

or duress, in particular through the use of means of mass destruction, the causing of catastrophes, or as part of a hostage taking offence.

- e.⁵⁵ sexual acts with children (Art. 187 No 1), indecent assault (Art. 189), rape (Art. 190), sexual acts with persons incapable of judgement or resistance (Art. 191), sexual acts with persons in institutional care, prisoners and persons on remand (Art. 192 para. 1) and exploitation of a person in a position of need or dependency (Art. 193 para. 1) if committed against children under the age of 12.⁵⁶

² If the right to prosecute the offence would have been time barred had Articles 97 and 98 applied, the court may in its discretion impose a more lenient penalty.

³ Paragraphs 1 letters a, c and d and paragraph 2 apply if the right to prosecute or execute the sentence had not been time barred by 1 January 1983 in accordance with the law applicable until that point in time. Paragraph 1 letter b applies if the right to prosecute or execute the penalty is not time barred under the previous law when the Amendment of 18 June 2010 to this Code comes into force. Paragraph 1 letter e applies if the prosecution or the sentence is not time barred by 30 November 2008 in accordance with the law applicable until that point in time.⁵⁷⁵⁸

Title Seven: Corporate Criminal Liability

Art. 102

Liability under the criminal law

¹ If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding 5 million francs.

⁵⁵ Inserted by No I 1 of the Federal Act of 15 June 2012 (Non-applicability of Limitation to Sexual or Pornography Offences against Prepubescent Children), in force since 1 Jan. 2013 (AS 2012 5951; BBl 2011 5977).

⁵⁶ Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

⁵⁷ Third sentence inserted by No I 1 of the Federal Act of 15 June 2012 (Non-applicability of Limitation to Sexual or Pornography Offences against Prepubescent Children), in force since 1 Jan. 2013 (AS 2012 5951; BBl 2011 5977).

⁵⁸ Amended by No I 1 of the Federal Act of 18 June 2010 on the Amendment of Federal Legislation in Implementation of the Rome Statue of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

² If the offence committed falls under Articles 260^{ter}, 260^{quinquies}, 305^{bis}, 322^{ter}, 322^{quinquies} or 322^{septies} paragraph 1 or is an offence under Article 4a paragraph 1 letter a of the Federal Act of 19 Dec. 1986⁵⁹ on Unfair Competition, the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking is responsible for failing to take all the reasonable organisational measures that were required in order to prevent such an offence.⁶⁰

³ The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

⁴ Undertakings within the meaning of this title are:

- a. any legal entity under private law;
- b. any legal entity under public law with exception of local authorities;
- c. companies;
- d. sole proprietorships⁶¹.

Art. 102a⁶²

Part Two: Contraventions

Art. 103

Definition Contraventions are acts that are punishable by a fine.

Art. 104

Application of the provisions of the First Part The provisions of the First Part also apply to contraventions, subject to the following changes.

⁵⁹ SR 241

⁶⁰ Wording in accordance with Art. 2 No 2 of the Federal Decree of 7 Oct. 2005 on the Adoption and Implementation of the Criminal Law Convention and the Additional Protocol of the European Council on Corruption, in force since 1 July 2006 (AS 2006 2371 2374; BBl 2004 6983).

⁶¹ Terminological footnote relevant to German only.

⁶² Repealed by Annex 1 No II 8 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).