

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY GERMANY
ARTICLE 8, PARAGRAPH 5
ASSET AND INTEREST DISCLOSURE SYSTEMS
GERMANY (NINTH SESSION)**

II. Information requested from States parties in relation to asset and interest disclosure (art. 8, para. 5)

1. Please describe (cite and summarize) the measures your country has taken, if any, (or is planning to take, together with the related envisaged time frame) to ensure full compliance with article 8 (5) of the Convention, and in particular to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

1.1 Disclosure requirements

Civil servants are generally required to disclose their assets neither to the revenue authorities nor to their employer. Obliging federal civil servants to disclose their assets is extremely problematic from the point of view of constitutional law. It would constitute interference with a highly personal sphere of life. This is protected by the general right of personality, as enshrined in Article 2 para. 1 in conjunction with Article 1 para. 1 of the Basic Law. In addition, such a duty would most likely lead to many qualified candidates being put off applying for higher office in particular and to their foregoing the opportunity to take such office.

During the recruitment process potential civil servants are, however, asked whether they are in debt and, if so, why and how high the debt is. The aim is to assess the applicant's personal suitability for public office. Candidates are asked to make a self-declaration. Where there are doubts as to a candidate's personal suitability, he or she may be rejected. Also, disciplinary proceedings must be instituted against federal civil servants who negligently enter into debt. This is based on the belief that civil servants owing large debts are particularly vulnerable to corruption.

The supervisory mechanisms have thus been shifted elsewhere, as explained in the following section.

According to the Federal Act on the Legal Status of Members of the Federal Government, members of the Federal Government are also not obliged to disclose their assets.

1.2 Notification requirement of the tax authorities etc. to compensate for the lack of duty to disclose investments and assets

All those agencies which are capable of preventing, uncovering and prosecuting corrupt practices are required to cooperate to guarantee the success of the fight against corruption. This presupposes that the law enforcement authorities are informed at an early stage of any facts which justify the suspicion that a criminal offence related to corruption has been committed. They are to first discuss and analyse the facts establishing a suspicion together so as to enable the relevant authority to then respond swiftly, flexibly and robustly.

The tax authorities' notification requirements result from the applicable provisions of tax law, for example section 4 (5), first sentence, no. 10 of the Income Tax Act, section 10 of the Ordinance on Tax Audits and section 31b, second sentence, of the Fiscal Code. Under section 4 (5), first sentence, no. 10 of the Income Tax Act, the revenue authorities are obliged to report facts which give rise to a reason to suspect a criminal offence to the law enforcement authorities. The courts, public prosecution offices and administrative authorities are obliged to report the same matters to the revenue authorities. Generally applicable rules also apply in this context, such as those under civil service law (concerning claims for compensation), the Fiscal Code (in section 116 on reporting tax crimes), the Criminal Code (in section 73 et seqq. on confiscation) and the Code of Criminal Procedure (in sections 111b et seqq. on the provisional securing of assets). Out of all the 16 Länder, 15 have already enacted their own rules in regard to the tax authorities', audit institutions' and other authorities' notification requirement so as to make up for the lack of requirement to disclose investments and assets.

2. Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

No information can be provided on this question.

3. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

We do not require any technical assistance.