BaFin

WpHG Administrative Fine Guidelines

Guidelines on the Imposition of Fines in Administrative Offence Proceedings for Breaches of the Provisions of the Securities Trading Act (Wertpapierhandelsgesetz – WpHG)

Bundesanstalt für Finanzdienstleistungsaufsicht
Federal Financial Supervisory Authority

Section for Administrative Offence Procedures

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Part 1 Explanatory notes on assessing administrative fines

A. Introduction

BaFin's Securities Supervision directorate is introducing guidelines on the imposition of fines in administrative offence proceedings (WpHG Administrative Fine Guidelines). The Guidelines are based on over ten years of experience that BaFin has gained over the course of its sanctions activities in the field of securities law.

In accordance with section 40 of the Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG), BaFin is responsible for pursuing and punishing offences under the WpHG. Its task is to identify offences against the law and to appropriately and proportionately punish the administrative offences committed. In the process, it ensures that the imposed administrative fine has the necessary deterrent effect on the persons committing the breach (persons concerned) and on third parties.

I. Concept and purpose of the WpHG Administrative Fine Guidelines

The WpHG Administrative Fine Guidelines are based on BaFin's prosecutorial discretion (see section 47 (1) sentence 1 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten* – OWiG), section 39 (4) of the WpHG) and represent assessment guidelines for administrative fines. They provide additional details on the provisions of section 17 of the OWiG, which governs the assessment of administrative fines, and take into account the assessment criteria developed for criminal law.

The purpose of the WpHG Administrative Fine Guidelines is to define the amount of the administrative fines to be imposed for certain common, regularly occurring administrative offences relating to the WpHG under the statutory system of administrative fines. In this context, the WpHG Administrative Fine Guidelines assume that the circumstances of the offence are not exceptional (normal cases). However, both the specific circumstances and the need to ensure a sufficiently high degree of deterrence may justify a departure from the assessment provisions under the WpHG Administrative Fine Guidelines.

The WpHG Administrative Fine Guidelines support the principle of equal treatment, which administrative bodies are obliged to comply with. These Guidelines ensure that materially

identical administrative offences are treated in a similar manner, while retaining the focus on the assessment of the specific circumstances of the offence and the offender.
Finally, the WpHG Administrative Fine Guidelines promote the transparency of BaFin's decisions on administrative fines for the parties concerned and for the public.

II. Scope of the WpHG Administrative Fine Guidelines

The WpHG Administrative Fine Guidelines apply to the imposition of fines in accordance with section 39 (4) of the WpHG on natural persons and on legal persons (assessment of administrative fines on entities in accordance with section 30 of the OWiG) in cases in which a responsible person in a managerial position has breached the duties under the WpHG that are sanctioned by administrative fines.

The WpHG Administrative Fine Guidelines apply to breaches of the following provisions:

- Section 15 (1) sentence 1 of the WpHG
- Section 21 (1) sentence 1 of the WpHG
- Section 25 (1) sentence 1 of the WpHG
- Section 25a (1) sentence 1 of the WpHG
- Section 26 (1) sentence 1 of the WpHG
- Section 26a sentence 1 of the WpHG
- Section 37v (1) of the WpHG
- Section 37w (1) of the WpHG
- Section 37x (1) of the WpHG

The WpHG Administrative Fine Guidelines are applied both in joint proceedings and in stand-alone proceedings (see section 30 (4) of the OWiG).

B. Specific assessment of administrative fines (section 17 of the OWiG)

Based on the statutory system for administrative fines set out in section 39 (4) of the WpHG, each offence has to be assessed in accordance with the provisions of section 17 of the OWiG.

BaFin will impose its administrative fines using a three-step process based on the specific circumstances of the case: in the first step, the base amount is calculated using assessment

criteria that are relevant to the offence (I.); in the second step, the base amount is adjusted to reflect the specific guilt of the person concerned using additional assessment criteria relevant to the offence and in particular to the offender (II.); and in the third step, the financial circumstances of the person concerned are considered (III.). When BaFin imposes the fine, it also reserves the right to skim off the economic benefit that the person concerned obtained as a result of the offence (see also section 17 (4) of the OWiG).

The base amount must reflect the significance of the punishable administrative offence (see section 17 (3) sentence 1 of the OWiG). In particular, the adjustment of the base amount (increase or decrease) reflects the charge faced by the offender (see section 17 (3) sentence 1 of the OWiG). BaFin also takes the offender's financial capacity into account which may lead to an adjustment of the fine (see section 17 (3) sentence 2 of the OWiG).

I. Step 1 – Calculation of the base amount

The base amount places a value on the severity of the offence. The latter shall not be measured in terms of those cases that occur especially often in practice, but in terms of those cases that are conceivable.

The base amount is calculated by adding together two assessment criteria relevant to the offence – the "size of the issuer" (1) and the "severity of the circumstances of the offence" (2). On the one hand, these criteria take into account the issuer's significance for the capital markets (its market position); on the other hand, the specific circumstances of the punishable administrative offence are also taken into account. The individual base amounts are set out in the following tables, starting with the element of intent (*mens rea*).

If the administrative offence is committed recklessly or negligently (the latter relates to offences against the provisions contained in sections 37v (1) sentence 1, 37w (1) sentence 1, 37x (1) sentence 1 in conjunction with section 39 (3) no. 12 of the WpHG), the maximum base amount in accordance with section 17 (2) of the OWiG amounts to half of the base amount calculated for intentional offences. A breach of supervisory duties under section 130 of the OWiG may also reduce the base amounts disclosed (sections 130 (3) sentence 2 and 17 (2) of the OWiG).

1. Categorisation of the issuer

Issuers are grouped into four defined size categories that correspond to their market position. The key defining criterion in this context is in particular the issuer's market capitalisation at the time the offence was committed, although exceptions and departures from this principle are permitted. The benchmark for measuring market capitalisation is based, among other things, on standard share indices:

Size of the issuer	**Issuer A**	**Issuer B**	**Issuer C**	**Issuer D**
Market capitalisation	**Over €4 billion**	**€500 million to €4 billion**	**€10 million to €500 million**	**Up to €10 million**

Fig. 1

2. Categorisation of the circumstances of the offence

The severity of the offence is also assessed in line with the specific circumstances of the individual offence. To this end, the circumstances of the offence are classified as "severe", "moderate", or "mild". Exceptions to this rule exist in relation to financial reporting requirements (sections 37v ff. of the WpHG).

Examples of regular, typically occurring circumstances of the punishable administrative offence are given below. They include in particular the type of the breach, its effect on the capital markets and its duration. As a rule, multiple circumstances exist and are then weighted and assessed together in the process of weighing up and arriving at an overall evaluation of the administrative offence being assessed.

II. Step 2 – Adjustment of the base amount

In the second step for assessing administrative fines, the mitigating and aggravating circumstances relating to the person concerned must be weighed up; in particular, these include offender-related criteria. Examples are the behaviour of the person concerned before the offence and after it during BaFin's investigations. This has an aggravating or mitigating effect on the sanction (the amount of the administrative fine). Assessment criteria that have already been taken into account in calculating the base amount cannot be considered again when adjusting it (prohibition of double assessment in accordance with section 46 (3) of the German Criminal Code (*Strafgesetzbuch* – StGB).

If there are any mitigating and/or aggravating circumstances, the sanction may be less or more than the calculated base amount. This step finally establishes the amount of the fine to be imposed (with the exception of the assessment of the offender's financial capacity). The following, non-exhaustive list of assessment criteria, which are explained in more detail in the annex, is particularly relevant in this context:

1. Mitigating adjustment criteria

The following mitigating adjustment criteria may apply:

- Confession
- Cooperation with BaFin's investigations
- Promise/measures taken to improve
- Long proceedings

2. Aggravating adjustment criteria

The following aggravating adjustment criteria may apply:

- Repeat offence
- Special deterrence (e.g. increased intransigence)

III. Step 3 – Consideration of financial capacity

In the last step, the amount of the administrative fine may be adjusted based on the financial capacity of the person concerned (which may be estimated where appropriate). Under certain circumstances, permission may be granted for the administrative fine imposed to be paid in specified instalments or by a deadline (section 18 of the OWiG).

Part 2 Base amounts

The base amounts apply to both legal and natural persons. Natural persons may be affected as the direct addressees for obligations such as those relating to voting rights. In addition, this category includes persons whose actions may lead to a fine that is to the legal person's disadvantage. An example here are members of a company's governing bodies who are authorised representatives in accordance with section 30 (1) no. 1 of the OWiG and – independently of their formal legal position – persons acting on behalf of the management in accordance with section 30 (1) no. 5 of the OWiG. For example, this could be the compliance officer or a person in the operation or enterprise who is responsible for internal accounting or auditing.

The base amounts apply to a single offence.

A. Base amounts for breaches of the ad hoc publication requirement under section 15 (1) sentence 1 of the WpHG

Intent Administrative fines of up to €1,000,000.00 (sections 39 (4), 39 (2) no. 5 a) of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€750,000.00	€600,000.00	€380,000.00	€200,000.00
Moderate	€500,000.00	€400,000.00	€250,000.00	€150,000.00
Mild	€250,000.00	€200,000.00	€130,000.00	€80,000.00

Fig. 2

Recklessness Administrative fines of up to €500,000.00 (sections 39 (4), 39 (2) no. 5 a) of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€375,000.00	€300,000.00	€190,000.00	€100,000.00
Moderate	€250,000.00	€200,000.00	€125,000.00	€75,000.00
Mild	€125,000.00	€100,000.00	€65,000.00	€40,000.00

Fig. 3

Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the inside information to be published ad hoc
- Extent of the incompleteness of the inside information to be published ad hoc
- Effect on the capital markets/impact of the breach on the capital markets (e.g. stock exchange turnover, free float, actual share price)
- Subject of the ad hoc notice (e.g. change in personnel, key earnings figures, insolvency)
- Need for administrative coercion

B. Base amounts for breaches of the duty to submit voting rights notifications under sections 21, 25 and 25a of the WpHG

The base amounts apply exclusively to administrative offences in which the person subject to the notification requirement (natural or legal person) has failed to submit the voting rights notification within the prescribed period to the issuer and/or BaFin in accordance with the provisions of sections 21 (1) sentence 1, 25 (1) sentence 1, 25a (1) sentence 1 of the WpHG (in conjunction with section 39 (2) no. 2 e) or f) of the WpHG) (normal cases). This also includes circumstances in which the person subject to the notification requirement initially submitted a notification within the maximum period of four trading days. However, because the person had to correct errors in the notification, a notification meeting the requirements of the WpHG was submitted late.

The size of the base amounts takes into account the fact that generally two administrative fines are levied jointly – one due to the breach of the duty to notify the issuer and one due to the breach of the duty to notify BaFin (section 20 of the OWiG).

Intent Administrative fines of up to €1,000,000.00 (sections 39 (4), 39 (2) no. 2 e) and f) of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€550,000.00	€300,000.00	€150,000.00	€75,000.00
Moderate	€350,000.00	€200,000.00	€100,000.00	€50,000.00
Mild	€180,000.00	€100,000.00	€50,000.00	€25,000.00

Fig. 4

Recklessness Administrative fines of up to €500,000.00 (sections 39 (4), 39 (2) no. 2 e) and f) of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€275,000.00	€150,000.00	€75,000.00	€37,500.00
Moderate	€175,000.00	€100,000.00	€50,000.00	€25,000.00
Mild	€90,000.00	€50,000.00	€25,000.00	€12,500.00

Fig. 5

Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the notification to be corrected and effect of the error on the information content of the voting rights notification (including errors relating to the date on which the threshold was crossed, erroneous information on the name of the party subject to the notification requirement, on the cases of attribution and on the percentage of voting rights held)
- Extent of the change in the percentage of voting rights held (including if a major shareholder sells its entire equity interest, the increase in the percentage of voting rights held, the number of voting rights thresholds affected, relevance for the

Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz* – WpÜG))

- Event causing the threshold to be exceeded (including as a consequence of a capitalisation measure)
- Issues relevant to the group as a whole
- Effect of the breach on the capital markets (including free float, major shareholder)
- Need for administrative coercion

C. Base amounts for breaches of the publication requirement under section 26 (1) sentence 1 of the WpHG

Intent Administrative fines of up to €200,000.00 (sections 39 (4), 39 (2) no. 5 c) of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€150,000.00	€135,000.00	€90,000.00	€52,500.00
Moderate	€100,000.00	€90,000.00	€60,000.00	€35,000.00
Mild	€50,000.00	€45,000.00	€30,000.00	€17,500.00

Fig. 6

Recklessness Administrative fines of up to €100,000.00 (sections 39 (4), 39 (2) no. 5 c) of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€75,000.00	€67,500.00	€45,000.00	€26,250.00
Moderate	€50,000.00	€45,000.00	€30,000.00	€17,500.00
Mild	€25,000.00	€22,500.00	€15,000.00	€8,750.00

Fig. 7

Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the publication to be corrected and the effect of the error on the information content of the voting rights notification (including errors relating to the date on which the threshold was crossed, erroneous information on the name of the reporting party or the issuer, on the percentage of voting rights held and on cases of attribution)
- Extent of the change in the voting rights held in the voting rights notification to be published

- Number of voting rights thresholds affected (including if a major shareholder sells its entire equity interest, increase in the percentage of voting rights held)
- Effect of the breach on the capital markets
- Need for administrative coercion

D. Base amounts for breaches of the publication requirement under section 26a sentence 1 of the WpHG

Intent Administrative fines of up to €200,000.00 (sections 39 (4), 39 (2) no. 5 c) of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€150,000.00	€135,000.00	€90,000.00	€52,500.00
Moderate	€100,000.00	€90,000.00	€60,000.00	€35,000.00
Mild	€50,000.00	€45,000.00	€30,000.00	€17,500.00

Fig. 8

Recklessness Administrative fines of up to €100,000.00 (sections 39 (4), 39 (2) no. 5 c) of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€75,000.00	€67,500.00	€45,000.00	€26,250.00
Moderate	€50,000.00	€45,000.00	€30,000.00	€17,500.00
Mild	€25,000.00	€22,500.00	€15,000.00	€8,750.00

Fig. 9

Specific circumstances of the offence

- Length of the delay
- Extent of the errors in the notification to be corrected and the effect of the error on the statutory information required (including on the total number of voting rights, on the information "as at the end of the month of x" and on the issuer)
- Publication of incorrect supplemental information (including an incorrect time when the change in equity took effect)
- Effect of the breach on the capital markets
- Need for administrative coercion

E. Base amounts for the failure to provide accounting documents at all or within the prescribed period under sections 37v (1) sentence 1, 37w (1) sentence 1, 37x (1) sentence 1 of the WpHG

I. Annual and half-yearly financial report in accordance with sections 37v (1) sentence 1, 37w (1) sentence 1 of the WpHG

Intent
Administrative fines of up to €200,000.00
(sections 39 (4), 39 (3) no. 12 of the WpHG)

Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	**€160,000.00**	**€130,000.00**	**€110,000.00**	**€90,000.00**
Moderate	**€120,000.00**	**€100,000.00**	**€85,000.00**	**€70,000.00**
Mild	**€80,000.00**	**€70,000.00**	**€60,000.00**	**€50,000.00**

Fig. 10

Negligence
Administrative fines of up to €100,000.00
(sections 39 (4), 39 (3) no. 12 of the WpHG, section 17 (2) of the OWiG)

Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	**€80,000.00**	**€65,000.00**	**€55,000.00**	**€45,000.00**
Moderate	**€60,000.00**	**€50,000.00**	**€42,500.00**	**€35,000.00**
Mild	**€40,000.00**	**€35,000.00**	**€30,000.00**	**€25,000.00**

Fig. 11

II. Interim management statement in accordance with section 37x (1) sentence 1 of the WpHG

Intent Administrative fines of up to €200,000.00 (sections 39 (4), 39 (3) no. 12 of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€105,000.00	€90,000.00	€70,000.00	€50,000.00
Moderate	€80,000.00	€70,000.00	€55,000.00	€40,000.00
Mild	€55,000.00	€50,000.00	€40,000.00	€30,000.00

Fig. 12

Negligence Administrative fines of up to €100,000.00 (sections 39 (4), 39 (3) no. 12 of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
Severe	€52,500.00	€45,000.00	€35,000.00	€25,000.00
Moderate	€40,000.00	€35,000.00	€27,500.00	€20,000.00
Mild	€27,500.00	€25,000.00	€20,000.00	€15,000.00

Fig. 13

Specific circumstances of the offence (relating to both I. and II.)

- Length of the delay
- Effect of the breach on the capital markets (including failure to provide financial reports in times of crisis, withholding of critical data, free float, connection with any threat of default or insolvency)
- Need for administrative coercion

F. Base amounts for breaches of the duty to publish an announcement on the availability of financial reporting documents under sections 37v (1) sentences 2 and 3, 37w (1) sentences 2 and 3, 37x (1) sentences 2 and 3 of the WpHG

I. Breaches of the duty to publish an announcement on the availability of the annual and half-yearly financial reports and the interim management statement under sections 37v (1) sentence 2, 37w (1) sentence 2, 37x (1) sentence 2 of the WpHG

Intent **Administrative fines of up to €200,000.00** **(sections 39 (4), 39 (2) no. 5 g) to i) of the WpHG)**				
Issuer group / **Circumstances of the offence**	**Issuer A**	**Issuer B**	**Issuer C**	**Issuer D**
	€60,000.00	**€50,000.00**	**€40,000.00**	**€30,000.00**

Fig. 14

Recklessness **Administrative fines of up to €100,000.00** **(sections 39 (4), 39 (2) no. 5 g) to i) of the WpHG, section 17 (2) of the OWiG)**				
Issuer group / **Circumstances of the offence**	**Issuer A**	**Issuer B**	**Issuer C**	**Issuer D**
	€30,000.00	**€25,000.00**	**€20,000.00**	**€15,000.00**

Fig. 15

II. Breaches of the duty to notify BaFin of an announcement and of the duty to transmit the announcement to the companies register under sections 37v (1) sentence 3, 37w (1) sentence 3, 37x (1) sentence 3 of the WpHG

Intent Administrative fines of up to €200,000.00 (sections 39 (4), 39 (2) no. 2 n) to p) and 39 (2) no. 6 of the WpHG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
	€30,000.00	€25,000.00	€20,000.00	€15,000.00

Fig. 16

Recklessness Administrative fines of up to €100,000.00 (sections 39 (4), 39 (2) no. 2 n) to p) and 39 (2) no. 6 of the WpHG, section 17 (2) of the OWiG)				
Issuer group / Circumstances of the offence	Issuer A	Issuer B	Issuer C	Issuer D
	€15,000.00	€12,500.00	€10,000.00	€7,500.00

Fig. 17

G. Base amounts for breaches of the duty to transmit financial reporting documents to the companies register under sections 37v (1) sentence 4, 37w (1) sentence 4, 37x (1) sentence 4 of the WpHG

Intent **Administrative fines of up to €50,000.00** **(sections 39 (4), 39 (2) no. 24 of the WpHG)**				
Issuer group / **Circumstances of the offence**	**Issuer A**	**Issuer B**	**Issuer C**	**Issuer D**
	€25,000.00	**€20,000.00**	**€15,000.00**	**€10,000.00**

Fig. 18

Recklessness **Administrative fines of up to €25,000.00** **(sections 39 (4), 39 (2) no. 24 of the WpHG, section 17 (2) of the OWiG)**				
Issuer group / **Circumstances of the offence**	**Issuer A**	**Issuer B**	**Issuer C**	**Issuer D**
	€12,500.00	**€10,000.00**	**€7,500.00**	**€5,000.00**

Fig. 19

Annex to the WpHG Administrative Fine Guidelines

This list of adjustment criteria is not exhaustive. Only the most common criteria are presented. Additional adjustment criteria may need to be used in individual cases.

A. Mitigating adjustment criteria

I. Confession

The person concerned confesses that the *actus reus* and *mens rea* (the objective and subjective element of the offence) have been committed. The quality of the confession must be taken into account. A voluntary self-incrimination by the person concerned is treated as a confession. A voluntary self-incrimination exists if BaFin would not have become aware of the offence without the cooperation of the person concerned. The person concerned contacted BaFin and informed BaFin of the failure to comply with the law.

II. Cooperation with BaFin's investigations

This is defined as statements relating to the facts of the offence other than a confession. The statements must be relevant to the allegation. The person concerned assists in explaining and reconstructing the course of events.

III. Promise/measures taken to improve

Promises to improve are defined as statements made by the person concerned to the effect that it has taken precautions to prevent further offences in future. Such statements must be credible. Furthermore, specific measures taken to improve must be taken into account. These measures must be presented in detail and be substantiated. Proof of them must also be provided to BaFin.

IV. Long proceedings

With respect to the duration of the procedure, two components must be taken into account:

- the period of time between the end of the offence and the issue of the administrative order imposing the fine and
- the duration of the official proceedings from the time when the authority became aware of the offence until the administrative order imposing the fine was issued.

The delays may not have been caused by the person concerned[1] or be the result of the complexity of the proceedings.

B. Aggravating criteria

I. Repeat offence

An offence has been committed again although a related offence (in terms of its timing and of the issues involved) of the legal provisions governing the capital markets was previously punished by a final and binding order imposing an administrative fine, or by a final and binding court decision. Under certain circumstances, an administrative order imposing a fine issued after the offence was committed may also be considered as increasing the fine to be imposed if the person concerned was aware at a minimum that the investigative proceedings had commenced when it committed the second offence.[2]

Provisions are considered to be related where it emerges that the person concerned is disregarding the mandatory requirements and prohibitions that apply to a particular area.[3] For example, this includes all the provisions of the Securities Trading Act. The timing is considered to be related when the fine was imposed within the previous five years. The date on which the first offence became effective marks the start of the period.

II. Special deterrence

The fine must be increased, among other cases, if the person concerned, out of disrespect for the law, expresses its intent to continue to disregard the legal system in future (increased intransigence) and rejects its duty to observe capital market norms in future. The person concerned takes the view that it does not need to comply with the law.[4] Given the offence and the personality of the person concerned, the assumption can be made that a lower fine will not sufficiently deter such person.[5] Remaining silent at a hearing or disputing the allegations shall not be considered as intransigence.

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[1] See Gürtler, in: Göhler, Ordnungswidrigkeitengesetz, 16th edition (2012), section 17 margin no. 26e. (available in German only)
[2] See Mitsch, in: Senge, Karlsruher Kommentar zum Gesetz über Ordnungswidrigkeiten, 3rd edition (2006), section 17 margin no. 76.
(available in German only)
[3] See Rebmann/Roth/Herrmann, Gesetz über Ordnungswidrigkeiten, 3rd edition (2011), section 17 margin no. 22. (available in German only)
[4] See Gürtler, in: Göhler, Ordnungswidrigkeitengesetz, 16th edition (2012), section 17 margin no. 26a. (available in German only)
[5] See Mitsch, in: Senge, Karlsruher Kommentar zum Gesetz über Ordnungswidrigkeiten, 3rd edition (2006), section 17 margin no. 70.
(available in German only)