

Corruption

„Business Ethics and Corporate Social Responsibility“ (Prof. Dr. Beckmann)

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Transparency International Deutschland e.V.

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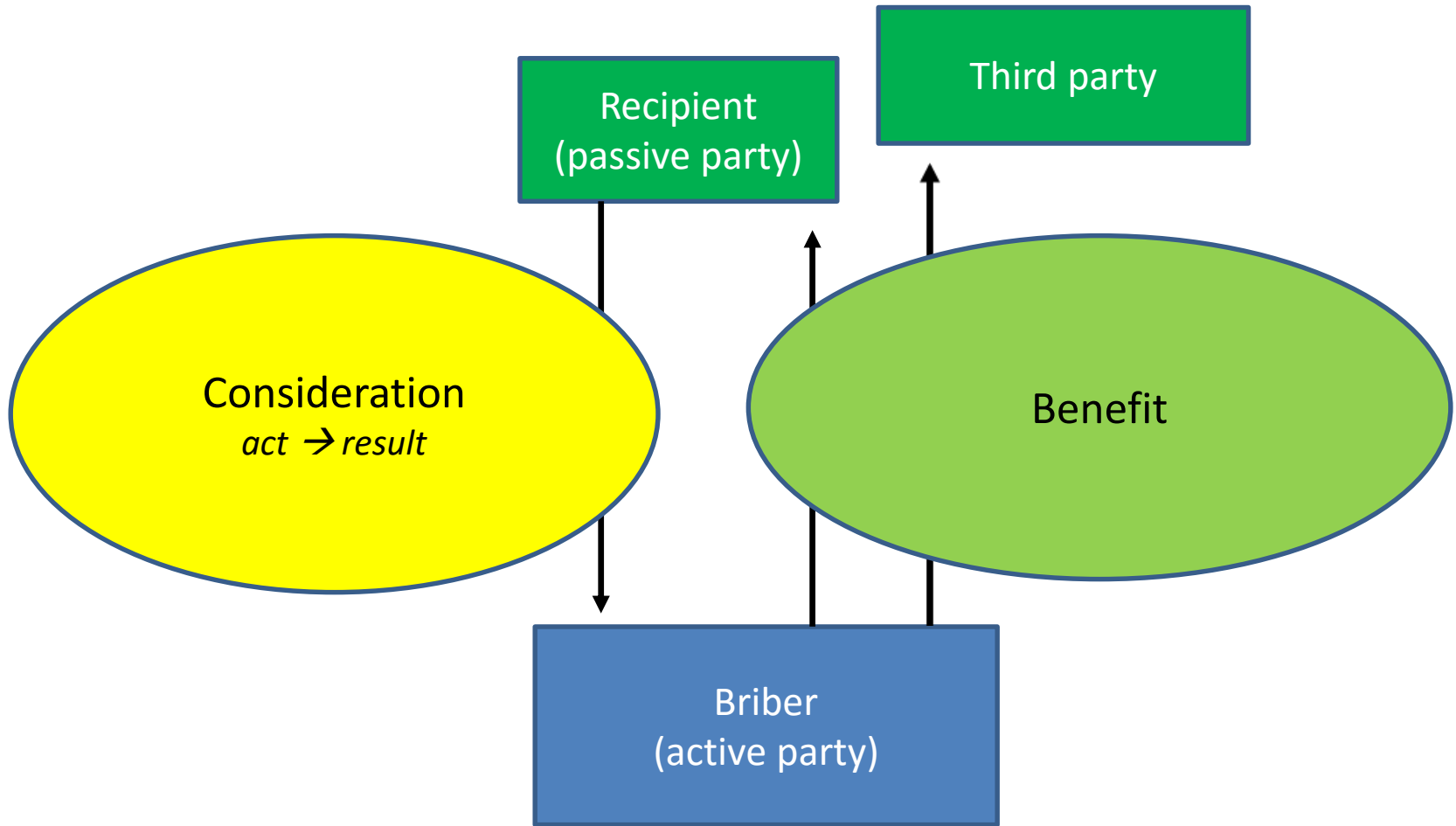
Rechtsanwalt

Fachanwalt für Strafrecht
Fachanwalt für Steuerrecht

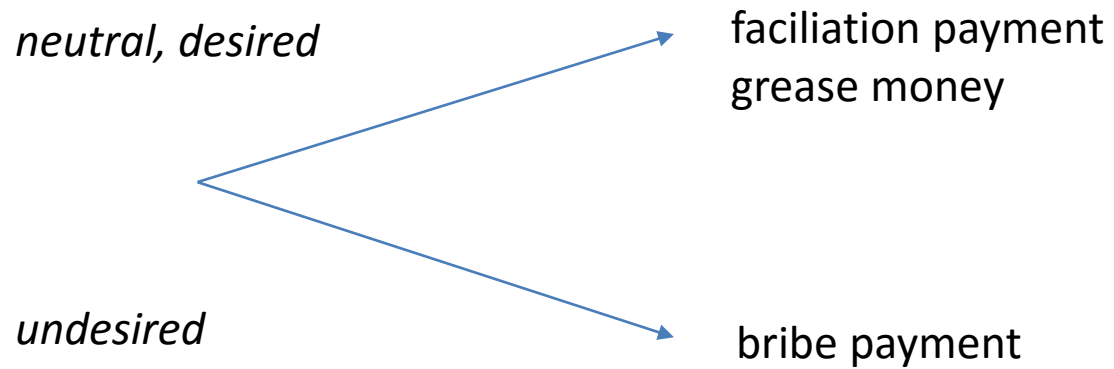
What is corruption?

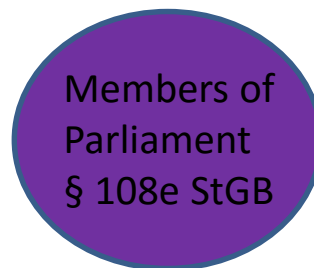
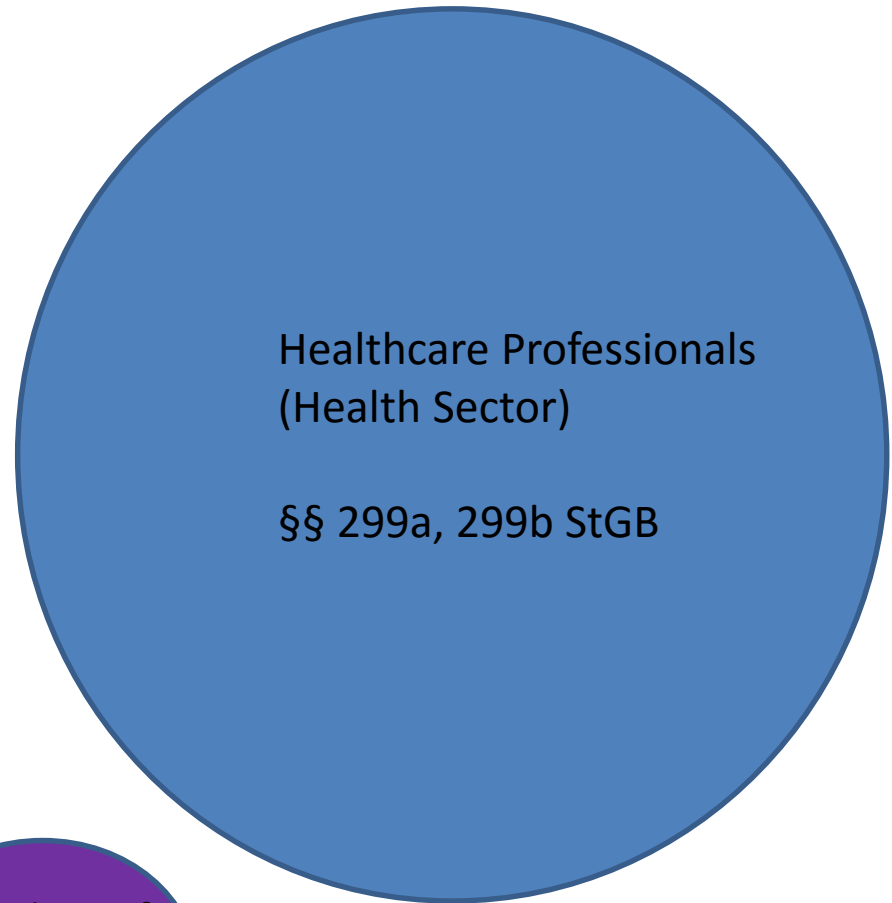
Transparency: Abuse of commissioned power for one's own advantage or benefit

Law: exchange / consideration



result





International bribery

A German enterprise grants a'n official in Nigeria to obtain the authorisation for erecting a power plant, although national safety rules are not observed.

Photography at school (BGH, 26.05.2011 - 3 StR 492/10)

F is photographer. He agreed with the principal of a primary school to take pictures of the students. The pictures are given to the pupils' parents and offered for sale. There is no obligation to accept the offer. As far as pictures are being sold, the receipts are given to the photographer.

In return the school obtains a donation of 500 Euros by F for the expansion of a new gym.

Pharmaceutical Industry (BGH, 29.03.2012, Az. GSSt 2/11)

The Pharma Company P grants every doctor 5% of the price as a premium to prescribe a special medicinal product.

Yoga Teacher

A Yoga teacher offers an orthopaedist sexual services in return for recommending her yoga studio for prevention of back health.

Fictitious Invoices

I is the holder of the G-GmbH (limited company). X is, as an employee of the large corporation S, responsible for awarding printing contracts . X constantly awards contracts to the G-GmbH. In parts it is just fictitious service, which are paid of the expense of the S-Group with the use of fictitious invoices. The payments for the fictitious invoices is forwarded by I to X`s private account in Switzerland.

This procedure causes a yearly damage to the S-Group of 1 million Euros.

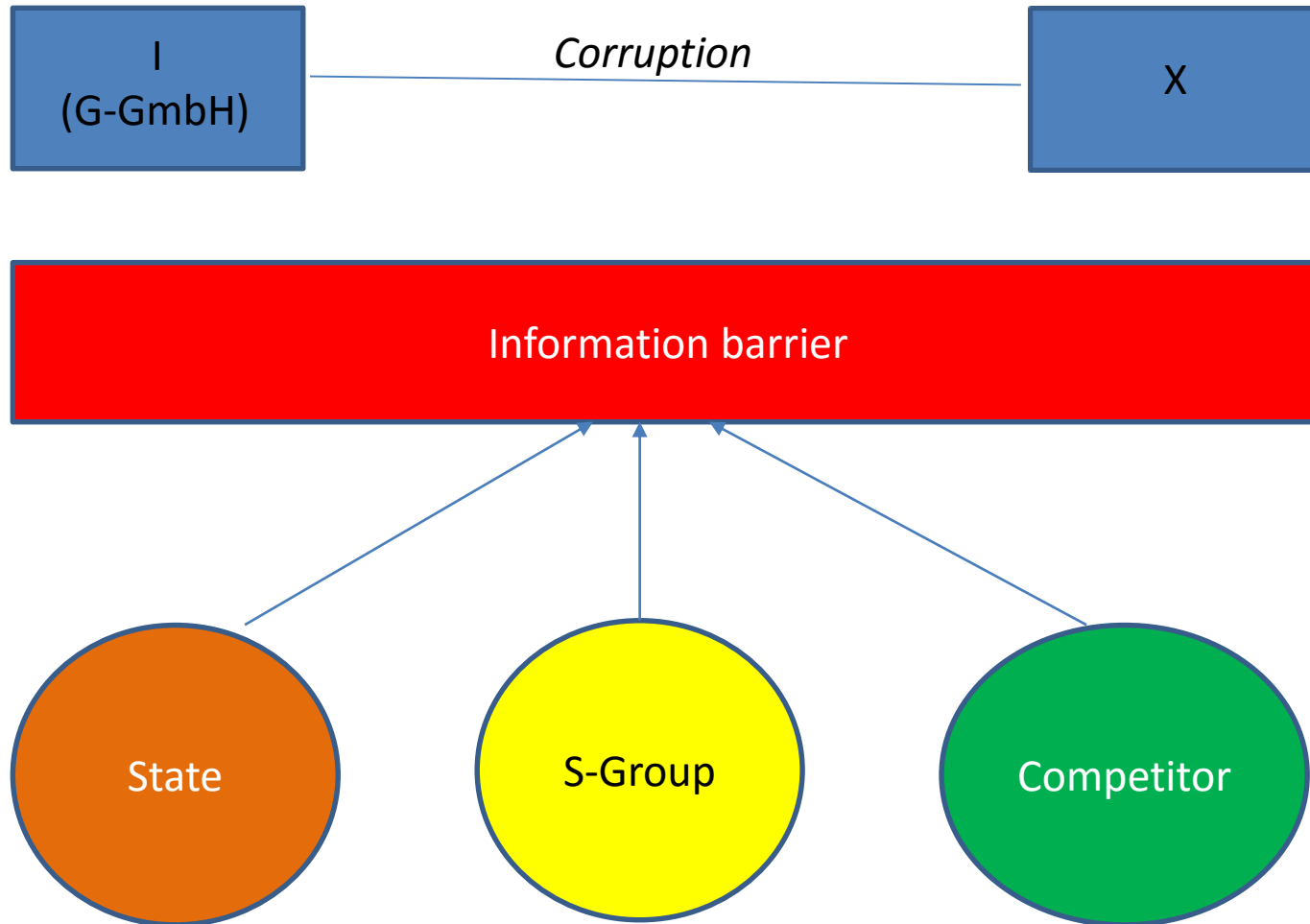
Catering

In a catering company there is an corporate guideline to the employees to wear the company`s uniform.

The association FC-N offers the employees of the catering company free tickets in return for wearing the club`s red tricots on the Christmas party.

Victimless Crime?

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Incentives to avoid corruption:

- § 4 V Nr. 10 EStG – Bribery payments are not tax-deductible / exemption of the tax secrecy
- § 823 II BGB – Compensation for offenses against protective laws
- § 261 StGB – Predicate offence for money laundering
- § 93 AktG – Obligation for the introduction of a Compliance System
- Corruption Register (North Rhine-Westphalia, Berlin)
- §§ 73 ff. StGB – Skimming of excess profit
- §§ 30, 130 OWiG (Administrative Offences Act)– Corporate fines for lack of compliance organisation
- *Companies as a subject of criminal law (corporate criminal liability)?*

„Neubürger-decision“ (LG München, 10.12.13, 5HK O 1387/10):

Within the context of his obligation to legal behaviour a member of the board has to ensure that the company is organised and supervised in a way that no legal offences as bribe payments to officials or individuals of a foreign nation are committed.



**Company-tools
to avoid corruption:**

→ **Compliance / Corporate Policies**
(„tone from the top“)

- 1. Equivalence:** Service – adequate Consideration
- 2. Separation:** procurement decisions personally independent from price negotiations
- 3. Transparency:** Clear *external* communication which benefit will be provided for what (e.g. consultancy agreements)
- 4. Documentation:** *Internal* written documentation of the Whys and Wherefores of paying benefits

Fictitious Invoices (vgl. BFH, 23.03.2016 - IX B 22/16)

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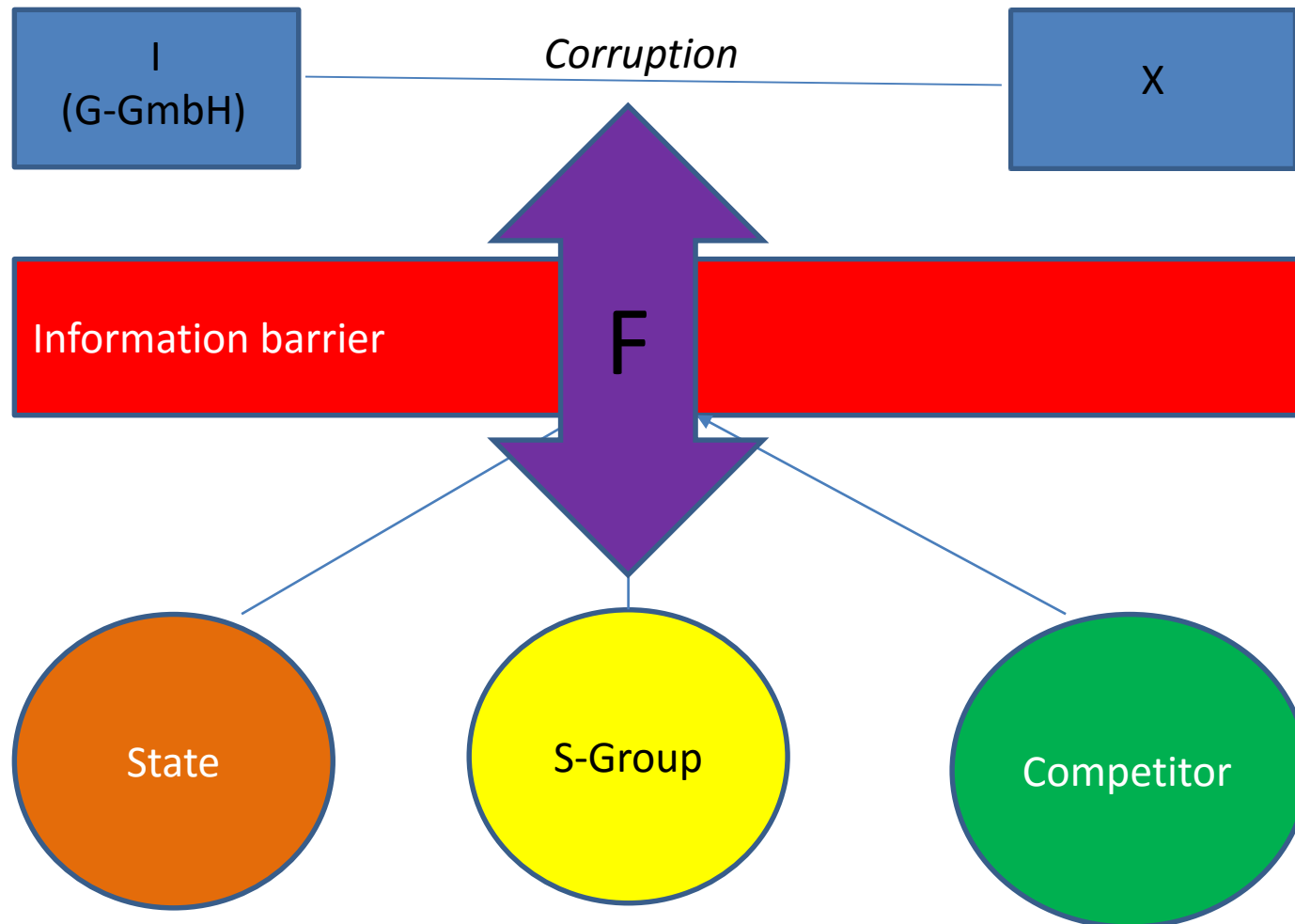
F is employed as a managing director at the G-GmbH. He sees into the bookkeeping and detects the corrupt behaviour of the head.

F wants to back out of it and make the case public.

Perforation of the information barrier



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Incentives for Whistleblowers?

- F is willing to make the case public, but claims 500.000 Euros from the S-Group. He justified his claim with the appropriate expectation that he might lose his job in the event of disclosure.
→ *Protection against dismissal for whistleblowers?*
- The whistleblower provides 10 Leitz files as proof to the confidence lawyer („Ombudsman“) of the S-Group, he has stolen from his employer.
→ *Punishability pursuant § 17 UWG (embezzlement of business and company secrets)?*
- One of the persons involved has been arrested and makes a confession. Thereupon the prosecutor demands the delivery of the complete files with the evidence from the confidence lawyer („Ombudsmann“)
→ *Exemption from Confiscation / Professional discretion of attorneys?*
- F had been involved in the corruption of I and X for several years and has made himself punishable. He only wants to step out if he would be exempted from punishment.
→ *Option of self-accusation to exempt oneself from punishment (analogue § 371 AO - Tax Code)?*