

Rolf Hilke

THE FIGHT AGAINST ECONOMIC CRIME

Preventive and repressive measures in German companies

Analysis, prognosis and trends in the year 2014

Summary of the Master's Thesis

Economic crime is like a cancer in our domestic economy. The immense damage it causes every year isn't just financial. The non-material effects, ranging from distortion of competition and loss of reputation to the creation of fundamental doubts concerning our economic system, make the fight against economic crime all the more urgent.

The Current Situation: Facts and Figures – a Review

The Police Crime Statistics give information about the extent of economic crime and what damage it causes. The „Bundeslagebild Wirtschaftskriminalität“, which is published annually by the Federal Criminal Police Office, gives valid facts and figures concerning **reported and registered** economic crimes.

Despite a fall in the number of crimes (-12% from 2012 to 2013) the total damage being caused to the German economy is increasing (+2%). The logical conclusion is that offenders are becoming increasingly professional, with access to insider information and participation in international networks. This development will be illustrated by the examples given in this thesis.

It's been shown that companies aren't the only victims of economic crime. The whole society is affected and often has to deal with far-reaching consequences. Billing fraud in the medical field, corruption and subsidy fraud, patent infringement, as well as many other examples, cause considerable damage to both the economy and the community. Trust is eroded and restoring it is a difficult process.

Attacks from global hackers and industrial spies are increasing. Because of its highly specialised technology and excellent products the German economy in particular has become a target of criminal attacks. All the more important, therefore, are the defensive measures that will be thoroughly investigated in this thesis.

Most attacks are perpetrated by employees within a firm. This thesis will examine why that is the case and what factors motivate the perpetrators.

Economic investigations, studies and empirical analyses

The scientific analysis of the concept “economic crime” makes it clear to what extent the research is still in an early and *searching* phase. The various definitions given for economic crime show considerable differences. There is no standard legal definition, rather a series of approximations. The **List of Offences**, for example, which under the Court Constitution Act may lead to referral of cases to the Commercial Crimes Court, doesn’t cover corruption or the unlawful acceptance of benefits. At the same time, these offences clearly belong to the concept of economic crime.

Current studies, based on specific surveys in companies, provide information about the **dark figure of crime**. They give an impression of the extent of economic crime in Germany and how perpetrators proceed. Approaches to tackling economic crime in German businesses are also discussed. The studies provide a snap-shot and point to trends which represent an increasing threat to German companies.

Economic crime in Germany – case studies

As part of this thesis several spectacular cases of economic crime in German business were investigated: the Siemens bribery scandal, the Mannesmann trial, the Telekom bugging affair, the EnBW ticket affair, the rail cartel case, etc. They enrich and reinforce the theoretical explanations.

These cases, brought to public attention by the media, will be complemented by the experiences of a CEO of a medium-sized business. In an interview which was conducted for this thesis he gives information about how an economic crime attack on his business was recognised and tackled.

This case will demonstrate which measures could be employed, as well as illustrating the negative effects those in charge had to fight against. The reaction of the CEO shows a fundamental belief in the decency of human beings. Despite the dramatic abuse of trust, he didn’t want to install additional security measures or surveillance mechanisms. He was determined not to restrict or abandon the open and cooperative environment of a

family business.

However, the present investigation has shown that preventive and repressive measures against economic crime will play an increasing role in the **competitiveness and survival chances of a business**.

Attacks and risks associated with economic crime must be detected regardless of level or rank. Directors, CEOs and executive employees can also be perpetrators.

The exposure of numerous scandals in large German companies has led to a loss of trust and image and a critical attitude amongst the population. However, there is a positive side, too. The **pressure to act legally and ethically** has increased. The Siemens scandal was the cause of a shift in perspective on corruption and can be seen as the starting point for the establishment of internal investigations.

The fight against economic crime

The issue „fighting economic crime“ is often associated with the work of police and public prosecutors. It is of course true that the role of the state authorities is central to the detection, fight against and punishment of such crime.

However, the crimes that have been discovered in recent years have become ever more far-reaching, complex and multi-layered. For this reason companies themselves have to think up and employ stronger **preventive and repressive methods**. This relatively recent development began about ten years ago. This thesis is therefore engaged less with the work of the investigative authorities and more with the measures which companies are currently planning in order to fight economic crime.

The central area of research in this thesis is the fight against economic crime via the professional deployment of **internal investigations**.

By means of these investigations wrongdoings are discovered, facts are systematically researched and finally sanctions are implemented. This process involves the companies' own employees in the form of internal audits and legal and compliance departments, as well as external experts like lawyers, auditors and tax consultants.

The reasons for and causes of internal investigations, as well as the processes and methods involved, are covered in detail. So this thesis also provides an interested reader

with guidelines as to how such investigations work.

The implementation of **amnesty programmes** for employees, as well as the establishment of **whistleblower systems**, show the workforce that lawful behaviour is supported and belongs to corporate culture.

Investigators have to adhere to defined **ethical standards**. So, for example, the rights of an informant are protected under the „**Theses of the German Federal Bar Association for Defence Lawyers in Criminal Law**“ („**Thesen der Bundesrechtsanwaltskammer zum Unternehmensanwalt im Strafrecht**“).

The state is also contributing to these changes through its laws. The German **Corporate Governance Code**, the introduction of a **corruption register**, **leniency in anti-trust law cases** and a possible **obligation to inform authorities about hacking attacks** are signs that point to a **zero-tolerance-strategy** in the future.

Developments in the Anglosphere, such as **pre-employment-screening** and **business partner-screening**, will be touched upon in this thesis. One important theme is the **influence** of the **U.S. Securities and Exchange Commission** on German businesses and the way they deal with corruption. The American influence has been part of the reason for the development of a new corporate culture which arms itself with **compliance** as a **preventive** and **internal investigations** as a **repressive element** in the fight against criminal behaviour.

In the future in Germany, as part of the international „**harmonisation of legislation**“, there will be a new **corporate criminal law** policy that goes beyond mere fines for the organisation – regardless of culpability.

It is to be hoped that the various measures described in this thesis will both improve business organisation in Germany and help to prevent significant cases of economic crime.