

Open-ended Intergovernmental Working Group on Prevention
Sixth Meeting

Information on certain aspects of corruption prevention
GERMANY

Preface

This document reflects only some of the measures on corruption prevention in Germany, i.e., it is non-exhaustive. Information is provided mainly on the basis of the guidelines provided in Annex I to UNODC document with the reference CU 2015/58/DTA/CEB.

Furthermore, it should be noted that this document, in order to keep it rather comprehensive, only reflects federal laws and measures related to the federal administration. Albeit the laws which are relevant within the context of this document are mostly federal laws, the organization of administrative bodies, as well as internal guidelines and directives, is a matter of autonomous discretion of the German federal states within the framework of federal laws, and the federal government does not enjoy any authority to instruct the federal states (*Länder*) on how to organize their administration. Also, the federal competencies to enact laws on the organization of the *Länder* administration are very limited.

The UN Convention Against Corruption is binding Germany as a whole, this including *Länder* authorities. Municipalities are regarded as *Länder* authorities.

In order to keep this document short, references to legislation are provided as internet URLs, as far as an English translation of legislation is available on the internet.

I - Information requested from States parties and signatories in relation to integrity in public procurement processes and transparency and accountability in the management of public finances (arts. 9 and 10)

1. Description of the measures/steps Germany has taken has taken (or is planning to take) to implement this provision of the Convention

Measures to ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making; establishing in advance the conditions for participation, including selection and award criteria and tendering rules:

The principles of transparency, competition, and objective criteria in decision-making / non-discrimination form the key cornerstones of all public procurement laws in Germany. They are expressly contained in Article 97 (1) and (2) of the Act Against Restraints on Competition, Section 1 and Section 2 Article 2 (1) VOL/A, Article 2 (1) VOB/A and Article 2 VOF (see below for further explanations on these regulations). Publication of tenders, pre- and post-notifications are required according to several provisions, in particular in legislation of the European Union on public procurement, or in national laws based on European Union legislation. In general, the award criteria have to be publicized or to be made available to participating enterprises.

Selection and award criteria must be objective and related to the goods or services to be procured, and are subject to independent review in tribunal / court proceedings as set out below in further detail.

Procurement laws which are applied in Germany, and, thus, procurement procedures, are based on different sources of law. With respect to procurement procedures above a certain threshold (based on the value of the public contract), which are determined by the laws of the European Union, the rules are based on Part IV of the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*)

http://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0603,

which are complemented by the Regulation on the Award of Public Contracts (*Vergabeverordnung*). Even more detailed rules are set out

- in section 2 of the Procurement Regulations for Construction Works (*Vergabe- und Vertragsordnung für Bauleistungen; VOB/A - no free English publication available*),

- in section 2 of the Procurement Regulations for Public Supplies and Services (*Vergabe- und Vertragsordnung für Leistungen; VOL/A*), <http://bmwi.de/BMWi/Redaktion/PDF/V/vergabe-vertragsordnung-fuer-leistungen-vol-en,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf>
- and in the Procurement Regulations for Professional Services (*Vergabeordnung für freiberufliche Dienstleistungen; VOF*). <http://bmwi.de/BMWi/Redaktion/PDF/V/vergabeordnung-freiberuflicheleistungen-vof-en,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf>
- For the procurement of utilities (water, energy, transport), the Ordinance on Awarding Contracts in the Areas of Transport, Drinking Water and Energy Supply - Sector Ordinance (*Sektorenverordnung; SektVO*) applies, while the Public Procurement Ordinance - Defence and Security (*Vergabeverordnung Verteidigung und Sicherheit – VSVgV*) contains specific rules on procurement for defence and security-related procurement (with respect to building works in those sectors, part 3 of the VOB/A also applies). The national laws mentioned before had been enacted to transform EU regulations 2004/18/EC, 2004/17/EC, and 2009/81/EC into national law.

In the following text, reference to the VOB/A is not made, as a free English translation is not available. The relevant regulations in the VOB/A are very similar to those in the VOL/A and the VOF.

In EU regulations 2014/23/EU, 2014/24/EU, and 2014/25/EU, the European Parliament and the Council have laid down new rules on procurement procedures, on concessions, and on procurement in the sectors water, energy, transport, and postal services. The EU Member States, this including Germany, and other EEA states, are obliged to transform the regulations into national law by 18 April 2016. The aforementioned directives can be found (in almost all official EU languages) at URLs: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0001.01.ENG
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024>
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0243.01.ENG

With respect to procurement below the EU threshold, for federal agencies, section 55 subsection 1 of the Federal Budget Act (*Bundeshaushaltsordnung*) provides:

“Before entering into contracts on goods or services, a preceding public tender is obligatory, as far as the nature of the contract or specific circumstances justify an exemption.”

In the (binding) general administrative regulations to the Federal Budget Act, section 1 of the Procurement Regulations for Construction Works (*Vergabe- und Vertragsordnung für Bauleistungen; VOB/A*) and section 1 of the Procurement Regulation for Public Supplies and Services (*Vergabe- und Vertragsordnung für Leistungen; VOL/A*) are declared applicable. The rules in the “non-EU” sections 1 of those procurement regulations provide for procedures which are almost as comprehensive and strict as the EU law based rules (sections 2).

The federal ministries have the power to define a threshold up to which certain simplifications, as provided for in the Procurement Regulations, are permitted in order to keep administrative burdens in proportion. However, those thresholds are not high. For example, the Federal Ministry of the Interior and its agencies have limited the amount up to which “single tender action” (award of contract without prior publication) is permitted to generally Euro 8,000 (without value added tax), and direct purchasing (without formal comparison of prices of several providers) is permitted only up to a contract value (without value added tax) of Euro 500.

Measures to provide for sufficient time to potential tenderers to prepare and submit their tenders and using by default an open tender procedure;

The regulations provide for sufficient time to potential tenderers to prepare and submit their tenders, see, for example, section 2 Article 12 EC VOL/A (above EU threshold), section 1 Article 10 VOL/A (below EU threshold), Article 7 VOF (professional services).

An open tender procedure is defined as default procedure, cf. section 2 Article 3 (1) EC VOL/A (above EU threshold), section 1 Article 3 (2) VOL/A (below EU threshold). For professional services, the negotiated procedure with a prior public invitation to take part (call for competition) is the default procedure. cf. Article 3 (1) VOF.

Measures to provide for transparent publishing of all procurement decisions including publishing the invitations to tender;

The publication of notices is provided for in the regulations, cf. section 2 Article 15 EC VOL/A, section 1 VOL/A and Article 9 VOF (publication in the Official Journal of

the EU with respect to procedures above the EU threshold), and section 1 Article 12 VOL/A (publication on www.bund.de with respect to procedures below the EU threshold). With respect to the publication of the award decision, cf. section 2 Article 23 EC VOL/A and Article 14 VOF (above the EU threshold), section 1 Article 19 VOL/A (procedures below the EU threshold).

Establish procedures, rules and regulations for review of the procurement process, including a system of appeal

In tender procedures with a value exceeding the EU threshold, remedy is available in form of speedy review procedures (cf. § 102 to § 124 GWB - see the above link) before an independent tribunal, with the possibility to appeal to a court. The independent tribunals are set up in the cartel authorities. As a result of such review, the contracting authority can be barred from entering into the contract. The laws provide for damages claims (cf. § 125, § 126 GWB), and, in some cases, for the contract awarded against the rules to be null and void (cf. § 101b GWB).

In case of a substantial violation of the rules which apply for procurement below the threshold, damages can be claimed.

Measures to provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases.

There are no specific rules applying to procurement personnel. The standard rules for staff members for areas of activity especially vulnerable to corruption apply.

Those rules are contained in a brochure called "Rules on Integrity" which can be downloaded here:

http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/2014/rules-on-integrity.pdf?__blob=publicationFile

In particular, no. 4.1 of the Directive Concerning the Prevention of Corruption (Number 2 in the brochure) provides for a careful selection of such staff.

In the Recommendations on Preventing Corruption (no. 3 in the brochure "Rules on Integrity"), where the Directive is further commented, the principle of careful staff selection is further explained:

When staff are hired for positions especially vulnerable to corruption, the organizational unit responsible for personnel matters and supervisors involved in personnel decisions determine the level of risk associated with persons considered for the position. Their assessment will typically be limited to evaluation of any noticeable problems, e.g.

- investigations of criminal or disciplinary offences,
- in-house investigations of suspected corruption,
- excessive debt, disorderly financial situation,
- social problems (alcohol or drug addiction, compulsive gambling),
- conspicuous behaviour leading to doubts about the person's reliability.

Any persons to whom any of the above apply may not be considered for a position in an area especially vulnerable to corruption while the relevant investigation is under way or until any suspicion has been found to be groundless.

A conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases is in effect. Staff having a conflict of interest may not be assigned for taking relevant decisions. The requirement for reporting and / or a permission to accept secondary employment is thoroughly regulated in sections 97 to 105 of the Act on Federal Public Servants (*Bundesbeamtengesetz* - cf. pages 71 to 74 of the brochure "Rules on Integrity") and the Ordinance on Secondary Employment (*Nebentätigkeitsverordnung*), both applying to federal public servants, and in the Act on the Status of Public Servants (*Beamtenstatusgesetz*) and *Länder* legislation for public servants of the states (*Länder*). For contractual employees, similar provisions are contained in an industrial agreement (cf. page 74 of the brochure "Rules on Integrity"). In case of a conflict of interest, staff may be prohibited from specific secondary employment.

Furthermore, Germany maintains a highly efficient tax administration. All inhabitants of Germany who have earnings above a certain threshold are obliged to file an annual tax return. For persons who receive a salary from which income tax is already deducted (which applies to all persons working in the public administration), that threshold amounts to 410 Euro per year. In the tax return, all taxable income has to be reported. This includes illegal earnings, which are taxable, as well. If the illegal earnings are not reported in the tax return, and thus, they are not taxed, this constitutes the crime of tax evasion (Article 370 of the Fiscal Code - *Abgabenordnung* - an English translation is published here: http://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p2134).

Furthermore, in severe cases of corruption or misappropriation of public funds, the facts may be disclosed to prosecution authorities by the taxation authorities if “there is a compelling public interest in such disclosure; such compelling public interest shall be deemed to exist in particular where [...] crimes and wilful serious offences against [...] the State and its institutions are being or are to be prosecuted, [...] economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are likely to substantially disrupt the economic order or to substantially undermine general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions [...].” (cf. Article 30 of the Fiscal Code - *Abgabenordnung* - http://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p0152).

With respect to award procedures, conflicts in individual cases - which lead to the non-assignment of staff which is affected in the individual case - are dealt with in section 16 of the Regulation on the Award of Public Contracts (*Vergabeverordnung*), which reads (unofficial translation into English):

(1) Natural persons, who are deemed to be biased, may not participate in decisions made in an award procedure as a member of an organ or of the staff of a purchaser, or as a representative or as member of the staff of a representative of a purchaser, as far as, in that procedure, they

- 1. are tenderer or applicant,*
- 2. consult a tenderer or applicant, or otherwise support him or her, or represent him or her legally or only in that award procedure,*
- 3. a) are employed by the tenderer or applicant against remuneration, or are acting for him or her as a member of the executive board, the supervisory board, or a similar organ,*
b) are acting for an enterprise which is involved in the award procedure, if that enterprise maintains business relations to the purchaser as well as to the tenderer or applicant at the same time,

except where a conflict of interest does not evolve for such persons, or the activities do not have any effect on the decisions in the award procedure.

(2) Persons, whose relatives fulfil the criteria set out in subsection 1 no. 1 to 3, shall also be deemed biased. Relatives are the fiancée, the spouse, the (registered same-gender) civil partner, persons related by birth or by marriage in direct line, siblings, children of siblings, spouses and civil partners of siblings, and siblings of spouses

and civil partners, siblings of the parents, as well as foster parents and foster children.

A violation of the ban on participation, as set out in the regulation quoted above, leads to the abrogation of the award. Each tenderer or applicant has the right to object the award in the procedure set out in section 97 ff. GWB (a link to the GWB is provided above) on the grounds of such participation of an excluded person.

Measures to put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.)

Such measures are set out in the Directive Concerning the Prevention of Corruption (Number 2 in the brochure “Rules on Integrity”) and further explained in the recommendations for its application (Number 3 in the brochure “Rules on Integrity”). They provide, inter alia, for the rotation of personnel with the obligation to record reasons for any assignment to a post which exceeds five years (no. 4.2 of the Directive Concerning the Prevention of Corruption). No. 11 of the Directive Concerning the Prevention of Corruption contains specific guidelines for awarding contracts, concerning the principle of competition, the separation of planning, awarding, and the settlement of accounts, and debarment.

Furthermore, debarment of tenderers who have been convicted of offences such as corruption, or who are guilty of other forms of misconduct, is regulated in detail in the relevant EU directives on procurement, as well as in section 2 Article 6 (4) to (7) VOL/A and Article 4 (6) to (9) VOF (above EU threshold), and Article 6 (5) and (6) VOL/A (below EU threshold). In some cases, such as in the case of a conviction because of corruption, debarment of the bidder from the procurement procedure is obligatory for the contracting authorities.

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 (*Haushaltsgrundsätzegesetz*), 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 (*Bundeshaushaltsordnung*), 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 lawmaking 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 by 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/bemerkungen-jahresberichte/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 to 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/Korr

[ption_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.

II. Information requested from States parties and signatories in relation to measures to prevent money-laundering (art. 14)

1. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention.

Germany has introduced a strong system to prevent -money laundering and combat - terrorist financing. Please refer in this regard to the mutual evaluation report of Germany <http://www.fatf-gafi.org/countries/d-i/germany/documents/mutualevaluationofgermany.html> which is based on an assessment of the Financial Action task Force (FATF). Concerning the last actions taken to strengthen the national AML/ CFT regime please refer to the 3rd follow-up report, published in June 2014 <http://www.fatf-gafi.org/countries/d-i/germany/documents/follow-up-report-germany-2014.html>

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 preventive measures required by art. 14 Germany intends to further strengthen its AML regime by the following measures:

Germany will bring its criminal offence of money laundering in line with FATF Recommendation 1:

Germany has already started the legislative process to amend the Criminal Code and introduce a new sentence 2 in section 261, subsection (9). This amendment will allow to punish the perpetrator of the predicate offence while maintaining the constitutional ban on multiple punishments for the same crime.

Measures are under way to fulfil FATF's requirements to the criminalization of financing of terrorism:

The Ministry of Justice and Consumer Protection presented draft legislation at the beginning of 2015. This legislation will establish the financing of terrorism as a separate offence. The new draft will broaden the scope of the offence since it contains a catalogue of (predicate) offences as defined within the scope of Article 2

(1) and the treaties listed in the Annex of the International Convention for the Suppression of the Financing of Terrorism. Furthermore, the new offence no longer includes a threshold of “not unsubstantial assets” and thus is applicable to any collection and provision of funds with the intention that they should be used for terrorist acts, or in the knowledge that they are to be used for terrorist acts. Moreover, the conceivable maximum sentence for all financing offences has been stepped up considerably and is now 10 years of imprisonment.

Finally, Germany has initiated legislation to improve its provisions regarding transparency of bearer shares (FATF Recommendation 33):

In this respect, on 7 January 2015, the Federal Government concluded a proposal to legislative bodies to effectively enhance measures to prevent the misuse of bearer shares. According to the draft legislation, bearer shares may be issued only if (1) the shares of the stock corporation are publicly listed or (2) if the shares have been immobilised. In the latter case, the law will require them to be held with a regulated financial institution or professional intermediary. If the stock corporation does not comply with these rules, the bearer shares will be treated as registered shares. It is expected that legislation will come into force within this year.

3. 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. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

No.

Clerk 2									
Assistant Clerk									
Registrar									
Secretary									
	Note: In certain cases, activities may be especially vulnerable to corruptions even in absence of the above characteristics (no. 2.1 of the recommendations).								