

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY GERMANY**

ARTICLE 9, PARAGRAPHS 2 AND 3 UNCAC

MANAGEMENT OF PUBLIC FINANCES

GERMANY (SIXTH MEETING)

Measures to provide for transparent and public procedures for adopting of the national budget, that specify the type of information required as part of the submission to the legislature, with opportunity for public input and debate;

Such procedures are provided for with regard to all levels of administration in Germany in the Budgetary Principles Act (*Haushaltsgrundsätze-gesetz*), a translation of which is available here:

http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Laws/1969-08-19-budgetary-principles-act.pdf?__blob=publicationFile&v=3

For the federal level, the procedures are set out in detail in the Federal Budget Code (*Bundshaushaltsordnung*), an English translation of which is available here:

http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Laws/1969-08-19-federal-budget-code.pdf?__blob=publicationFile&v=4

The states (*Länder*) have enacted more detailed legislation with respect to their budgets and the budgets of the municipalities.

The draft of the Budget Act together with the draft annual budget presented to the Bundesrat and the Bundestag (the two federal parliamentary bodies) by the government is published immediately after presentation. The plenary parliamentary debates are public. The procedures for passing the law for the annual budget follows the standard law making procedure, with some deviations (Article 110 (2) of the Basic Law - *Grundgesetz*, which is the federal German constitution)

An English translation of the Basic Law (German federal constitution) can be found here:

http://www.gesetze-im-internet.de/englisch_gg/index.html

The information to be presented together with the draft bill is defined in section 13 and 14 of the Federal Budget Code.

Measures to ensure that reporting on revenue and expenditure is public, timely and regular, and that there are consequences for the responsible agency and officials for failure to report at all or in a timely fashion;

Such measures are provided for in Article 114 of the Basic Law (*Grundgesetz* – see above link). For the purpose of discharging the Federal Government, the Federal Minister of Finance has to submit annually to the two Houses of Parliament an account of all

revenues and expenditures as well as of assets and liabilities during the preceding financial year. The German Supreme Audit Institution (*Bundesrechnungshof*, website: http://www.bundesrechnungshof.de/en?set_language=en), whose members enjoy judicial independence, audits the account and examines the performance, regularity and compliance of financial management. It submits an annual report directly to the two Houses of Parliament as well as to the Federal Government. In other respects mandate and tasks of the *Bundesrechnungshof* are regulated by federal law.

In the Federal Budget Code, the rules on accounting as well as on auditing, and publication of final accounts which apply for the federal administration are set out in greater detail; the constituent states (Länder) provide for similar legislation.

The responsible federal government departments and agencies render accounts for each financial year (or other periods, where permitted) on the basis of the closed accounts. On the basis of the closed accounts, the Federal Ministry of Finance prepares the budget account and the account of assets and liabilities for each financial year. In the budget account, revenues and expenditures are listed alongside the budget appropriations in accordance with a procedure designated by law. The law provides for a final cash account and for a final budget account to be set up. The final cash account and the final budget account are explained in a report. Federal enterprises which keep their accounts according to the rules of commercial double-entry accounting prepare annual financial statements and a management report in line with the regulations of the Commercial Code (*Handelsgesetzbuch*). The rules on setting up budget accounts have to be applied insofar as they are compatible with the rules of commercial double-entry accounting.

Failure to report is a breach of duty and can lead to disciplinary and, where applicable (e.g. in case of fraud), criminal sanctions.

Measures to ensure that effective system of accounting and auditing is put in place and that there is effective oversight over the budgetary revenue and expenditure with regular training and accreditation requirements for government accountants and auditors;

Rules on auditing which apply at federal government level are set out in Article 114 of the Basic Law (see above), regulating the judicial independence of the *Bundesrechnungshof* at constitutional level, and in sections 88 to 104 of the Federal Budget Code.

The *Bundesrechnungshof* (see above) and its regional offices audit the Federal Government's entire budgetary and financial management, including its trust funds and corporations established under federal law, in accordance with the provisions set out in the Federal Budget Code. It provides advice to the two Houses of Parliament, the Federal Government and individual federal ministries on the basis of its audit findings. Where the *Bundesrechnungshof* gives advice to Parliament, it has to inform the Federal Government at the same time.

The *Bundesrechnungshof* audits receipts, expenditures, commitments authorisations, assets and debts, government programmes that have financial implications, the provisional entries and advances, and the use of funds allotted for independent management. The *Bundesrechnungshof* is free to limit the scope of the audit and leave specific accounts unaudited.

The *Bundesrechnungshof* examines whether the regulations and principles applicable to budgetary and financial management have been observed, and in particular whether the provisions of the Budget Act and the budget have been adhered to, the revenues and expenditures have been properly substantiated and supported by documents, and whether both the budget and capital accounts have been duly prepared, whether funds have been used efficiently and economically, and whether the task can be accomplished at less expense in terms of personnel or materials, or otherwise more effectively.

The *Bundesrechnungshof* is also entitled to audit bodies or other third parties outside the federal administration, in particular of the constituent states (*Länder*), where such bodies receive or handle federal funds, or private-law enterprises where the Federal Government is a shareholder, which are not engaged in competition, perform exclusively or predominantly public tasks as provided or serve this purpose, and receive budget funds or guarantees to this end from the Federal Government or one of its trust funds. Where such agencies pass on the funds to third parties, the *Bundesrechnungshof* may also audit those third parties.

The audit examines whether funds have been managed and used economically and for the intended purpose. In the case of grant allocations, the *Bundesrechnungshof* may also audit other budgetary and financial management by the recipient if it deems this necessary for the purposes of audit work.

Where the Federal Government has granted loans from budget resources or entered into commitment authorisations, guarantees or other warranties, the *Bundesrechnungshof* may audit the beneficiaries to ascertain whether they have made sufficient provision to prevent detrimental consequences for the Federal Government, or whether the conditions for recourse to the Federal Government have been met.

The *Bundesrechnungshof* also audits the management of the Federal Government's shareholdings in private-law enterprises.

A joint audit shall be carried out where both the *Bundesrechnungshof* and one of the Regional Audit Institutions share auditing responsibilities. Furthermore, the *Bundesrechnungshof* may assign or assume individual audits or assume auditing tasks for supranational or international organisations, provided it is authorised to do so by international treaties, administrative agreements or by the Federal Government.

The *Bundesrechnungshof* sets out the audit findings in management letters that are sent to the audited bodies. These are required to submit their comment within a time frame set be

the *Bundesrechnungshof*. Where this is deemed necessary for particular reasons, the *Bundesrechnungshof* may communicate audit findings to other government bodies and the Parliament's Budget Committee. In addition, key audit findings of a basic nature or having major financial implications are brought to the attention of the Federal Ministry of Finance.

Where the administration intends to refrain from pursuing claims of the Federal Government which are dealt with in the management letters, the *Bundesrechnungshof* must be consulted. The *Bundesrechnungshof* may waive this right.

Final audit results may also be disclosed to third parties. In order to protect the auditing and deliberation process, access may not be granted to records documenting auditing or deliberation activities. This also applies to relevant records at audited agencies.

Each year, the *Bundesrechnungshof* submits an annual report on major audit findings and audit recommendations to both Houses of the German Parliament and to the Federal Government. Its annual report is an essential basis for the annual decision by Parliament about granting discharge to the Federal Government.

The annual report states in particular whether the amounts shown both in the budget and capital accounts tally with those shown in the primary accounts, and whether the revenues and expenditures are properly supported by documents, in which important cases the regulations and principles applicable to budgetary and financial management have not been observed, which major objections have arisen from the auditing of Government shareholdings in private-law enterprises, and which measures are recommended for the future.

Comments on matters that have to be kept secret are submitted to the presidents of the two Houses of Parliament, to the Federal Chancellor and to the Federal Ministry of Finance.

After submitting the annual report, the *Bundesrechnungshof* publishes it online without delay, except for the findings on matters that have to be kept secret.

The 2014 annual report (English translation) is published here:

<http://www.bundesrechnungshof.de/de/veroeffentlichungen/bemerkungenjahresberichte/jahresberichte/2014>

Apart from annual reporting, the *Bundesrechnungshof* may at any time report to the two Houses of Parliament and to the Federal Government on matters of major importance. Where the *Bundesrechnungshof* reports to Parliament, it has to inform the Federal Government at the same time. After submitting its reports on matters of major importance, the *Bundesrechnungshof* must publish such reports online without delay.

Special reports are published here:

<http://www.bundesrechnungshof.de/en/veroeffentlichungen/sonderberichte>

One example of a special report would be the *Joint report of the SAIs of Germany, Belgium and the Netherlands on intra-community VAT fraud* of 2009, which also serves as an example for the cooperation of EU Member States.

The statement of account of the *Bundesrechnungshof* itself is examined by the two Houses of Parliament, who also grant discharge.

There are certain obligations of agencies to report certain matters to the *Bundesrechnungshof*, as, e.g. the conclusion of agreements on the management of budget funds, or the establishment, substantial alteration or discontinuation of holdings. It has to be consulted before administrative regulations on the implementation of the Federal Budget Code are issued.

The *Bundesrechnungshof* is also mandated to audit the budgetary and financial management of private-law entities, which receive grants from the Federal Government on the basis of a law, or where the Federal Government is obliged by law to grant guarantees, or where such entities are administered solely or principally by the Federal Government or by a person appointed by the Federal Government, or where it has been agreed with the *Bundesrechnungshof* that an audit should be carried out by it, or where such entities are not enterprises and provide in their articles of association with the consent of the *Bundesrechnungshof* for an audit to be carried out by it.

Where the Federal Government is entitled to receive more than a quarter of the profit of an enterprise in which it is not a shareholder, the *Bundesrechnungshof* also has to audit the financial statements to ascertain whether the interests of the Federal Government have been protected in accordance with the existing provisions.

In the *Bundesrechnungshof*, decisions are taken by panels. Members of the *Bundesrechnungshof* as well as auditing staff supporting the members, require an adequate academic background (studies of economics, law, or administrative sciences), proven theoretical and practical professional background related to budgetary laws, accounting, and the use of relevant computer software. As “soft skills”, they require, inter alia, excellent communication and cooperation skills, the ability to perform teamwork, to persuade, assertiveness, analytical thinking and judgment, negotiating skills and the readiness to make decisions, as well as the ability and willingness, if necessary, to take on new tasks and to acquire the necessary knowledge.

Measures to ensure that effective and efficient system of risk management and internal control is put in place, with clear allocation and description of the roles and responsibilities and description of how the offices responsible for risk management and internal control maintain, organize and store records;

With respect to corruption prevention, a risk assessment system is in place on the federal level (the states - *Länder* - maintain own systems). According to the Directive Concerning the Prevention of Corruption (Number 2 in the brochure “Rules on Integrity” - see the link above) and further explained in the recommendations for its application (Number 3 in the brochure “Rules on Integrity”), each agency has to assess the areas of activity within the agency which are especially vulnerable to corruption, and to apply certain measures for staff entrusted with them (see answers above).

The vulnerability is assessed by a uniform system, based on spreadsheets which are easy to apply. The spreadsheet for a unit (translated into English) is arranged as set out in **Annex I** to this document. This work is supported by the provision of a “handbook on identifying areas of activity especially vulnerable to corruption”.

According the Recommendations on Preventing Corruption (no. 3 in the brochure “Rules on Integrity”), in areas of activity especially vulnerable to corruption,

- after identifying special vulnerability to corruption for the first time,
- after organizational or procedural changes,
- after changes to assigned tasks, or
- after no more than five years,

the need for conducting a risk analysis should be examined. To do so, the existing safeguards for each area of activity especially vulnerable to corruption and the effectiveness of these safeguards should be briefly examined. If the brief examination points to a need for action, a risk analysis is to be conducted. For this purpose, the individual operations and processes and existing safeguards against corruption have to be examined for each area of activity. This has to be followed by an evaluation as to whether the existing safeguards are sufficiently effective to counter the risks. If action is needed, then the organization and processes and/or personnel assignments are to be examined to see how they can be changed. In this case, the risk analysis will include recommendations and/or order additional measures.

The key aspects of a risk analysis are described in Annex 5 of the “handbook on identifying areas of activity especially vulnerable to corruption”.

The federal government applies a decentralized approach to the prevention of corruption, in order to customize the required measures in their details. The persons competent for taking the measures under the Directive must be appointed within each agency. By the end of 2013, 1,267 persons (on - calculated - 643.8 full-time workplaces) were entrusted with tasks related to the prevention (not: investigation) of corruption in the federal administration, which comprised (within the scope of the application of the Directive) 571,713 members of staff (including soldiers) by the end of the calendar year 2013.

The decentralized approach is accompanied by reporting requirements in order to mitigate negative effects of such decentralization. Each federal agency or other entities under federal public law (except for some social insurance institutions) has to annually report facts and figures on corruption prevention on a website form. The questionnaire currently used has more than 50 questions. On the basis of these reports, an annual report

is submitted to the Bundestag. After discussions on such report in the relevant Bundestag committee, the report is published. The report which had been prepared for the calendar year 2013 (in German only) can be found here:

http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsoring/jahresbericht-2013_korruptionspraevention.pdf?__blob=publicationFile

Measures to provide for corrective action in case of failure to comply with the legal requirements, with description of the procedure for oversight and implementation.

Apart from the reporting requirements, disciplinary action and - if crimes are committed or suspected to be committed - also prosecution takes place. In the calendar year 2013, proceedings against 19 members of staff with respect to the suspicion of corruption had been initiated.

The details of disciplinary measures against civil servants on federal level are set out in the *Bundesdisziplinargesetz*, an English translation of which is not published by the Federal Government. The original German version can be found here:

<http://www.gesetze-im-internet.de/bdg/>

The disciplinary measures can be a formal reprimand, a fine, a cutback of remuneration, degradation, removal from office, and removal from office in combination with the loss of pension rights (beyond the ordinary social insurance pension).

In the case of the suspicion of a breach of duty of a public servant, any superior has to instigate disciplinary measures. The suspicion has to be investigated; the public servant has a right to be heard. Deliberations of criminal courts are binding in the disciplinary procedure. During investigation, it is possible to suspend the public servant from office, and to simultaneously hold back up to 20 per cent of the salary, which has to be reimbursed only once the public servant is not guilty. A reprimand, a fine, or a cutback of remuneration can be ordered by the administration, with a right of the public servant to appeal to a court. Degradation, removal from office, and removal from office in combination with the loss of pension rights can only be ordered by a court after formal accusation of the civil servant, which the administration files with the court after the case had been sufficiently investigated.

Any prison sentence against a public servant of a year or more (with or without probation) for an intentional criminal offence automatically leads to the loss of office in combination with the loss of pension rights (beyond the ordinary social insurance pension).

With respect to employees who are not public servants, labour law applies. Breaches of duty may, depending on the severity, lead to dismissal.

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

In addition to the measures required by arts. 9 and 10 Germany intends to further strengthen its anticorruption framework in relation to public procurement and management of public finances (arts. 9) and public reporting by the following measures:

In course of the implementation of the new EU directives on public procurement into German law, it is intended to cease with the split-up of the procurement rules into several bodies of law, in order to make the relevant laws more transparent and legible. The setting-up of a nationwide register on debarments from public procurement, and the introduction of the obligation to use fully electronic procurement procedures is intended, but challenging, as more than 30,000 agencies on federal, state (*Länder*) and municipal level procure goods and services.

Furthermore, the reporting on measures on corruption prevention on the federal level is currently being strengthened. The 2014 report on corruption prevention is intended to be more detailed and precise than the 2013 report.

3. Do you require technical assistance in relation to the measures described above?

No.