

I - Information requested from States parties in relation to mandates of anti-corruption body or bodies in respect of prevention (art. 6)

Each State Party shall ensure the existence of a body or bodies that prevent corruption for example by implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies or by increasing and disseminating knowledge about the prevention of corruption (Article 6 para 1).

At the federal level, application of the Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration of 30 July 2004 ("the Directive") is binding; the *Länder* have adopted similar rules. Pursuant to no. 5.1 of the Directive, a contact person for corruption prevention is to be appointed in all agencies of the federation based on the tasks and size of such agency. This contact person can be responsible for more than one agency. Contact persons may be charged with the following tasks:

- a) serving as a contact person for agency staff and management, if necessary without having to go through official channels, along with private persons;
- b) advising agency management;
- c) keeping staff members informed (e.g. by means of regularly scheduled seminars and presentations);
- d) assisting with training;
- e) monitoring and assessing any indications of corruption;
- f) helping keep the public informed about penalties under public service law and criminal law (preventive effect) while respecting the privacy rights of those concerned.

Each State Party shall grant the corruption prevention bodies the necessary independence to carry out their functions effectively and free from any undue influence. The necessary material resources and specialized staff should be provided (Article 6 para. 2).

No. 5.5 of the Directive provides that, in carrying out their duties of corruption prevention, contact persons are to be independent of instructions. They are to have the right to report directly to the head of the agency and may not be subject to discrimination as a result of performing their duties.

Pursuant to Article 6 para. 3, each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

The authority within the meaning of paragraph 3 at the federal level is the Federal Ministry of the Interior which has the primary competence on corruption prevention within the Federal Government.

II - Information requested from States parties in relation to public sector legislative and administrative measures, including measures to enhance transparency in the funding of candidatures for elected public office and, where applicable the funding of political parties (arts. 5 and 7).

1. Please describe the legislative and administrative measures you have taken to prevent corruption in the public sector. In particular, please provide information on measures you have taken to enhance transparency in the funding of candidatures for elected public office and the funding of political parties.

Under Article 21 (1) fourth sentence of the Basic Law, political parties must publicly account for their assets and for the sources and use of their funds. This constitutional requirement of transparency is specified in detail in the Political Parties Act (*Parteiengesetz*, PartG). According to the Act, political parties must provide an annual statement of accounts covering all income, expenditures and assets. This statement is published as a Bundestag printed paper and may be accessed also on the website of the German Bundestag (Section 23 (1) first sentence and (2) third sentence PartG). Donations exceeding a total of €10,000 in a calendar year must be recorded in the statement of accounts with the name and address of the donor as well as the total amount of the donation (Section 25 (3) first sentence PartG). In addition, single donations exceeding €50,000 must be reported immediately to the president of the Bundestag, who publishes them as a Bundestag printed paper (Section 25 (3) second and third sentences PartG) and on the Internet. The Political Parties Act also stipulates which donations parties are not allowed to accept (Section 25(2) PartG). Measures and sanctions in case of failure to comply with the requirements to present a statement of accounts or the prohibition on accepting certain donations are specified in Sections 31a to 31d PartG.

Candidates for parliamentary elections in Germany are nominated by the political parties, and election campaigns are led by the national, regional and local political party organizations. Election campaigns and candidatures are financed by the political parties,

whose statements of accounts are made public. Political party members, and thus also candidates and office-holders of a political party, who accept donations to the political party are required by law to forward all donations without delay to a member of the political party executive who has been designated in accordance with the political party's statutes as responsible for financial matters (Section 25 (1) third sentence PartG); political party members who fail to do so are subject to criminal prosecution, while the political party is subject to significant fines. Due to the small number of candidates not affiliated with any political party and the absence of tax incentives to donate to individual candidates, personal funding for individual candidates has little practical significance in Germany. Unlike donations made to political parties, donations made to candidates are not tax-deductible. Like gifts to private individuals, such donations are subject to the gift tax. Donations made to candidates are therefore almost always intended by the donor as donations to the political party and are to be treated as such.

States parties may wish to cite and describe measures that:

- *Establish a legal definition of what constitutes a donation or contribution to a candidate for public office or a political party;*

The Political Parties Act contains definitions of membership dues, contributions paid by elected representatives and donations to political parties. Membership dues are regular payments made to the political party by political party members in accordance with the political party's statutes. Contributions paid by elected representatives are regular money payments made by a holder of an elected public office (elected representative/official) in addition to his/her membership dues. Political party donations are free gifts from third persons or payments in cash or in kind from political party members in addition to membership dues or contributions from elected representatives (Section 27 (1) PartG).

- *Require public disclosure of donations received by candidates for public office and political parties, including the identity of individual and corporate donors;*

All donations and other income must be reported in political parties' statements of accounts. Donations to a political party exceeding a total of €10,000 in a calendar year must be recorded in the annual statement of accounts with the name and address of the donor as well as the total amount of the donation (Section 25 (3) first sentence PartG). Political parties must submit their statements of accounts to the president of the German Bundestag, who publishes them as a Bundestag printed paper (Section 23 (2) third sentence PartG). The Bundestag printed papers can also be accessed on the website of the German Bundestag.

In addition, single donations in excess of €50,000 must be reported immediately to the president of the German Bundestag. The president then publishes the donor's name, address and amount of donation without delay as a Bundestag printed paper (Section 25 (3) second and third sentences PartG) and on the Internet.

- *Establish a ceiling or limits on donations that can be made to candidates or political parties;*

Only donations made to political parties are tax-deductible; free gifts to individuals are subject to estate or gift taxes. As expressions of the general freedom of action, free gifts to individuals or political parties are not subject to any limits; donations to private individuals are subject to gift tax, and donations to political parties are subject to transparency requirements under political party law (they must appear in the statement of accounts; total donations of more than €10,000 must be given with the donor's name and address, and, in addition, single donations of more than €50,000 must be published immediately by the president of the Bundestag). According to the Code of Conduct for Members of the German Bundestag, donations to members of the Bundestag exceeding €5,000 in a calendar year must be reported to the Bundestag president with the donor's name and address; donations of more than €10,000 in a calendar year must be published by the Bundestag president with the total amount of the donation and its origin (Section 4 (2) and (3) of the Code of Conduct for Members of the German Bundestag).

- *Clarify the permissibility and limits applicable to donations by foreign donors or legal entities owned in whole or in part by the State;*

Section 25 (2) PartG stipulates which donations parties are not allowed to accept.

No donations from abroad may be accepted unless

- these donations accrue directly to a political party from the assets of a German, of a citizen of the European Union, or of a business enterprise, of whose shares more than 50 per cent are owned by Germans or by a citizen of the European Union or whose registered office is located in a Member State of the European Union;
- they are donations to political parties of national minorities in their traditional settlement areas from countries which are adjacent to Germany and where members of their ethnic group live; or
- it is a donation not exceeding €1,000 made by a foreigner (Section 25 (2) no. 3 PartG).

No donations may be accepted from corporations under public law, parliamentary groups or groups of local councils (Section 25 (2) no. 1 PartG). The same applies to companies which are partly or fully publicly owned or are managed or operated by public entities if

the state's direct participation amounts to more than 25 per cent (Section 25 (2) no. 5 PartG).

Further, a political party is barred from accepting a donation if it is evidently made in the expectation of, or in return for, some specific financial or political advantage (Section 25 (2) no. 7 PartG).

The law contains additional prohibitions on accepting certain donations (Section 25 (2) nos. 2, 4, 6 and 8 PartG).

- *Establish regular financial reporting obligations of donations and expenditures, including pre- and post-election, for candidates and political parties;*

Political parties must account publicly for the sources and use of their funds and for their assets at the end of each calendar year in statements of accounts truthfully and to the best of their knowledge and belief (Section 23 (1) first sentence PartG). Before they are submitted, the statements of accounts must be checked and certified by an authorized public accountant (Section 23 (2) first sentence PartG). The statements of accounts must be submitted to the president of the German Bundestag, who publishes them as a Bundestag printed paper (Section 23 (2) third sentence PartG). The law specifies the structure of the statement of accounts in detail (Section 24 PartG). For example, income accounting must indicate income from membership dues, contributions paid by elected representatives, donations from natural persons, donations from legal persons and other kinds of income (Section 24 (4) PartG). Expenditure accounting must also be itemized, including operating expenditures on general political work and on election campaigns (Section 24 (5) PartG).

As already explained above, donations are subject to special reporting requirements. Donations to a political party exceeding a total of €10,000 in a calendar year must be recorded in the annual statement of accounts with the name and address of the donor as well as the total amount of the donation (Section 25 (3) first sentence PartG). In addition, single donations in excess of €50,000 must be reported immediately to the president of the German Bundestag. The president then publishes the donor's name, address and amount of donation without delay as a Bundestag printed paper (Section 25 (3) second and third sentences PartG) and on the Internet. Donations to members of the Bundestag and other elected officials must be forwarded without delay to a member of the political party executive who has been designated in accordance with the political party's statutes as responsible for financial matters (Section 25 (1) third sentence PartG). If the donor intends to donate directly to an individual member of the Bundestag, donations exceeding €5,000 in a calendar year must be reported to the president of the Bundestag with the

donor's name and address and the total amount of the donation; total donations exceeding €10,000 in a calendar year must be published by the president of the Bundestag with the total amount of the donation and its origin (Section 4 (2) and (3) of the Code of Conduct for Members of the German Bundestag).

- *Apply sanctions for the violation of any relevant laws, rules and regulations applicable to political candidates or political parties; and*

The Political Parties Act provides for various measures and (also criminal) sanctions in case of violations of the requirement that political parties present a statement of accounts or the prohibition on accepting certain donations:

If contributions and donations (i.e. membership dues, contributions from elected representatives and donations) were untruthfully stated in the statement of accounts and, as a result, the amount of funds from the public partial financing of political parties to be allotted to the political party, which is linked *inter alia* to the amount of donations and contributions received by the political party, was wrongly determined, the president of the German Bundestag revokes the decision made on the amount of public funds to be disbursed (Section 31a (1) first sentence PartG).

In case of inaccuracies in its statement of accounts, a party must pay a penalty double the amount wrongly stated to the president of the Bundestag (Section 31b first sentence PartG).

If a political party violates the prohibition on accepting certain donations under Section 25 (2) PartG by accepting such donations and does not forward them to the president of the German Bundestag in accordance with Section 25 (4), it is required to pay a penalty amounting to three times the amount illegally obtained (Section 31c (1) first sentence PartG).

If a party fails to publish donations in its statement of accounts in accordance with the Political Parties Act, it is required to pay twice the amount of the sum not properly disclosed (Section 31c (1) second sentence PartG).

Persons engaging in any of the above-mentioned activities may have committed a criminal offence pursuant to Section 31d PartG. Under Section 31d (1) first sentence PartG, anyone who engages in the following with the intent to conceal the origin or use of the party's funds or assets or to evade the obligation to render public account is subject to criminal prosecution:

- entering incorrect information about the income or assets of the party in a statement of accounts or submitting an inaccurate statement of accounts; or

- as a recipient, dividing a donation into smaller amounts and entering them into the books or having them posted by others; or
- as a political party member, receiving donations to a political party and failing to forward these donations immediately to the member of the political party's executive committee designated by the political party statutes as responsible for financial matters in violation of Section 25 (1) third sentence PartG.

Further, auditors or auditors' assistants who report inaccurately on the result of the audit of a political party's statement of accounts, conceal important circumstances in the audit report or issue an audit certificate containing inaccurate information are committing a criminal offence (Section 31d (2) first sentence PartG). [Please see the following point on the requirement that political parties' statements of accounts must be checked by an auditor.]

- *Allow for the independent monitoring of financing of political candidates or political parties.*

Before they are submitted to the president of the German Bundestag, political parties' annual statements of accounts must be checked and certified by a certified auditor or an auditing firm (Section 23 (2) first sentence PartG). The audit must check whether the statement of accounts complies with the law and must be conducted in such a way that inaccuracies and violations of the law are detected during the conscientious performance of professional duties (Section 29 (1) third and fourth sentences PartG). The auditor must record the results of the audit in a written audit report (Section 30 (1) PartG). If the final result of the audit does not give any cause for objections, the auditor must confirm by means of a certificate that, as established by an audit properly performed to the extent required and based on the political party's account books and documents and on the clarifying information and documentary proof furnished by the executive committees, the statement of accounts complies to the degree it has been audited with the provisions of the Political Parties Act. If the audit result gives cause for objections, the auditor must either refuse to provide, or must qualify, such confirmation in his/her audit certificate (Section 30 (2) PartG). The audit certificate must be attached to the statement of accounts to be submitted and be published in full with that statement (Section 30 (3) PartG). The independence of the auditors is ensured through provisions on reasons for exclusion related to persons or institutions and on the obligation to carry out their duties conscientiously and impartially (Section 31 PartG).

The president of the German Bundestag (with assistance from the relevant unit of the German Bundestag administration) checks whether the annual statements of accounts submitted by the political parties are accurate and meet the formal requirements

(Section 23a (1) first sentence PartG). If there is concrete evidence that any information contained in a political party's statement of accounts is inaccurate, the president gives the political party concerned an opportunity to comment. The president may require the political party to have the accuracy of its comments confirmed by its certified auditor (Section 23a (2) second sentence PartG). If the political party's response does not disprove the aforementioned concrete evidence of inaccuracy in the statement of accounts, the president may, in agreement with the party concerned, commission a second auditor or auditing firm of his/her choice to determine whether the political party's statement of accounts complies with the Political Parties Act. The political party concerned must permit the auditor to access and inspect the records and supporting documents required for the audit (Section 23a (3) first and second sentences PartG). After this procedure has been concluded, the president of the German Bundestag issues a notice identifying any inaccuracies in the statement of accounts and the amount corresponding to the inaccurate information (Section 23a (4) first sentence PartG). If a political party's statement of accounts contains inaccuracies, the political party concerned must correct its statement of accounts and resubmit the statement in full or in part, as decided by the president of the German Bundestag; this statement must be confirmed by an auditor with an audit certificate. Corrected statements of accounts must also be published in full or in part as Bundestag printed papers. By way of exception, the correction may be made in the statement of accounts for the following year, if the amount to be corrected does not exceed €10,000 in a single instance and €50,000 for the accounting year (Section 23a (5) PartG). Inaccuracies in the statement of accounts also result in the measures and sanctions under Sections 31a to 31d PartG as described above.

In addition to reviewing and publishing the political parties' individual statements of accounts as Bundestag printed papers and on the Internet, the president of the German Bundestag reports every two years to the German Bundestag on the development of the political parties' financial situation and on the statements of accounts submitted by the political parties. The president is also required to prepare short annual comparative overviews of the political parties' income and expenditure and their assets. These reports are published as Bundestag printed papers (Section 23 (4) PartG).

2. Please provide information demonstrating implementation of the measures described above.

In particular, States parties may wish to provide information such as:

- *Disclosure reports made by candidates for public office and/or political parties;*

The president of the German Bundestag publishes the political parties' annual statements of accounts as Bundestag printed papers (Section 23 (2) third sentence PartG). An index where the statements of accounts can be directly accessed can be found on the website of the German Bundestag using the following link:

<http://www.bundestag.de/bundestag/parteienfinanzierung/rechenschaftsberichte/index.html>

The statements of accounts for 2012 have been published as Bundestag printed papers 18/400 and 18/401 and can be accessed directly on the Bundestag website using the following links:

<http://dipbt.bundestag.de/dip21/btd/18/004/1800400.pdf>

<http://dipbt.bundestag.de/dip21/btd/18/004/1800401.pdf>

Donations made directly to members of the Bundestag (i.e. donations not intended to go to the political party but to the member of the Bundestag personally) are published in the Official Handbook (Part II) and on the Bundestag website (with the members' biographies) along with the rest of the member's income subject to publication requirements.

- *Examples or statistics regarding cases involving violations of the political funding provisions, including any sanctions applied or criminal prosecutions that resulted;*

The president of the German Bundestag's reports that are produced every two years on the development of the political parties' financial situation and on the statements of accounts submitted by the political parties (Section 23 (4) PartG) also contain information on political parties' violations of political party financing and accounting provisions of the Political Parties Act. For example, information on violations of individual prohibitions on accepting donations and on violations of publication requirements can be found on pages 20 ff. and 30 ff. of the report of 16 December 2011 (Bundestag printed paper 17/8200) and on pages 24 ff. and 38 ff. of the report of 18 December 2013 (Bundestag printed paper 18/100). The reports also contain information on violations of additional provisions of the Political Parties Act. These reports can be found on the German Bundestag website using the following links:

<http://dipbt.bundestag.de/dip21/btd/17/082/1708200.pdf>

<http://dipbt.bundestag.de/dip21/btd/18/001/1800100.pdf>

- *Key conclusions and recommendations from reports produced by government agencies responsible for oversight of the system applicable to the funding of election candidates and political parties; and*

The president of the German Bundestag's reports that are produced every two years on the development of the political parties' financial situation and on the statements of accounts submitted by the political parties (Section 23 (4) PartG) also contain conclusions drawn from the review of statements of accounts and recommendations for federal lawmakers and political parties. As a general result of the review, the report of 18 December 2013 (see above) concludes that the statements of accounts submitted by political parties having a claim to funds from the public partial financing of political parties largely complied with the provisions of the Political Parties Act (p. 11). However, the president of the German Bundestag noted that current law makes no provision for enforcing the requirement of accountability for political parties having no claim to funds from the public partial financing of political parties (i.e. small political parties receiving less than 0.5% of the valid votes cast in the most recent Bundestag and European parliamentary elections, and less than 1% of the valid votes cast in the most recent elections to the state parliaments; Section 18 (4) first sentence PartG) which fail to comply with their legal obligation to submit a statement of accounts (p. 6). An example of the president of the German Bundestag's recommendations to the political parties can be found in the report of 18 December 2013 on the treatment of unauthorized donations (pp. 22–23).

- *Statistics regarding public perception of integrity and transparency in the funding of election candidates and political parties.*

We are not aware of specific statistics on the public perception of integrity and transparency in the funding of political parties.

The European Commission's EU Anti-Corruption Report to the Council and the European Parliament of 3 February 2014 (COM(2014) 38 final, Annex 5 [Germany], p. 3) contains information on the results of the 2013 Eurobarometer survey: 92% of respondents in Germany stated that they were not personally affected by corruption in their daily life (EU average: 70%); 59% of respondents considered corruption in Germany to be widespread (EU average: 76 %); These surveys did not refer specifically to integrity and transparency of funding of political parties, however, but to corruption in general.

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

Political parties which do not submit their statements of accounts on time are not eligible to claim funds from the public partial financing of political parties (Section 19a (3) PartG). In order to enforce the requirement of accountability for political parties not receiving enough votes to claim funds from the public partial financing of political parties (they must receive at least 0.5% of the valid votes cast in the most recent Bundestag or European parliamentary elections, or at least 1% of the votes in the most recent elections to the state parliaments, Section 18 (4) first sentence PartG), including additional possibilities for sanctions under the law could be useful (see the president of the German Bundestag's report of 18 December 2013 mentioned above, Bundestag printed paper 18/100, p. 6).

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required.

No.