(White collar) Sentencing schemes – the German perspective

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I. Exposed white collar crime cases (Germany)
...and an exceptional feedback...

"This is not a robbery. I am collecting for the Bavarian state."
II. The (prescribed) range of penalties

- **penalty range according to offence(s) committed**

  > **adjustments:** minor offense / particularly serious case

  **Example:**

  *Fraud (Section 263 Criminal Cod)*

  (1) Whosoever with the intent of obtaining for himself or a third person an unlawful material benefit damages the property of another by causing or maintaining an error [...] shall be liable to *imprisonment not exceeding five years or a fine.*

  (2) [...]

  (3) In *especially serious cases* the penalty shall be *imprisonment from six months to ten years.* [...]

- **one act** (violating multiple laws / the same law more than once) > **one sentence**

- **multiple offences** (committed by multiple acts) > **aggregate sentence**
III. Sentencing (in a narrower sense)

- section 46 Criminal Code: principles of sentencing
- no sentencing guidelines
- German Federal Court of Justice: „Spielraumtheorie“ (BGHSt 7, 28, 32)

„It is not possible to determine exactly which punishment is appropriate. There is room for manoeuvre here, which is limited at the bottom by the penalty already appropriate to the guilt and at the top by the penalty still appropriate to the guilt. The judge may [...] at his discretion, decide how high he is to reach within this margin.”
IV. Agreements in criminal proceedings („deal“)

- no “plea bargaining”

„In describing the German practice of exchanging an admission of guilt for a reduced sentence, the term „negotiated judgment“ is technically more accurate than the term „plea bargaining.“ German defendants do not merely enter a guilty plea, but rather tender a confession, which does not obviate the subsequent trial...“ [Jenia I. Turner]

- codification of the so-called „deal“ in section 257c German Code of Criminal Procedure (in 2009)
V. Corporate criminal liability

- to this date: no criminal law for corporations and enterprises

- **current draft legislation**: law to combat corporate criminality
  - financial fines up to ten percent of the worldwide annual turnover
  - empowerment to dissolve associations
  - public announcement of convictions („naming and shaming“)
  - incentives to introduce compliance systems and to conduct internal investigations

- **current „handling“**: 
  - financial fines based on the act of regulatory offences
  - confiscation of proceeds / forfeiture measures
Thank you for your kind attention!

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