FRAUD BY EXPLOITING THE MISCONCEPTION OR DELUSION OF ANOTHER PERSON: A COMPARATIVE STUDY

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One common feature of the crime of fraud, as it is defined in the main penal codes in Europe, is that the culprit should have deluded the victim of the fraud, or, if a delusion already exists in the mind of the latter, has through his behaviour upheld or reinforced it. If the delusion results in the remaining prerequisites of fraud being present then the crime of fraud has been committed.

It is possible, however, to conceive of situations where a person—A—is aware that another person—B—is already under the delusion that a certain state of affairs exists and that this delusion could be exploited without A being in any way active where B's delusion is concerned. Consequently, in such a case A has not in any way contributed to the creation of the delusion, nor has he behaved in a way that has either upheld or reinforced B's delusion. All that A has done is to take advantage of a delusion that already existed in B's mind. Let us, as an example, assume that B has confused A with some other person whom he knows to be very wealthy. Under the influence of this misconception B offers to lend money to A, who is in fact in financial difficulties. A, being aware of B's error, accepts the loan, and in so doing he has exploited B's delusion in the sense we are concerned with here.

A different kind of case that is often cited in legal writing is where A discovers that his bank or post giro account has been wrongly credited with a large sum of money. Being aware of the error A proceeds to make use of this sum, for example, by drawing on his account.

There is no doubt that the two cases described above are examples of taking advantage of a delusion that already exists, though this does not necessarily mean that the action taken in these cases must be regarded as fraud. It is this particular point that the present study proposes to examine.

Any study involving the exploitation of a delusion that is already present in another person's mind cannot avoid dealing with two closely-related situations. The first is that A has in reality created the delusion in B's mind though not with the intention of defrauding him. A can quite well have been acting in good faith when imparting the misleading information to B. But it is also possible that even though he had no intention of defrauding B, he knew that the information was incorrect at the time he imparted it to B. The problem arises if, at a later date, A decides to take advantage of the delusion he himself has already created. In that case he is exploiting a delusion that already exists,

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a delusion he himself has created even though at the time he did so it was not his intention to defraud.

The other situation dealt with here is that in which A has to begin with supplied B with details that were quite correct. However, something happens then which means that the details supplied by A are no longer correct. If B is not aware of the change and A thereupon exploits his ignorance, then A has taken advantage of a delusion he himself has not created. When A supplied the information it was correct—A claimed he had a boat which he wanted to sell. However, the boat strikes a mine and sinks, but when the time comes to complete the final purchase B is not aware of this. At this point B is under the delusion that the boat really exists when the deal is completed. Even so, the fact that the boat strikes a mine and sinks is not a misleading act on A's part but is a change of reality which makes B's supposition incorrect and so B has not been misled by A.

Whether—and in that case to what extent—taking advantage of another person's existing delusion amounts to culpability for fraud is a vexed question. I have chosen to concentrate the following study on an analysis of the concept of fraud in Danish, Norwegian and Swedish law, and I have done so for these reasons. The provision in Danish law currently in force where fraud is concerned expressly makes it a criminal offence to exploit another person's delusion. In the 1902 Norwegian Penal Code the provision relating to fraud did not originally say anything about taking advantage of another person's delusion but following a revision of the law in 1951 such a state of affairs was expressly incorporated in the text of the Code. Finally, the Swedish provision relating to fraud does not mention anything about exploiting another person's delusion. The Committee on Penal Law was, even so, of the opinion that the draft provision did to some extent make such exploitation a criminal offence. Since the provision came into force it has also been applied in cases where advantage was taken of a delusion that had already been created in another person's mind. What I aim to investigate is, on the one hand, the way in which the conception of the crime of fraud differs in Danish, Norwegian and Swedish law and, on the other hand, whether possible differences have resulted in any divergence in legal usage in this field in these three countries.

Although this survey concentrates on Danish, Norwegian and Swedish law it seems to me that it would be of some interest to include a summary—of necessity superficial—of how a number of other European penal codes approach the problem to be considered here. In certain legal systems the wording of the provision on fraud makes it, at any rate theoretically, impossible to regard exploiting a delusion that already exists in another person's mind as fraud. I have chosen French and English law as examples of this. Other legal systems, for instance the Swiss one, state specifically that exploiting a delusion

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another person is already under is a form of fraud and is a criminal offence, while German and Austrian law certainly do not make specific mention of this type of fraud in their statutes though they probably accept it in practice. Of the three spheres of jurisprudence mentioned above I have, for reasons that will become clear, felt obliged to consider German law in somewhat more detail than the other two.

The standpoint adopted by French law seems to be the easiest to describe, for the simple reason that the French section on fraud, Code pénal, sec. 405, so unambiguously and exhaustively specifies what kind of behaviour amounts to culpable misrepresentation. The person who commits fraud must make use of "faux nom", "fausse qualité" or "manœuvres frauduleuses", and these three comprise all the forms of misrepresentation.[1] A simple lie does not suffice. Merle-Vitu sees certain defects here and adds[2] that the state of affairs in foreign legislation is different, since there "le dol ou le mensonge, ou même l'omission de fournir à la victime les renseignements qui lui étaient dus" are usually regarded as criminal offences.

The situation is more complicated in English law. The crime of fraud was given its present formulation through the 1968 Theft Act, secs. 15 and 16 (the amendments in the 1978 Theft Act make no difference here). What sec. 15 has in view is that anyone "by any deception dishonestly obtains property belonging to another" and sec. 16 that anyone "by any deception dishonestly obtains for himself or another any pecuniary advantage". In both these sections the word "deception" means the same thing, namely that there must have been activity on the part of the perpetrator—activity which is described in the text of the Act by the phrase "by words or conduct". However, this does not mean that situations in which the perpetrator exploits or appears to exploit an already existing delusion will always fall outside the sphere of criminal offences. During its work on the wording of the Act the Criminal Law Revision Committee discussed at length[3] whether the Act ought not also to cover cases "when a dishonest omission to correct a mistaken belief ... should count as deception for the purpose of the clause". The Committee refrained from including such a provision though it did so mainly for technical reasons. It is quite evident[4] that the Committee was of the opinion that liability for fraud could exist in cases where a person had a duty to dispel another person's delusion and that omitting to do so could lead to him being charged with fraud. The Committee bases its reasoning on the fact that in civil law there are

[1] See Vouin, *Droit pénal spécial*, 5th ed. Paris 1983, p. 54, cf. p. 59. See also Goyet, *Droit pénal spécial*, 8th ed. by Rousselet–Arpaillange–Patin, Paris 1972, p. 667, and Merle-Vitu, *Traité de droit criminel. Droit pénal spécial*, Paris 1982, pp. 1892 ff.
[2] Merle-Vitu, *op. cit.*, 1881, cf. p. 1893.
[3] CLRC, Eighth Report. *Theft and Related Offences*, London 1966, pp. 50 f.
[4] *Ibid.*

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many situations where a person is under a certain obligation to supply information to the other party. At the same time the Committee points out that the fact that there is an obligation to inform in civil law does not automatically make the omission to inform a basis for a criminal charge of fraud.

Smith expresses a view which is in broad agreement with that of the Committee.[5] Griew, on the other hand, seems to be more restrictive in his view since he states[6] that "there may in fact be no situation, in which mere silence, mere inaction alone can work a deception within the meaning of the Act".

It must, however, be pointed out that English law provides a good deal of latitude when it is a matter of interpreting a person's "words or conduct" as implying the presence or absence of a certain state of affairs. Then the question of whether the person concerned has deceived the other party by omitting to inform him of a relevant fact no longer applies. Smith also discusses[7] the question of whether a person's passive acquiescence in relation to the other party's self-deception could lead to his being charged with fraud. However, he is of the opinion that such is not the case.

A relatively new case, *DPP* v. *Ray*, may be cited to illustrate the standpoint of English law.[8] In this case the accused had ordered a meal at a restaurant and had eaten it. During the meal it had been his intention to pay for it, but afterwards he changed his mind and decided not to pay. After having come to this decision he remained at the table for about 10 minutes until the waiter had left the room. R then left the restaurant. The court of first instance convicted R of fraud in accordance with sec. 16, but the Divisional Court reversed the conviction because there was no deception on R's side. The House of Lords re-convicted R, giving as its reason that "on ordering the meal he had impliedly made to the waiter the ordinary representation of an ordinary customer that he had the means and the intention of paying for it before he left ... It followed that, since there was nothing discernible in the conduct of the accused after he had decided not to pay for the meal to show that his initial representation had become false, he had practised a 'deception' on the waiter by ostensibly continuing to represent to him that he intended to pay for the meal before leaving."

Of the German language laws the Swiss is of greatest interest in that the fraud provision, sec. 148, expressly states that anyone who "*den Irrtum eines andern arglistig benutzt*" commits a form of fraud, though there seems to be a good deal of uncertainty concerning the situations that result in a penalty.

5 Smith, *The Law of Theft*, 4th ed. London 1979, p. 89.
6 Griew, *The Theft Acts 1968 and 1978*, 4th ed. London 1982, pp. 110f., cf. Williams, *Textbook of Criminal Law*, 2nd ed. London 1983, p. 775.
7 Smith, *op. cit.*, p. 87.
8 1974 A.C. 370, 1973 All E.R. 131. An analysis of the case is found in CLRC Working Papers, London 1974, p. 175. Cf. Smith, *op. cit.*, p. 89, and Williams, *op. cit.*, p. 787.

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What is certain is that mere silence in relation to the person who is under a delusion is not in itself sufficient. The fact is that, on the one hand, the Act states that the perpetrator must have been active in some way and must have *exploited* the delusion and, on the other hand, it must be possible to describe this exploitation as "*arglistig*", that is to say, it must be cunning.[9] On the whole there seems to be general agreement that it is difficult to find cases that correspond to the type of fraud indicated here. Strahtenwert is of the opinion[10] that this type of fraud "nur in seltenen Grenzfällen anwendbar sein [dürfte], die vorerst jeder klaren Kontur entbehren".

Two cases from case law may be cited as possible examples. In the first one[11] N's bank account had been erroneously credited with Fr. 30 000:–. N, who realized that a mistake had been made, withdrew the sum from his account. He was charged and convicted—though for embezzlement not fraud. The question of whether what N had done could be regarded as fraud was never brought up at all. It is Noll's view[12] that the requirement of "arglistig" was not fulfilled and that therefore no fraud was at hand.

The other case[13] is described in the report of the case itself as "arglistige Benutzung eines Irrtums durch plichtwidriges Schweigen". The principal accused, L, who was general secretary of a trade union, induced the union to purchase 3 000 copies of a certain book from a "Vereinigung für Wirtschaftsdemokratie" at a cost price of Fr. 15:– per copy. In actual fact the cost price was Fr. 10:– per copy, in addition to which the said "Vereinigung" really consisted only of L and another accused.

L was convicted of fraud. The Bundesgericht confirmed the conviction. As regards the description of the type of fraud given in the report the objection could perhaps be made that what was involved here was a positive deception practised by L—incorrect information about the cost price—and not exploitation of an already existing delusion.[14]

[9] See Stratenwerth, *Schweizerisches Strafrecht, Besonderer Teil I*, 3rd ed. Bern 1983, pp. 239 f., Rehberg, *Strafrecht III, Delikte gegen den Einzeln*, 2nd ed. Zurich 1980, pp. 67 ff., and Noll, *Schweizerisches Strafrecht, Besonderer Teil I*, Zurich 1983, p. 195.

[10] Stratenwerth, *op. cit.*, p. 240. Cf. Noll, *ibid.*

[11] BGE 87 IV 115.

[12] Noll, *ibid.*, cf. Stratenwerth, *op. cit.*, p. 226.

[13] BGE 76 IV 102.

[14] Stratenwerth, *op. cit.*, p. 239, is of the same opinion. He also points out that it has not yet been possible to show that there has been any correct use in case law of the clause relating to "arglistige Benutzung" in the fraud section. There is reason here also to recall the case BGE 76 IV 158. This case was concerned with the question of whether the debtor could be guilty of fraud if he failed to inform his creditor that he was requesting too little. In the case in question an electricity board had mistakenly requested Fr. 67,50 for electricity consumption instead of 675,00. The accused, who had noticed the error but failed to point it out, was acquitted by the court of first instance. The court of second instance convicted him of "arglistige Benutzung" of another person's mistake. However, the Bundesgerichtshof acquitted him since the injury had already been caused by the issuing of the incorrect account and ruled that "ein Tun oder Unterlassen, dass bloss dazu beiträgt, dass ein bereits eingetretener Schaden nicht beiseitigt wird, genügt nicht". See also Stratenwerth, *op. cit.*, p. 238.

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It must, however, be pointed out that the Swiss law does not only recognize a special rule about exploiting another person's delusion. Swiss law also applies the traditional doctrine relating to fraud in the form of "false" crimes of omission ("unechte Unterlassungsdelikte"). This means that omitting to inform the other party of a relevant fact can be punished as fraud, providing that an obligation to inform is held to exist.[15] Here too, then, exploiting an already existing delusion can result in criminal liability for fraud.

The Austrian fraud provision, Strafgesetzbuch, sec. 146, makes no mention of exploiting another person's delusion. Apart from this the situation in Austrian law would seem to be about the same as in Swiss law, that is to say, exploiting a delusion that already exists in another person's mind can be punished as a form of fraud that amounts to a dishonest crime of omission. So, if an obligation to inform the other party has existed then omitting to inform the other party can lead to a charge of fraud.[16] Kienapfel also asserts, and rightly,[17] that in many cases where one would like to see a punishable omission to inform there is in actual fact an earlier conclusive misleading act that has confirmed the delusion that already exists in the mind of the fraud victim.

The German fraud provision, Strafgesetzbuch, sec. 263, also makes no mention of exploiting a delusion that already exists in the mind of another person. On the contrary, sec. 263 in fact seems to exclude this case from the sphere of punishable offences because the wording of the law requires the perpetrator to have "einen Irrtum erregt oder unterhält". Cramer[18] expressly points out that the mere exploitation of a delusion that already exists in another person's mind cannot be regarded as an "Unterhalten". But—if an obligation to inform does exist then Cramer, too, is of the opinion that silence could amount to keeping alive a delusion.[19] Thus, it is also here that the doctrine on fraud as a crime of dishonest omission comes into use.

It may be added that it is not difficult to find cases in German law where convictions for fraud have been recorded in situations that have been described

[15] See Rehberg, *op. cit.*, pp. 66 f., Stratenwerth, *op. cit.*, pp. 237 ff., and Noll, *op. cit.*, pp. 195 f.

[16] Kienapfel, *Grundriss des österreichischen Strafrechts, Besonderer Teil II*, Vienna 1980, sec. 146, RN 66 ff., cf. Foregger-Serini, *Strafgesetzbuch, Kurzkommentar*, 3rd ed. Vienna 1984, pp. 353 ff. But, as Kienapfel expressly points out in RN 96, if no duty to inform has existed then exploiting another person's delusion cannot be held to be fraud. As regards the crime of fraud as it was formulated in Austrian penal law in force prior to 1974, it should be noted that it was doubtful whether the doctrine of false crimes of omission was applicable where the crime of fraud was concerned, cf. Nowakowski, *Das österreichische Strafrecht in seinen Grundzügen*, Graz-Vienna-Cologne 1955, pp. 183 f.

[17] Kienapfel, *op. cit.*, sec. 146, RN 68.

[18] Schönke-Schröder, *Strafgesetzbuch. Kommentar*, 20th ed. by Lenckner-Cramer-Eser-Stree, Munich 1980, sec. 263, note 46. Cf. Bockelmann, *Strafrecht, Besonderer Teil I*, 2nd ed. Munich 1982, pp. 67 ff., and Lackner, *Strafgesetzbuch mit Erläuterungen*, 14th ed. Munich 1981, pp. 919 f.

[19] Schönke-Schröder, *op. cit.*, sec. 263, note 45.

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as exploiting a delusion that already exists in another person's mind. Here, it must also be noted that the German courts seem to go further than those in Denmark, Norway and Sweden when it is a question of assuming the existence of an obligation to inform. A typical case from German case law will be touched on below.

After this brief survey of how certain European legal systems view this question of whether exploiting the delusion already in another person's mind can amount to fraud, it is time to turn to Danish, Norwegian and Swedish law. As has already been indicated the present legal situation is as follows:

In the Danish and Norwegian Penal Codes exploiting another person's delusion is expressly defined as a criminal offence. The relevant provision in Danish law, Penal Code, sec. 279, makes it a criminal offence for anyone "by unlawfully inducing, confirming or taking advantage of a delusion" to cause a person to dispose of money. The Norwegian Penal Code of 1902 did not originally punish anyone for taking advantage of another person's delusion, but as a result of a change in the law in 1951 sec. 270 dealing with fraud was reworded so that it is now a criminal offence for anyone "by inducing, strengthening or taking advantage of a delusion, unlawfully and maliciously" to cause someone to part with money.

The state of affairs in Swedish law is more complicated. The Swedish provision on fraud, Penal Code, ch. 9, sec. 1, makes it a criminal offence for anyone who "through a deception induces another" to part with money. Exploiting a delusion in another person's mind is not mentioned. Even so, it is clear that in the view of the legislator the Swedish fraud section also covers exploiting an already existing delusion. The Committee on Penal Law has this to say:[20] "In such a situation it is justifiable and in agreement with the general basic principles of penal law that to some extent the exploiting of a delusion should be regarded as fraud, even though the wording of the law text does not directly specify this." The same view finds expression in the Commentary to the Penal Code,[21] which in this respect is based entirely on the *travaux préparatoires*. The basis for this view is the doctrine of what are known as false crimes of omission, so that the prerequisite of culpability for fraud is that the perpetrator has a duty to provide information and has failed to inform the other party that the latter is under a delusion concerning a certain relevant fact. Hypothetical causality, which is required between omission and effect where false crimes of omission are concerned, must also be present, which means that if the perpetrator had fulfilled his obligation to inform the other

[20] *SOU* 1940: 20, pp. 130 f.

[21] Beckman–Holmberg–Hult–Strahl, *Brottsbalken jämte förklaringar*, vol. I, 4th ed. Stockholm 1974, p. 357.

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party then the latter's delusion would have been dispelled, thus preventing him from performing the act that led to his losing money.[22]

That Swedish case law has complied with the intention of the law and that exploiting another person's delusion has therefore been punished as fraud will be seen from one or two cases discussed below. On the other hand, legal writing has to some extent refused to accept the view of the Committee on Penal Law. Strahl is not of the opinion that exploiting another person's delusion is punishable as fraud according to Swedish law.[23] Jareborg, too,[24] repudiates the view that exploiting another person's delusion falls within the purview of the fraud section, though he does agree that it is unwarranted from the point of view of legal policy.

An analysis of the conceivable types of fraud involved in fraud through exploiting another person's delusion necessitates adopting a position as regards the concept of "delusion". In the first place, of course, it includes incorrect ideas held by someone about a certain fact or a certain state of affairs. What is more problematic is whether sheer ignorance is also included here, since it is not uncommon in legal writing for sheer ignorance to be excluded from the concept of delusion. This seems particularly natural in those cases where a person has not given any thought at all to the fact or circumstance of which he is ignorant.[25] But like, for example, Andenæs, Hurwitz and Waaben I am of the opinion that it is hardly possible to distinguish between incorrect ideas about a certain state of affairs and sheer ignorance of it.[26] Ignorance of the existence of a certain fact or a certain circumstance can in general just as well be described as an incorrect idea about the situation to which this fact or circumstance relates. In German legal writing and legal usage attempts have been made to exclude sheer ignorance from the concept of "Irrtum",[27] but this has resulted in the emergence of concepts of the kind that in spite of his ignorance the ignorant person may be said to have a vague idea that "alles sei in Ordnung". In this way it has been possible to transform sheer ignorance into an incorrect idea, a delusion.[28]

[22] Cf. Thyrén, *Förberedande utkast till strafflag, Speciella delen,* IV, Lund 1922, p. 144. The picture Skeie, *Den norske strafferett*, vol. II, *Den spesielle del*, Oslo 1946, pp. 300 f., gives of Norwegian law before 1951 is very similar to this.

[23] Strahl, *Allmän straffrätt i vad angår brotten,* Lund 1976, p. 247. Judging by a statement on p. 248 it is possible that what Strahl intends by the term exploiting another person's delusion are cases of the kind where no obligation to inform exists.

[24] Jareborg, *Förmögenhetsbrotten,* Lund 1975, p. 225.

[25] In Danish doctrine, for example, Krabbe, *Borgerlig straffelov af 15. april 1930 ...*, Copenhagen 1947, p. 677, and in Norwegian doctrine Øvergaard, *Det straffbare bedrageri etter norsk rett,* Oslo 1941, p. 81, have wanted to exclude sheer ignorance from the concept of delusion.

[26] See Andenæs, *Formuesforbrytelsene*, Oslo 1975, p. 86, Hurwitz, *Den danske kriminalret, Speciel del*, Copenhagen 1962, p. 447, and Waaben, *Strafferettens specielle del I*, Copenhagen 1978, p. 157. Cf. Rørdam, "Vildfarelseskravet i straffelovens bedrageribestemmelse", *Juristen* 1960, pp. 306 f.

[27] In this respect see Schönke-Schröder, *op. cit.*, sec. 263, notes 36–37.

[28] A telling criticism of this formulation is to be found in Kienapfel *op. cit.*, sec. 146, RN 85–86.

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Consequently I am of the opinion that sheer ignorance must be ranked together with delusion where fraud is concerned, and so in the rest of this essay the concept of delusion embraces both incorrect ideas and sheer ignorance.

However, the concept of delusion is not the only factor that must be taken into account. Of even greater importance for the continued presentation is the need to decide what is meant by fraud through "exploiting another person's delusion". There is no doubt that the locution is employed with varying meanings by various writers and in the *travaux préparatoires* of different acts. Sometimes the expression is used as a general term for frauds through omission, that is to say, frauds committed through the perpetrator having disregarded his duty to inform the other party,[29] sometimes as a term for those cases where the perpetrator has exploited an already existing delusion which he himself has not provoked—or if he has it was without intent to defraud—in order to bring about the obtaining of property or a pecuniary advantage.[30] A third variant is to let the expression refer to cases of the kind where no duty to inform the other party is held to exist and where, consequently, fraud has *not* been committed.[31] It is probable that more variants could be found.

From one point of view it can be said that all frauds are committed through the exploitation of another person's delusion, but for the purposes of this essay it is understood that such frauds involve exploiting a delusion already present in the mind of the other person, although the delusion has not been created by the perpetrator. The same applies to situations where the perpetrator certainly—on a previous occasion—has created the delusion though not with the intention of defrauding. However, where the perpetrator has neglected to inform the other party of a relevant fact and the latter in consideration of the perpetrator's duty to provide information has drawn incorrect conclusions from his silence, fraud through exploitation does not exist in the sense of the definition given here. What the perpetrator has done by remaining silent in the case described is of course to cause a delusion to arise. A case that is often used in the legal writing on fraud may be cited as an example.[32]

A businessman has an agent in a distant market who has to inform his principal by cable of changes in exchange rates and commodity prices. An important change occurs but the agent—intending to commit fraud—neglects to inform his principal. If the agent's silence leads the latter to draw the conclusion that the market has not changed then this silence has caused a delusion to arise. If the principal now acts on this delusion and enters into an

[29] For example, the Committee on Penal Law in the *travaux préparatoires* to the Swedish section on fraud in *SOU* 1940: 20.

[30] Thus, e.g., Andenæs, *op. cit.*, p. 85.

[31] Thus, e.g., Schönke-Schröder, *op. cit.*, sec. 263, note 46, and Kienapfel *op. cit.*, sec. 146, RN 96.

[32] See, e.g., Andenæs, *op. cit.*, pp. 84 f.

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agreement with the result that he loses money while the other party makes a profit, then a fraud has been committed—but not a fraud through exploiting a delusion already existing in another person.

The typical crime of fraud consists of one long chain of causality. The perpetrator has to be the cause of a delusion being provoked, maintained or strengthened, and this delusion in turn has to be the cause of an act or omission, which in turn has to bring about the obtaining. It has, however, proved difficult to ensure that frauds through exploitation fit well into this chain of causality. This point has been especially emphasized by Rørdam.[33] In his opinion the chain of causality where exploitation fraud is concerned is instead "delusion–action–act of the perpetrator". Seen in this light the behaviour of the perpetrator is the cause of neither the delusion nor the decision to act. Rørdam stresses the fact that it is not possible to coerce another person to act simply through taking advantage of a delusion he is under. Instead of causality between deception and action there must therefore be causality between delusion and action where exploitation frauds are concerned.[34] As far as I can see, what contributes to Rørdam's conception of frauds through exploitation is undoubtedly the fact that he does not concern himself with the possibility that the victim's action constitutes an omission. I will return to this in connection with the cases dealt with below.

However, Waaben has asserted[35] that in frauds of exploitation, too, the perpetrator can have a determining effect on the victim's action. The fact is that the perpetrator can have such an effect in the sense that if he had informed the other party of his delusion then the action would not have come about.

The rest of this essay will concentrate on the relationship between the perpetrator and the action of the person exploited, though it is first necessary to mention one problem connected therewith. Fraud through exploitation presupposes that the perpetrator has a duty to inform the other party, and in Swedish legal writing and usage such a duty derives from the doctrine of false crimes of omission. It would seem to be unimportant for the questions to be dealt with here whether, as in older legal writing, this duty to inform comes from the doctrine of legal duty or, as in more recent legal writing, from some variant of what is known as the guarantor doctrine. In Danish and Norwegian legal writing, however, what is at issue here is not only the doctrine of false crimes of omission. In these two legal systems the duty to inform must also be placed in relation to the requirements of the respective fraud sections that the

[33] Rørdam, *op. cit.*, pp. 319 ff.

[34] The same view is to be found in Hurwitz, *op. cit.*, p. 452, to which Rørdam refers. Cf. Krabbe, *op. cit.*, p. 679.

[35] Waaben, *op. cit.*, p. 160. Cf. Waaben, *Det kriminelle forsæt*, Copenhagen 1957, pp. 259 ff.

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perpetrator must have acted unlawfully.[36] However, there is a close connection between the doctrine of legal duty—duties of positive action—and the requirement of illegality.[37]

It is not possible here to go into the vital question of when and why the perpetrator should be regarded as being under an obligation to provide information. Unless it is otherwise indicated, in the cases to be discussed from now on it is assumed that he is under such an obligation.

As we have seen, in Danish law there is a requirement that the perpetrator "induces someone to an act or omission" and in Swedish law that the perpetrator "induces someone to an act or an omission".[38] In Norwegian law the requirement is that the perpetrator "maliciously causes someone else to an act". However, in Norwegian law the act can also consist of an omission since the Penal Code, sec. 4, prescribes that wherever the law speaks of an act this shall also include omitting to act, unless the opposite is evident.

It is clear that the three provisions in Scandinavian law all express a requirement of causality between delusion and action. But the requirement for causality can be presented in two different ways. The first means that causality is required of the type that is characteristic of false crimes of omission, in which case this is a question of a hypothetical causality between omission and effect. If the action expected of the perpetrator would in all probability have prevented the coming into being of the illegal effect, causality is assumed to exist between omission and effect. Consequently, if, in a case of fraud, the perpetrator could have prevented the disposition coming about by informing the victim of a relevant circumstance of which he is ignorant or has an incorrect idea, then the omission on the part of the perpetrator is regarded as having caused the victim's action.

But the requirement of causality can also be presented in another way. It is possible to require that the action comes about as a result of mental influence exerted by the perpetrator. As far as Swedish law is concerned Jareborg expresses this in the following concise manner: "The word 'induce' is consequently accompanied by a requirement of mental causality."[39] This requirement that the action must be conscious, that it must have come about through a decision of the fraud victim is of special importance in those cases where the

[36] See Hurwitz, *op. cit.*, p. 451, Waaben, *Strafferettens specielle del*, pp. 159 and 161 ff., Greve–Unmack Larsen–Lindegaard, *Straffeloven, Speciel del*, Copenhagen 1975, p. 335, and Andenæs, *op. cit.*, pp. 90 ff.

[37] On this point, see Andenæs, *Straffbar unnlatelse*, Oslo 1942, pp. 170 ff.

[38] As was the case in the Danish Act the original suggestion of the Committee on Penal Law for the wording of the law made use of the verb "decide" ("Whoever by means of a deception decides someone ...") but the head of the department changed this to "induce", which it was felt was more in keeping with normal usage, *NJA* II 1942, p. 393.

[39] Jareborg, *Brotten*, vol. II, *Förmögenhetsbrotten*, Lund 1978, p. 144.

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action consists of an omission. In that event, cases of the kind where the victim because of sheer ignorance of a certain fact or a certain circumstance unconsciously omits to react, for example, fails to demand payment of a debt or payment of a refund, fall outside the area of fraud.

What has been said above will be illustrated with the aid of two typical cases which often appear in doctrine and case law. The first is a variant of insurance fraud, while the second involves the receipt of a performance, usually a cash payment, to which one is not entitled. The payment is thus based on a delusion on the part of the person making it, and in what follows this type of case is referred to as payment in error.

The following Swedish cases have been selected as examples of insurance fraud:

> *1954 SvJT 27.* In this case Mr and Mrs L. acting in good faith told their fire insurance society that some insured property had been destroyed by fire. They were compensated for this by the society. Later on, however, Mr and Mrs L. found the item they thought had been destroyed by fire. They did not, however, inform the society but kept both the compensation and the recovered property. The Court of Appeal found them guilty of fraud, though in view of the fact that the sum involved was small the crime was classified as petty fraud.
>
> The reason given by the Court of Appeal for its ruling was particularly concise. It reads: "On the other hand, the Court of Appeal finds that Mr and Mrs L. have through their behaviour been guilty of fraud."

In the above case the delusion consists of the insurance society remaining ignorant of the fact that Mr and Mrs L. have found the property for which they have been compensated, and can consequently be called upon to make a refund. The insurer remains ignorant concerning a fact that is relevant to the insurance agreement, and it is this delusion that Mr and Mrs L. exploit by failing to inform the insurer.

The action here consists in the insurer's omission to take steps to secure a refund, and it can be both conscious and unconscious. It is conceivable that someone dealing with the matter thought about it and came to the conclusion that as such a long time had elapsed since the settlement without any word from Mr and Mrs L., everything must be in order and that no request for a refund was necessary. In that case the omission to demand repayment is the result of a conscious decision. The omission by Mr and Mrs L. has had a mental effect on this.

However, what is much more likely is that once the claim had been settled no one connected with the claim thought about it again, and so the omission to demand a refund from Mr and Mrs L. was not a result of a conscious decision but merely an unconscious result of the fact that no one gave the case any further thought. But hypothetical causality of the kind that is required in false crimes of omission is still present. If Mr and Mrs L. had informed the

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insurance company it would probably have presented them with a demand for a refund. Consequently, on the basis of the premise accepted by the Committee on Penal Law, Mr and Mrs L. have not merely exploited a delusion but have also misled the insurer by keeping alive his delusion.

It is not clear from the judgment of the Court of Appeal how that court viewed the problem of causality, though it can hardly be doubted that it was content to see it as the causality typical of crimes of false omission. There was no requirement that the insurer should have decided not to claim a refund, and so an action consisting of an unconscious omission was accepted.

The ruling of the Court of Appeal has been strongly criticized from a number of points of view,[40] but despite this I am of the opinion that the ruling is in keeping with the view expressed in the argument submitted by the Committee on Penal Law as well as in the Commentary on Crimes against Property made when the ruling was made.[41] Jareborg is of the opinion[42] that the decision is due to influence from German case law. German case law is of interest in so far as there is a German case, 70 RGSt (1936) 225, which in all essentials is identical with 1954 SvJT 27. In the German case the accused had received as compensation from a fire insurance company RM 105 for, *inter alia*, a watch and a wedding ring. These objects were discovered later, but the accused did not inform the insurance company. He was convicted of fraud.

Of special interest is the Reichsgericht's statement concerning the causality between delusion and the acting of the company: "By failing to inform the fire insurance company that he had found the objects, the accused has caused the company to remain in the delusion he had, although in good faith, induced and thereby prevented them from recognizing and making their claim for recompensation." However, it does not seem necessary to me to invoke the influence of German case law as a reason for the outcome of the Swedish case, since the effect of the Swedish *travaux préparatoires* and the Commentary on Crimes against Property from that time provide a perfectly adequate explanation.

There remains the question of whether the Swedish case would be regarded as one of fraud by exploitation in Danish and Norwegian law. To take Danish

[40] Strahl, "Svensk rättspraxis, Straffrätt 1953–58", *SvJT* 1960, p. 267, criticizes the ruling by referring to the fact that it had not been demonstrated that a conscious act existed on the part of the insurance company. He also questions the obligation to inform of Mr and Mrs L. In *Allmän straffrätt i vad angår brotten*, p. 351, Strahl adds yet another point of view, namely that "no one at the insurance company had any incorrect idea". It is possible that Strahl feels that sheer ignorance falls outside the scope of the term delusion. Thornstedt, "Legalitet och teleologisk metod i straffrätten", *Festskrift tillägnad Nils Herlitz*, Stockholm 1955, p. 367, note 1, criticizes the ruling because in his opinion the court went too far in equating an omission with a positive act as described in the law. Finally, in *Förmögenhetsbrotten*, p. 225, Jareborg criticizes the ruling with reference to the fact that no mental pressure was put on the insurer and that there was accordingly no conscious act.

[41] Ekeberg *et al.*, *op. cit.*, pp. 176 f.

[42] Jareborg, *Förmögenhetsbrotten*, p. 225.

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law first, it must be pointed out that it is not possible to let the payment of the compensation constitute the action. At the time of the payment both the insurance company and Mr and Mrs L. believed that the latter were entitled to the compensation paid to them. At that moment Mr and Mrs L. had no intention of exploiting a delusion, so the only conceivable action is the insurer's unconscious omission to demand a refund.

Where Danish law is concerned the decisive point must be the requirement that the perpetrator has to induce the person defrauded to perform an act. This involves not merely the requirement of causality mentioned above but also a requirement that the act must be a consequence of a conscious decision. Waaben formulates it by saying that the action must involve "a choice of action based on the motives provided by the perpetrator's activities".[43] An unconscious omission cannot therefore be accepted. A Danish High Court case (1966 UfR 882 V) may be cited, in which case the person accused of fraud omitted to report to the poultry export commission the sale of poultry on which fees had to be paid. In giving its ruling *Vestre Landsret* stated: "The matter involving only passivity from the side of the accused described in the indictment may not be classified as fraud under sec. 279 of the Penal Code ..."

To me the case appears to be a clear example of a delusion in the form of sheer ignorance that leads to an unconscious omission to present a demand. There is no action in the form of a decision.[44] It is somewhat surprising that the Court stresses precisely the fact that the accused remained absolutely passive because passivity in itself in no way precludes responsibility for fraud. Could it be that the Court wishes to point out that in cases of fraud through exploiting another person's delusion there is also a requirement that the perpetrator should have been active to some extent?

It is difficult for me to see that the Swedish insurance fraud case could have been judged as fraud according to sec. 279 of the Danish Penal Code. After all, there is no conscious action. This is why it is surprising to read the following in the statement on Danish law made by the Swedish Committee on Penal Law:[45] "In the penal laws of certain countries, for example Denmark, the exploitation of a delusion is expressly equated with the creation of one. However, it would appear that this is going too far."[46] It is difficult to avoid coming to the conclusion that here there is a misunderstanding about Danish law. The Committee on Penal Law wishes, moreover, to punish the exploitation of another person's delusion as fraud in certain cases and in so doing seems to be basing itself on the same modes of thought as those in Danish law,

[43] Waaben, *Speciel del*, p. 129. Cf. Hurwitz, *op. cit.*, p. 453, and Greve *et al.*, *op. cit.*, p. 336.
[44] Waaben, *op. cit.*, p. 129, seems also to feel that this is the essential thing in the case.
[45] *SOU* 1940:20, p. 130.
[46] Cf. Waaben, *op. cit.*, p. 161.

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that is to say, on the doctrine of false crimes of omission. On the contrary, it would seem that by accepting also unconscious omission as an action in fraud the Committee on Penal Law and Swedish case law go further than Danish law does in punishing the exploitation of another person's delusion.

What remains now is the question of how the Swedish insurance fraud case ought to be judged according to Norwegian law. Before the 1951 change in the law the answer, theoretically speaking, ought to have been obvious. At that time the Norwegian fraud provision did not regard exploiting another person's delusion as a criminal offence. Andenæs,[47] who discusses the same situation that arose in the Swedish case, is of the opinion that the Norwegian fraud provision in its pre-1951 version is not applicable. After all, the perpetrator has not created or reinforced a delusion. It seems doubtful whether the 1951 change in the law extends the scope of the criminal act so that it embraces the Swedish case, too. Andenæs says[48] that even if the text of the law incorporates the alternative "utnytte" (take advantage of) some uncertainties remain. Is there in the wording of the Act "maliciously induces someone to an act" a requirement that the perpetrator has been active in some way? Or does the provision cover also cases where the perpetrator, as in the case of Mr and Mrs L., has been completely passive? Connected with this is the question of whether in Norwegian, as in Danish, law there is a requirement that the act or omission is conscious, that it is a result of a decision made by the victim. Since, in a different connection, Andenæs states,[49] that fraud does not exist "if someone takes advantage of someone else's ignorance to gain pecuniary advantages at his expense but without the latter being active", then it seems to me that Andenæs requires a conscious act.

As far as I can understand, from Andenæs' viewpoint the Swedish case ought to fall outside the Norwegian Penal Code, sec. 270, in both its pre-1951 and its post-1951 wording, though whether this is the viewpoint adopted in Norwegian case law seems more uncertain.[50] Where pre-1951 case law is concerned Andenæs has asserted[51] that no particular attention was paid to establishing causality between delusion and the omission to inform or between creating or reinforcing the delusion and the act.

Cases of payment by mistake constitute one variant of fraud through exploiting another person's delusion that is often discussed in the doctrine and

[47] Andenæs, *Unnlatelse*, pp. 444 ff.
[48] Andenæs, *op. cit.*, p. 447.
[49] Andenæs, *Formuesforbrytelsene*, p. 89. Cf., however, Andenæs, *Unnlatelse*, pp. 445 f.
[50] The older insurance case referred to by Andenæs, *Unnlatelse*, p. 444, note 1—decision by Kristiania district court—which is very similar to the Swedish case, is of no interest here since it was adjudicated according to a special section relating to insurance fraud in the then current penal law.
[51] Andenæs, *Unnlatelse*, pp. 446 f.

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sometimes appears in case law. Such cases can take many different forms. As a starting point I have chosen the situation in an as yet unpublished Swedish Appeal Court case in which X was charged with and convicted of large-scale fraud. X had entered a bank to collect 25 SEK which was to be paid to him by means of a telephone order from another bank. Owing to a misunderstanding on the part of the bank making the payment X was instead paid the sum of 25 000 SEK. X, who noticed the error at once, left feeling pleased.

In the situation just described it is possible *mutatis mutandis* to apply the arguments advanced earlier in the insurance fraud case. The very problem that arose in that case also arises here. But in cases of payment by mistake one or two additional complications supervene that did not arise in the insurance fraud case.

The first complication is concerned with the deception and is of special interest where Swedish law is concerned, for the Swedish section on fraud requires deception whereas Danish and Norwegian law require only the exploitation of a delusion. In Swedish legal writing cases of payment by mistake are looked upon not as fraud by omission but as fraud where the deception lies in a deceptive conduct, namely the acceptance of the payment by the perpetrator. His acceptance of the payment would reinforce the delusion the payer is under, namely that the payment is in order.[52] Then there will be a positive deception on the part of the perpetrator, which is assumed to reinforce the delusion the payer is under that the transaction is in order. This construction seems to me to be quite unrealistic.[53] It is of course possible to conceive of situations where when receiving payment the perpetrator behaves in a way that does really influence the other party mentally.[54] But in cases where the recipient does nothing but silently receive the money then as I see it the relevant deception must consist of an omission to point out the mistake.

The second complication typical of cases of payment by mistake touches on the question of what the act consists of. It could in fact be thought of as consisting either of the payment itself or else of an omission to demand repayment of the sum paid out in error. In Swedish law, as Skorup has made clear,[55] the choice must be to regard the omission to demand repayment as the relevant act of the victim. If the payment itself is allowed to constitute the act

[52] This view was advocated by the Law Council when scrutinizing the proposals for new legislation on crimes against property submitted by the Committee on Penal Law, see *NJA* II 1942, p. 458.

[53] The same view is expressed by Strahl, *Allmän straffrätt*, p. 350, and Kienapfel, *op. cit.*, sec. 146, note 48.

[54] Jareborg, *Förmögenhetsbrotten*, pp. 226 f., maintains that this can possibly be the case with periodic payments.

[55] Skorup, "Bedrägeri genom underlåtenhet—en kausalitetsfråga", *SvJT* 1976, pp. 727 f.

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then the act—the payment—precedes the deception, i.e. the omission to point out the error. In that case there is no causality between deception and act.[56]

If it is assumed that the act consists of an omission to demand repayment a well-known question will of course arise, that of whether this omission has been induced mentally. In the majority of cases this must be doubted.[57]

In Danish and Norwegian law the natural thing would seem to be to regard the payment out as the relevant act of the victim, since what is required is that the delusion is the cause of the act, which is undoubtedly the case. In Danish law, moreover, there is a requirement that the victim's act has been induced by the perpetrator in the sense that if the latter had informed the payer of the mistake then the act would not have been made. Normally this requirement is met, though it ought to be pointed out that during a momentary act of paying, such as handing over a fifty kronor note in mistake for a five kronor one,[58] information from the recipient can hardly prevent the handing over itself from being completed. What would then arise instead would be a retrieval of the note which is prevented by the recipient's saying nothing about the mistake. The position would seem to be the same in Norwegian law, though there the question also arises of whether criminal responsibility should require some kind of activity by the perpetrator and not just silent acceptance. In general the recipient of a payment by mistake is far from meeting such a requirement.

After this review of the difficulties in the fraud doctrine that arise in cases of payment by mistake it is time to take a look at case law. It can without further ado be declared that in Danish, Norwegian and Swedish case law cases of payment by mistake have been regarded as fraud.

To begin with Swedish case law, it is not difficult to find published as well as unpublished cases of payment by mistake that have been adjudged as fraud. However, since the introduction of the crime of fraudulent conversion (Penal Code, ch. 10, sec. 4, in the 1942 revision of the Penal Code decisions vary somewhat, which would seem to be a result of the contradictory statements contained in the Commentary to the Penal Code and its predecessors.[59] If one

[56] This phenomenon may be pondered over in a Swedish case of mistaken payment, 1976 SvJT 14, where the majority of the Appeal Court held that no fraud had been committed since the payment out could not have been caused by the fact that the accused had omitted to report the error. In his description of the deed the prosecutor had alleged that the payment out (of 31,982 SEK instead of 3,182 SEK) was the relevant act of the victim.

[57] This is also Jareborg's view, *Förmögenhetsbrotten*, p. 226. This is why he denies that mistaken payments of the kind discussed here can be regarded as fraud. In *Allmän straffrätt*, p. 350, Strahl also expresses the view that cases of mistaken payment ought not to be regarded as fraud, though he bases his opinion on the fact that by not reacting to the payment the perpetrator cannot be said to have implanted an incorrect idea in the mind of the other party.

[58] Cf. the Swedish case of mistaken payment, 1954 SvJT 33, where the Appeal Court held that fraud had been committed.

[59] See, e.g., Ekeberg *et al.*, *op. cit.*, p. 177. There he says: "If anyone should receive by mistake a larger sum of money than he is entitled to or one that he should not have had, the recipient can be

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wishes to discover a general tendency in these decisions it would seem to be that the courts usually convict for fraudulent conversion, on the one hand, in cases when the perpetrator has not taken part in the act of payment but has had the payment mistakenly credited to his account,[60] and, on the other hand, in cases in which he has certainly taken part in the act of payment but has not been aware of the mistake until *some time later*.

It seems to me that the viewpoint adopted in Danish case law involving cases of payment made in mistake is on the whole much the same as that in Swedish case law. A conviction for fraud requires that the perpetrator was involved in the act of payment and was aware of the mistake at that time.[61] If he was not aware of the mistake until later on there is at any rate no fraud.

In Norwegian law a conviction for fraud also requires the perpetrator to have taken part in the act of payment and to have been aware of the mistake at that time. If he has received the payment in some other way, for example by post, and keeps the money then there is at any rate no fraud.[62] In case 1918 NRt 288, involving a person who had received from a sickness insurance office 121 NOK instead of 2.13 NOK, counsel for the state set forth the view that for fraud to exist it is necessary for the perpetrator to have realized the error when accepting payment.[63]

If an attempt is to be made to draw any conclusion from the investigation carried out then it is likely to be that despite differences in the wording of the provisions and in the definition of fraud itself, the extent to which fraud through exploiting another person's delusion is a criminal offence is, in practice, much the same in Danish, Norwegian and Swedish law. However, Swedish law seems to have a somewhat larger criminal offence sphere than Danish and Norwegian law due to the fact that Swedish courts accept unconscious omission as an act. In other respects it appears that the causality problem does not matter very much in practice. It is not such matters that in reality determine what is punishable and what is not, but whether the courts

guilty of fraud even if he has not specifically supplied misleading information; liability for fraudulent conversion will arise only subsequently ... In practice anyone who has in general remained passive has not infrequently been held to have committed fraud through having kept alive a delusion."

However, on p. 261 concerning the same situation we can read that at times liability for fraud can arise but in other cases "he is guilty of fraudulent conversion through having kept the property".

[60] See, e.g., 1954 NJA 464.

[61] See Krabbe, *op. cit.*, p. 679, Hurwitz, *op. cit.*, p. 451, Waaben, *Speciel del*, pp. 158 f., and Greve *et al.*, *op. cit.*, pp. 335 f. 1949 UfR 509 Ø is a characteristic case, in which the perpetrator received a pay packet larger than he was entitled to. Further cases from unpublished case law are to be found in Rørdam, *op. cit.*, p. 319.

[62] Andenæs, *Formuesforbrytelsene*, p. 88.

[63] On this point, see Kjerschow, *Almindelig borgerlig straffelov ... utgitt med kommentar*, Oslo 1930, p. 673, note 2.

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accept or reject the idea of an obligation to inform.[64] With the aid of this the courts are able to regulate the extent of the criminal offence sphere smoothly and without any trying arguments about causality.

The introductory survey of the crime of fraud as treated in German, Austrian and Swiss law does not enable us to compare how these legal systems deal with punishment for exploiting another person's delusion. Such a comparison would require a far more penetrating analysis of doctrine and practice in these legal systems. However, a more or less intuitive assessment seems to indicate that the differences in the extent of the criminal offence sphere between, on the one hand, the Nordic legal systems mentioned and, on the other hand, German, Austrian and Swiss law, are not all that great. If this is so then it is of course due to the fact that it is the doctrine of fraud as a false crime of omission which in these countries constitutes the basis on which criminal responsibility rests. That the Swiss penal code makes a point of stating that exploiting another person's delusion is a criminal offence seems not to have resulted in the criminal offence sphere having become larger than is the case in German and Austrian law, just as the corresponding stipulations in this respect in Danish and Norwegian penal law have not led to the criminal offence sphere becoming larger than is the case under Swedish law.

What has been said above seems to justify the conclusion that the actual wording of the law as regards the crime of fraud plays a relatively minor role when it is a question of determining the real extent to which an act will be regarded as a criminal offence. This does not of course apply to French law, where the technical formulation of the crime of fraud differs quite considerably from that laid down in the Nordic and German language laws.

On the other hand, in spite of the differences of a technical and dogmatic nature that exist in the field of penal law, English court practice does not in actual fact differ all that much from the standpoint that finds expression in Nordic and Continental (German language) court practice.

STATUTORY TEXTS ON FRAUD

SWEDEN

Penal Code (1962), ch. 9, sec. 1:

Anyone who through a deception induces another to an act or omission that involves gain for the perpetrator and is to the detriment of the person deceived or another person whom the latter represents will be guilty of fraud and imprisoned for not more than two years.

[64] Cf. Andenæs, *Unnlatelse*, p. 447.

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DENMARK

Penal Code (1930), sec. 279:

Anyone who, in order to gain unwarranted pecuniary benefits for himself or for any other person, by unlawfully inducing, confirming or taking advantage of a delusion, causes someone to an act or omission, thereby causing a loss to him or anyone else on whom the act or omission was decisive, will be guilty of fraud.

NORWAY

Penal Code (1902) before the 1951 amendment, sec. 270:

Anyone who, in order to gain unwarranted pecuniary benefits for himself or for anyone else, by inducing or strengthening a delusion, unlawfully and maliciously causes any person to an act and thereby a pecuniary loss is inflicted upon himself or upon anyone on the behalf of whom he acts, as well as anyone who is an accomplice to such act will be guilty of fraud and fined or imprisoned for not more than three years.

Penal Code (1902) after the 1951 amendment, sec. 270:

Anyone who, in order to gain unwarranted pecuniary benefits for himself or for anyone else, by inducing, strengthening or taking advantage of a delusion, unlawfully and maliciously causes someone else to an act or omission which entails pecuniary loss or risk for such loss for the latter or for anyone on whose behalf the latter acts as well as anyone who is an accomplice will be guilty of fraud.

The punishment for fraud is a fine or imprisonment for not more than three years or both.

AUSTRIA

Strafgesetzbuch vom 23. Jänner 1974

§ 146 Betrug

Wer mit dem Vorsatz, durch das Verhalten des Getäuschten sich oder einen Dritten unrechtmässig zu bereichern, jemanden durch Täuschung über Tatsachen zu einer Handlung, Duldung oder Unterlassung verleitet, die diesen oder einen anderen am Vermögen schädigt, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

ENGLAND

Theft Act (1968)

FRAUD AND BLACKMAIL

Obtaining property by deception

15.–(1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.

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(4) For purposes of this section "deception" means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

Obtaining pecuniary advantage by deception

16.–(1) A person who by any deception dishonestly obtains for himself or another any pecuniary advantage shall on conviction on indictment be liable to imprisonment for a term not exceeding five years.

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(3) For purposes of this section "deception" has the same meaning as in section 15 of this Act.

FRANCE

Code pénal

Art. 405. (*Décr.-L.* 16 juill. 1935). Quiconque, soit en faisant usage de faux noms ou de fausses qualités, soit en employant des manœuvres frauduleuses pour persuader l'existence de fausses entreprises, d'un pouvoir ou d'un crédit imaginaire, ou pour fair naître l'espérance ou la crainte d'un succès, d'un accident ou de tout autre événement chimérique, se sera fait remettre ou délivrer, ou aura tenté de se faire remettre ou délivrer des fonds, des meubles ou des obligations, dispositions, billets, promesses, quittances ou décharges, et aura, par un de ces moyens, escroqué ou tenté d'escroquer la totalité ou partie de la fortune d'autrui, sera puni d'un emprisonnement d'un an au moins et de cinq ans au plus, et d'une amende de 3600 F au moins et de 36000 F au plus.

GERMANY

Strafgesetzbuch für das Deutsche Reich vom 15.5.1871

§ 263 Betrug

(1) Wer in der Absicht, sich oder einem Dritten einen rechtswidrigen Vermögensvorteil zu verschaffen, das Vermögen eines anderen dadurch beschädigt, dass er durch Vorspiegelung falscher oder durch Entstellung oder Unterdrückung wahrer Tatsachen einen Irrtum erregt oder unterhält, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft.

(2) Der Versuch ist strafbar.

(3) In besonders schweren Fällen ist die Strafe Freiheitsstrafe von einem Jahr bis zu zehn Jahren.

SWITZERLAND

Schweizerisches Strafgesetzbuch vom 21. Dezember 1937

Art. 148 – Betrug

Wer in der Absicht, sich oder einen andern unrechtmässig zu bereichern, jenanden durch Vorspiegelung oder Unterdrückung von Tatsachen arglistig irreführt oder den Irrtum eines andern arglistig benutzt und so den Irrenden zu einem Verhalten bestimmt, wodurch dieser sich selbst oder einen andern am Vermögen schädigt, wird mit Zuchthaus bis zu fünf Jahren oder mit Gefängnis bestraft.

Der Betrüger wird mit Zuchthaus bis zu zehn Jahren und mit Busse bestraft, wenn er den Betrug gewerbsmässig betreibt.

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