

# National Report Germany



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## Section 299 German Criminal Code

### Taking and giving bribes in commercial practice

#### Old version until Nov. 2015

(1) Whosoever as an employee or agent of a business, demands, allows himself to be promised or accepts a benefit for himself or another in a business transaction as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services shall be liable to imprisonment not exceeding three years or a fine.

#### New version since November 2015

(1) Imprisonment not exceeding three years or a fine shall be imposed on anybody who as an employee or agent of a business of a company

1. demands, allows himself to be promised or accepts a benefit for himself or another as consideration for according an unfair preference to another in the national or international competitive purchase of goods or commercial services or
2. without consent of the company demands, allows himself to be promised or accepts a benefit for himself or another as consideration for performing or omitting any act in breach of that person's duties towards the company in the purchase of goods or commercial services.



# Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector

## Article 2 - Active and passive corruption in the private sector

1. Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities:
  - (a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties;

...

# German remarks and questions

- General criticism of the „Geschäftsherrenmodell“  
→ including breach of trust-components into § 299
- How to comply for companies?
- The (non)sense of consent
- Causality?
- How to?



## § 299 GCC new version since Nov. 2015

(1) Imprisonment not exceeding three years or a fine shall be imposed on anybody who as an employee or agent of a business of a company

(...)

### 2. **without consent of the company**

demands, allows himself to be promised or accepts a benefit for himself or another as consideration for performing or omitting **any act in breach** of that person's duties towards the company in the purchase of goods or commercial services.

## Corruption in the healthcare sector - §§ 299a/299b GCC (to be established in May 2016)

### § 299a Taking bribes in the healthcare sector

Whosoever as a healthcare practitioner, which requires a government-regulated training for the profession or the professional title, in connection with the exercise of his profession demands, allows himself to be promised or accepts a benefit for himself or another as consideration for according an unfair preference to another in national or international competition

1. when prescribing drugs, remedies or aids or medical devices

2. when purchasing drugs or aids or medical devices , each destined for immediate use by the health professional or a family of his professional helper , or

3. when forwarding patients or patient-material to be examined

shall be liable to imprisonment not exceeding three years or a fine.

Section 299 German Criminal Code Taking and giving bribes in commercial practice (old version until November 2015)	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector Article 2 - Active and passive corruption in the private sector	Section 299 German Criminal Code Taking and giving bribes in commercial practice (actual version since November 2015)
(1) Whosoever as an employee or agent of a business, demands, allows himself to be promised or accepts a benefit for himself or another in a business transaction as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services shall be liable to imprisonment not exceeding three years or a fine.	1. Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities: (a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties;	(1) Imprisonment not exceeding three years or a fine shall be imposed on anybody who as an employee or agent of a business of a company  1. demands, allows himself to be promised or accepts a benefit for himself or another as consideration for according an unfair preference to another in the national or international competitive purchase of goods or commercial services or  2. without consent of the company demands, allows himself to be promised or accepts a benefit for himself or another as consideration for performing or omitting any act in breach of that person's duties towards the company in the purchase of goods or commercial services.
(2) Whosoever for competitive purposes offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration for such employee's or agent's according him or another an unfair preference in the purchase of goods or commercial services shall incur the same penalty.	(b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.	(2) The same penalty shall apply to anybody who in business towards an employee or agent of a business of a company  1. offers, promises or grants a benefit to that person or another as consideration for such employee's or agent's according him or another an unfair preference in national or international competitive purchase of goods or commercial services or  2. without the consent of the company offers, promises or grants a benefit to that person or another as consideration for performing or omitting any act in breach of that person's duties towards the company in the purchase of goods or commercial services.
(3) Subsections (1) and (2) above shall also apply to acts in competition abroad.		(3) Subsections (1) and (2) above shall also apply to acts in competition abroad.

**Thank you very much for your  
attention !**

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# Köpfe



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Studium der Rechtswissenschaften an der Universität Münster von 1992 bis 1997

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Seit 2007 Partner der Kanzlei Wessing & Partner

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