

Information requested from States parties in relation to strengthening the role of supreme audit institutions in the prevention of and fight against corruption (Resolution 8/13 of the Conference of the States Parties to the United Nations Convention against Corruption) – Contribution GERMANY

Article 9, paragraph 2:

“Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

...

- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph”.

Please describe (cite and summarize) the measures/steps that your country has taken, if any, (or is planning to take, together with the related time frame) to implement the relevant provision of the Convention and to promote the implementation of resolution 8/13.

The government is subject to financial and economic audit by the Federal Court of Audit (Bundesrechnungshof - BRH), which can be called Supreme Audit Institution (SAI). It audits the accounts of the government and determines “whether public finances have been properly and efficiently administered by the Federation”.

The German Supreme Audit institution’s (SAI) status and that of its members is enshrined in the Constitution Section 114 (2), Basic Law¹). It is an independent body of government auditing subject only to the law. No other government institution may instruct it to perform an audit. The German SAI is an institution of its own kind that is neither part of the legislative, judicial nor executive branches of government. This is a special feature distinguishing external audit bodies from internal audit bodies. The SAI is a supreme federal authority. It is a Court by designation but has no judicial function. It has a board model.

¹ The Bundesrechnungshof whose Members shall enjoy judicial independence shall audit the accounts and examine the performance, regularity and compliance of the Federal Government’s financial management. To perform audit work as provided by sentence 1 of this article, the Bundesrechnungshof may also collect audit evidence at bodies outside the federal administration. Such audit access also extends to cases where federal funds are allocated to the federal states for specified purposes. The Bundesrechnungshof shall report annually to both Houses of Parliament and to the Federal Government. In all other respects, its powers shall be determined by federal legislation.

The SAI's staff is made up of Members (President, Vice-President, Senior Audit Directors and Audit Directors), audit managers, auditors and support staff. The Members are independent both personally and in respect of the performance of their duties. Upon the proposal of the Federal Government, both the President and the Vice-President are elected by the two Houses of Parliament and appointed by the President of the Federal Republic of Germany for a non-renewable term of twelve years. Decisions relating to audit work are generally made by panels of Members. As a rule, a panel is made up of two, i.e. the senior audit director and the audit director. Panels of three Members including either the President or the Vice-President may also be formed. The regulations on independence and disciplinary measures within the supreme federal judiciary are applied to the SAI Members.

The SAI may select all audit matters as it deems fit and decide on the audit coverage. The German SAI provides audit impact throughout the budget procedure.

The German SAI's audit work also serves to provide a reliable basis for Parliament to grant discharge to the Federal Government for financial management of the preceding financial year. The directly elected first chamber of the German Parliament (Deutscher Bundestag) passes on the German SAI's annual report to the **Budget Committee**, which has a leading role in the deliberation. The **Budget Committee** in turn passes the report to a sub-committee, the Public Accounts Committee (PAC). The resolutions adopted are communicated to the **Budget Committee** to prepare the decision on discharge incumbent on the first chamber of Parliament. The resolution on recommended action adopted by the Budget Committee also includes the demand addressed to the Federal Government to implement the decisions made in the annual report, to introduce or pursue efforts to enhance efficiency and to report on the progress made in due time. This is to ensure that the results achieved can be duly taken into account in the budget deliberations. When deciding on granting discharge, the Bundestag plenary session places reliance on the recommended action included in this resolution.

During the parliamentary procedure for granting discharge to the Federal Government, the annual report may prompt Parliament to impose requirements on the Government (Art. 114.2 Federal Budget Code) or expressly disapprove of specific matters under scrutiny (Art. 114.5 Federal Budget Code).

Its work is governed by legislation: the SAI's Act, the federal financial regulations (Federal Budget Code) and the Budgetary Principles Act. Accordingly, the German SAI has set up its own, additional internal standards and procedures which can only be understood in conjunction with the applicable legal basis and which have to comply with German law and its methodology. For example, the Mission Statement sets out values that govern the external audit function. The mission statement also reflects the

objectiveness and values of the SAI: independence, neutrality, objectiveness and credibility.

The independence and the audit mandate of the German SAI are inviolable. Procedures and audit approaches are set forth in the standing orders and the SAI's audit rules.

All audited bodies are obliged to provide all information the SAI deems necessary for carrying out its functions.

Furthermore, the SAI provides advice to the two Houses of Parliament, the Federal Government and the line ministries on fundamental issues, on major spending programmes or on matters where decision-makers ask for information. Apart from annual reporting the SAI may at any time report to the two Houses of Parliament and the Federal Government of matters of particular importance (Art. 99 sentence 1 German Federal Budget Code). It may also do real-time audits of measures having major spending impact. The German SAI works closely with Parliament, especially the Public Accounts Committee that supports the audit findings.

The Senate is the SAI's supreme decision-making body. It is composed of 16 Members: President, Vice-President, all senior audit directors, three audit directors and two rapporteurs. The Senate may set up committees. The most important and obligatory committee provided for by the SAI Act is the standing committee. It participates in the decision-making process on the allocation of audit assignments within the SAI.

The schedule of responsibilities determines the distribution of functions within the SAI and is drawn up by the President in consultation with the standing committee of the Senate in accordance with statutory procedure. One major purpose of this procedure is to ensure full audit coverage and avoid to the extent possible any audit gaps.

In its audit work, it applies the criteria of performance, regularity and compliance as set forth in Art 114.2 German Constitution. In many cases, it does financial, compliance and performance audit in a single audit exercise, with the focus on performance audit (comprehensive audit).

The German SAI's budget is one of the departmental budgets making up the aggregate federal budget. The German SAI prepares its annual budget estimate at its own discretion. The estimate is submitted to the Federal Ministry of Finance that scrutinises the budget estimates of all government departments and draws up the federal budget. It may amend the estimates after consultation with the departments and agencies concerned. If, however, it decides to amend the SAI's budget estimate it has to notify the Federal Government of any deviations if such amendments have not been approved by the SAI (s. section 28, Federal Budget Code). The draft estimate of the SAI as part of the federal budget estimate is then submitted to Parliament for adoption together with the amendments proposed by the Federal Ministry of Finance on which no agreement

has been reached. If the Federal Finance Ministry wishes to amend the German SAI's budget request it has to present, its wishes for modification along with the original request to Parliament and Parliament will have the final say.

The Bundestag, in particular the Budget Committee and its Public Accounts Committee, play a key role when it comes to ensuring that the necessary consequences are drawn. In recent years, these committees have embraced virtually all of the SAI's observations and have translated the SAI's recommendations into committee decisions addressed to the Federal Government.

The SAI frequently examines certain aspects of corruption prevention as a part of adequate financial management and the implementation of corruption prevention measures in individual federal agencies or institutions, in particular regarding areas at high risk of corruption (e.g. procurement, grants and construction measures). For example, it has examined the scope of the federal government's requirements as regard integrity in the federal administration (i.e. preventing corruption, accepting rewards and gifts, sponsoring and the use of external parties), and recommended that the scope of these provisions be defined more uniformly and should include all parts of the federal administration. It has examined how ten different federal authorities have carried out the threat and risk analyses. Quite often, corruption prevention is part of a comprehensive audit concerning the budgetary and economic management of the audited institution.

It can be said that the SAI's core task with regard to corruption prevention is to identify weaknesses in administrative procedures and inadequate preventive measures that may facilitate the emergence of corruption.² Through its findings and recommendations, the SAI systematically helps to promote comprehensive corruption prevention in the federal administration. It also advises the administration on the further development of the regulatory framework.

² See

e.g. <https://www.bundesrechnungshof.de/de/veroeffentlichungen/produkte/beratungsberichte/langfassungen/langfassungen-2019/2019-bericht-stand-der-korruptionspraevention-im-geschaeftsbereich-des-bundesministeriums-fuer-verkehr-und-digitale-infrastruktur-pdf/view>;
<https://www.bundesrechnungshof.de/de/veroeffentlichungen/produkte/pruefungsmittelungen/langfassung-en/2018/2018-pm-korruptionspraevention-beim-deutschen-wetterdienst-pdf/view>
<https://www.bundesrechnungshof.de/de/veroeffentlichungen/produkte/pruefungsmittelungen/langfassung-en/2018/2018-pm-korruptionspraevention-in-der-generaldirektion-wasserstrassen-und-schiffahrt-und-ihrem-nachgeordneten-bereich-pdf/view>;
https://www.bundesrechnungshof.de/en/veroeffentlichungen/products/annual-reports/dateien/spring-report-2015/at_download/file (page 6);
<https://www.bundesrechnungshof.de/en/veroeffentlichungen/products/leitsaetze-der-externen-finanzkontrolle/leitsatzsammlung/ordnungsmaessigkeit/01-01>.

The SAI provided its expertise for Germany's country review under the second cycle of the Mechanism for the Review of Implementation of the UNCAC, including during the country visit.

Information requested from States parties in relation to the role of national parliaments and other legislative bodies in preventing and combating corruption in all its forms (resolution 8/14 of the Conference of the States Parties to the United Nations Convention against Corruption) – Contribution Germany

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related time frame) to promote the implementation of resolution 8/14.

Parliamentary oversight of the Federal Government is ensured based on the division of powers. As a consequence, the Bundestag has the power to limit or check on the Federal Government within the boundaries of the German Constitution. The government is collectively responsible for its political actions to the Bundestag (Section 28, GOBReg). There are several powers in place to exercise this control, e.g. the right of Members of Parliament (MEPs) to ask questions to and receive information from the government (i.e. the right of interpellation), the right to cite and gain access to and hear members of the government. A particular form of scrutiny is the parliamentary committee of inquiry.

The German Bundestag has the final oversight over the implementation of the Corruption Prevention Directive, and can issue decisions that have to be taken into account by the federal administration. The annual report of the Federal Government on the Implementation of the corruption prevention directive is discussed and adopted by the relevant committee of the German Bundestag. The committee frequently issues decisions to further enhance the implementation of corruption prevention measures in the Federal Government. One of its decisions was to publish the report to enhance transparency and enable public scrutiny. Recently, the relevant committees also decided to merge the reports on the implementation of the Corruption Prevention Directive, on sponsoring for the Federal Administration and on the use of external persons in the Federal Administration with the aim to get a more comprehensive overview on corruption prevention measures in the Federal Government. The first comprehensive report will be discussed in the committee in the 2nd half of 2021.

With regard to internal rules and measures, the plenary of the German Bundestag has passed various changes to the Members of the Bundestag Act and the Code of Conduct for Members of the German Bundestag (Code of Conduct), which came into force on November 19, 2020 with and along with the thirty-first law amending the Members of the Bundestag Act (Federal Law Gazette I, 2394). It is now permitted to impose an administrative penalty in the event of infringements of the duty of MEPs to notify donations or if inadmissible allowances or pecuniary benefits were accepted. This strengthens the enforcement of the Code of Conduct.

Moreover, section 108e of the Criminal Code (CC) incriminating bribery of MEPs safeguards the integrity of the decision-making processes in the German Bundestag. The scope of application of the criminal law provisions of section 108e CC was extended in 2014. The provisions now cover undue influence on MEPs more broadly by including any action in the exercise of the MEP's mandate as a possible counter-action for the bribe – whereas the previous provisions only covered vote buying.

The Commission for the Legal Status of MEPs (Commission) has voted in favour of increasing the staff of the division responsible for the Code of Conduct (Division PM 1 of the German Bundestag) by creating a position in the senior service on a permanent basis.

In line with recommendations issued in the 2nd UNCAC evaluation report (for the review cycle 2016-2021)¹ and by the Council of Europe's Group of States against Corruption (GRECO) in its fourth evaluation cycle, the Commission has also deliberated several times on questions relating to the lobby register and a legislative footprint. On September 8, 2020, the draft law introducing a lobby register at the German Bundestag and amending the law on administrative offenses (Lobby Register Act) was introduced in the Bundestag by the two parliamentary groups that together form the majority in the plenary. It is currently still being debated. In the first reading there was consensus that the Federal Government should also fall under the scope of the draft law. An expert hearing with stakeholders was publicly held on October 1, 2020.

The Commission also discusses new transparency requirements for the acquisition of stock options and an irreducible degree of transparency information on contractual partners in cases of assertion of confidentiality rights or the right to refuse testimony.

¹ Endeavour to enhance transparency of outside interests and activities of members of the Bundestag by adopting: (a) additional disclosure requirements for members of the Bundestag covering conflicts between their private interests and parliamentary functions; and (b) effective and comprehensive regulations on transparency of interaction of members of the Bundestag with lobbyists and other third parties (art. 8, para. 5)