall be irrelevant to the approval, granting, reclaiming and the renewal or continuation, and the retention of a subsidy or of advantages associated with the subsidy. Where a fact is concealed by a bogus transaction or a bogus action, this concealed fact shall be decisive in the decision as to whether the subsidy or the advantage associated with the subsidy is approved, granted, reclaimed, renewed or continued, or retained.
- (2) Any approval or granting of a subsidy or part of a subsidy shall be excluded in cases where a legal transaction or other action has entailed abuse of scope to act in the context of an application for a subsidy. Such abuse shall be present where someone, in order to gain a subsidy or an advantage associated with a subsidy, for himself or a third party, makes use of his scope for action in a way that is inappropriate in the situation in hand, and despite the fact that it is contrary to the purpose of the subsidy. This shall be assumed to be the case especially in cases where the formal requirements for a subsidy or an advantage associated with a subsidy are being artificially established in a way that is contrary to the purpose of the subsidy.

Section 5 Restitution of advantages associated with a subsidy

- (1) Whoever has used an object or cash benefit, the use of which is limited by legal provisions or by the subsidy giver in relation to a subsidy, in a way that is contrary to the use-limitation, and has thereby gained an advantage, shall undertake restitution of this advantage to the subsidy giver.
- (2) The provisions of the German Civil Code relating to the surrender of an unjust enrichment shall apply *mutatis mutandis* to the scope of the restitution. It shall be

impossible for the person having to undertake the restitution to object to the restitution on the grounds that he is no longer enriched, provided that he knew of the use-limitation or that his ignorance of it was due to gross negligence.

- (3) These provisions shall be without prejudice to any specific requirements related to restitution that may apply.