



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Germany

Review by Greece and Croatia of the implementation by Germany
of articles 5-14 and 51-59 of the United Nations Convention
against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Germany of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Germany, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Greece, Croatia and Germany, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving: Markus Busch and Stephanie Goebel from Germany; Ioannis Androulakis and Antonis Baltas from Greece; Dinko Kovacevic and Tomislav Matoc from Croatia. The staff members of the secretariat were Tanja Santucci and Meder Begaliev.
6. A country visit, agreed to by Germany, was conducted from 10 to 12 September 2018 in Berlin.

III. Executive summary

1. ***Introduction: overview of the legal and institutional framework of Germany in the context of implementation of the United Nations Convention against Corruption***

Germany signed the Convention on 9 December 2003 and deposited its instrument of ratification on 12 November 2014. International treaties form an integral part of the domestic law of Germany as a consequence of the respective act of parliament in accordance with article 59 of the Basic Law of Germany (GG). The Convention therefore has the status of a federal law.

Germany is a federal parliamentary republic consisting of 16 states (Länder). The federation and the states have concurrent legislative powers in areas related to corruption prevention and asset recovery (arts. 70–74, GG).

The implementation by Germany of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle. The anti-corruption and anti-money-laundering frameworks of Germany have been assessed by the Council of Europe's Group of States against Corruption (GRECO), the Organization for Economic Cooperation and Development (OECD), the Financial Action Task Force (FATF), and the Financial Sector Assessment Program (FSAP) of the International Monetary Fund.

The national legal framework for preventing corruption and asset recovery comprises, notably, the GG, the Criminal Code (StGB), the Federal Budget Code (BHO), the Act on Federal Civil Servants (BBG), the Federal Civil Servant Status Act (BeamtStG), the Act against Restraints of Competition (GWB), the Freedom of Information Act (IFG), the Money Laundering Act (AMLA) and the Act on International Legal Assistance in Criminal Matters (IRG).

Relevant corruption prevention and asset recovery authorities include the Federal Ministry of the Interior, Building and Community (BMI), the Federal Ministry of Justice and Consumer Protection (BMJV), the Supreme Audit Institution (BRH), the Financial Intelligence Unit (FIU), the Federal Office for Justice (BfJ), the Federal Criminal Police Office (BKA) and the competent authorities (prosecution offices and courts) of the federal states.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

To prevent corruption, Germany relies on the existing legal and regulatory framework consisting of various provisions under criminal law, public service law and other rules for the administration at both federal and state levels. The Cabinet of Germany adopted a Directive Concerning the Prevention of Corruption in the Federal Administration of 30 July 2004 (CPD), which sets out key elements of the federal administration's preventive strategy and requires, inter alia, each federal administration body, and other bodies in receipt of federal funding, to develop effective internal corruption prevention measures and to appoint a contact person for corruption prevention. In addition, the Strategy on Corruption of the Standing Conference of the Interior Ministers of the Länder (IMK) from 1995 guides corruption prevention efforts of federal states.

The implementation and periodic revisions of CPD are coordinated by an interministerial working group consisting of corruption prevention contact persons and experts of internal audit units.

Germany has not measured the impact of the corruption prevention strategy, particularly in sectors considered prone to corruption.

There are several bodies in Germany at federal and state levels charged with coordinating and overseeing the implementation of the aforementioned anti-corruption policies. A lead division on corruption prevention has been set up in BMI (Division DG I 3). Internal audit units and contact points for corruption prevention are also actively involved in preventive activities and may monitor and assess any indications of corruption.

BRH, a constitutionally independent body, monitors certain aspects of the implementation of CPD by federal administration bodies and provides comments on the BMI's annual CPD implementation reports submitted to the parliament (Bundestag). The Bundestag has the final oversight over the implementation of CPD and can issue decisions that have to be taken into account by the federal administration. All federal states have autonomous and independent audit institutions with mandates largely similar to that of BRH.

Germany actively participates in various international and regional anti-corruption initiatives, projects and programmes. Germany is a member of GRECO, the OECD Working Group on Bribery in International Business Transactions, the OECD Working Party of Senior Public Integrity Officials and the Group of 20 Anti-Corruption Working Group.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The legal framework regulating the recruitment, promotion, remuneration and retirement of civil servants comprises the GG, BBG, BeamStG and related federal and state laws.

Public bodies conduct recruitment individually. Candidates are selected based on their aptitude, qualifications and professional achievements. This principle is enshrined in constitutional law, namely in article 33, paragraph 2, of the GG, as well as in the relevant federal and Länder laws concerning civil servants. Generally, vacancies to be filled with external candidates are publicly advertised. New staff are trained on corruption prevention issues and relevant codes of conduct upon induction.

Special procedures for the selection, training and rotation of individuals in positions vulnerable to corruption are required under CPD.

The criteria for candidates to be elected to federal public offices are provided in the GG and Federal Electoral Act. Comparable regulations exist for candidates to elected offices at state and local levels. Criminal convictions for certain crimes disqualify candidates automatically (sect. 45 (1), StGB), as may acts of bribery (sect. 108 (e) (5), StGB).

Political parties must submit annual financial reports to the President of the Bundestag detailing their assets, liabilities, income and expenditure in both campaign and off-campaign periods (sect. 23(1), Political Parties Act

(PartG)). Anonymous (up to 500 euros) and cash (up to 1,000 euros) donations are permitted and details of donations above 10,000 euros must be disclosed publicly (sect. 25, PartG). If parliamentarians or candidates receive donations for political parties directly, they shall report and transmit them to their party's treasurer (sect. 25, PartG). Section 23a of PartG further provides for the verification of financial statements by the President of the Bundestag.

Germany promotes integrity, responsibility and honesty among public officials through relevant provisions of, inter alia, StGB, BBG and BeamtStG. There are restrictions on accepting gifts and secondary employment (sect. 60 et seq., BBG; sect. 33 et seq., BeamtStG; and sects. 108e and 331 et seq., StGB). The statutory provisions are supplemented by guidelines and administrative regulations.

CPD contains an Anti-Corruption Code of Conduct and Guidelines for Supervisors and Heads of Public Authorities/Agencies, which are binding on federal administration bodies. The Directive, which is applicable to federal ministries, does not specify application to ministers. Other codes of conduct apply to members of the Bundestag and at state level.

There is no stand-alone legal or administrative framework to comprehensively address whistle-blowing in the public sector. General protections against discrimination for whistle-blowers acting in good faith are found in the GG, StGB, the Civil Code, labour laws and case law.

Regarding conflicts of interest, sections 20 and 21 of the Federal Administrative Procedure Act and the equivalent laws of the states exclude individuals from administrative procedures who, inter alia, are affiliated with affected companies or may directly benefit or suffer as a result. If permitted and no conflict or interference with primary responsibilities arises, civil servants may engage in enumerated paid or unpaid secondary activities (sects. 97–101, BBG).

Civil servants must report financial and non-financial obligations and interests (including third-party interests) that might conflict with their official functions to their supervisors for appropriate action. This includes secondary employment and activities after the end of the civil service.

Post-employment restrictions and accompanying disclosure requirements for current and former members of the Federal Government and parliamentary state secretaries are provided under the Act Governing the Legal Status of Members of the Federal Government and the Act on the Legal Relationships of Parliamentary State Secretaries.

Members of the Bundestag may engage in secondary employment, subject to disclosure and publication requirements in the Code of Conduct for Members of the Bundestag. In addition, the Code requires members to disclose gifts (above 200 euros), donations (above 5,000 euros) and outside activities, including sponsored travels (above 5,000 euros). Every member of the Bundestag in receipt of remuneration for activities in connection with a subject to be debated in a committee of the Bundestag shall, prior to the deliberations, disclose as a member of that committee any link between these interests and the subject to be debated where this is not evident from the information published under the provisions of the Code. There is no similar obligation for debates and deliberations in the plenary. Members of the

Bundestag are not required to declare their dealings with lobbyists and other third parties, liabilities or significant assets, with the exception of shareholdings in a private corporation or partnership if they possess more than 25 per cent of the voting rights.

Disciplinary or other measures may be taken against public officials if they breach the above laws or codes.

The Judiciary Act (DRiG) establishes requirements and procedure for the appointment of federal judges and regulates their outside activities and discipline. BBG applies to federal judges, unless DRiG provides otherwise. Therefore, CPD applies to federal judges insofar as it does not undermine their judicial independence established under the GG.

Additionally, relevant laws ensure integrity among judges (e.g. sections 41 and 42 of the Civil Procedure Code (ZPO), on recusal of judges). Judges must declare conflicts of interest and secondary activities to presidents of the courts when they arise. Judges are subject to ongoing training on skills and ethics organized by the German Judicial Academy. These trainings are also open to prosecutors and other staff of the judiciary.

Public prosecutors are subject to general civil service laws and regulations described above.

Public procurement and management of public finances (art. 9)

Public procurement in Germany is decentralized and each public body conducts procurements under the framework set by various laws. For procurements above the thresholds set under relevant European Union laws (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU), the basic rules are mainly provided under GWB. Procurements below the thresholds at federal level are conducted in accordance with the general principles in section 55 of BHO, the Code of Procedure for Procuring Supplies and Services below the European Union Thresholds (UVgO), and applicable state laws, while public works contracts are subject to a special regime.

All stages of procurement shall be comprehensible and controllable for all those involved (sect. 97(1), GWB). Contract notices, selection criteria and award notices must be published in advance.

GWB provides for mandatory (sect. 123) and discretionary (sect. 124) grounds to disqualify bidders. UVgO extends these rules to procurements below the European Union thresholds (sect. 31). A national competition register that will list companies that may or must be disqualified under GWB is expected to go online in late 2020. Steps are also under way to digitalize procurement processes and improve data collection and reporting.

Procurement officials who have personal interests in the outcome of procurements are excluded (sect. 6(1), Ordinance on the Award of Public Contracts).

For procurements above the European Union thresholds, unsuccessful bidders may request a review of procurement decisions by an independent body (e.g. procurement tribunals established under GWB). For other procurements, bidders may seek redress in civil proceedings. BRH or local audit authorities may conduct audits of procurement processes.

The GG, BHO, the Budget Principles Act, annual budget laws and various administrative provisions provide for requirements for and procedures on the adoption of the budget, budget management, periodic reporting, accounting and bookkeeping. The states have comparable provisions in their constitutions and financial regulations.

The draft budgetary plan is adopted in the Budget Act following consultations in the Bundestag and Bundesrat. Budget account statements are publicly accessible and information on budget performance is regularly reported. Financial and performance audits are conducted by BRH.

Federal administration bodies must have effective systems of risk management as required by CPD. Depending on the size of a public body, internal audit units shall also be established to conduct internal audits in accordance with the standards of the Institute of Internal Auditors. BMI regularly organizes meetings of internal audit units to share experience and standardize audit procedures.

Measures to preserve the integrity of financial documentation related to public finances, including minimum retention periods, are found in BHO (secs. 70–79), StGB and related administrative regulations and guidelines.

Public reporting: participation of society (arts. 10 and 13)

IFG provides any person with the right to access information held by federal bodies, subject to restrictions designed to protect public and private interests. Many federal states have their own legislation that largely corresponds to IFG.

IFG does not mandate federal administration bodies to take specific and uniform measures to operationalize the Act and does not specify the content and form of IFG requests and to whom they shall be made; each body can introduce entity-specific arrangements and procedures.

IFG vests the Federal Commissioner for Freedom of Information (BfDI) with oversight powers over the Act. Complaints against decisions denying IFG requests may be lodged with BfDI or administrative courts. In case of the former, BfDI may approve the authority's decision or object to it and ask for reconsideration.

Germany recently enacted measures to improve transparency of and promote public participation in decision-making processes. For example, the Open Data Act 2017 requires the federal administration to proactively publish data as open data. The portal www.govdata.de provides a means of accessing administrative data.

The Act on E-Government served as the basis for the Government's programme "Digital Public Administration 2020". The Act to Improve Online Access to Administrative Services (OZG) requires the federal and state governments to offer their administrative services in electronic form via administrative portals and to link these portals in a network by the end of 2022.

The Federal Government annually publishes reports on its corruption prevention efforts (BMI) and the National Situation Report on Corruption

(BKA). Federal states also publish reports on corruption risks through IMK or individually.

The Federal Government raises awareness of issues of corruption among the public, including through government websites, press, public relations and issuances of booklets. Schools and universities in Germany have introduced various education programmes and initiatives on anti-corruption.

The authorities seek input from relevant stakeholders (associations, industries and expert groups) regarding draft bills pursuant to the Federal Government's Joint Rules of Procedure and publish them on their websites.

Bodies responsible for anti-corruption are known to the public and anyone can report corruption or other criminal acts to them, including anonymously.

Private sector (art. 12)

Prevention of corruption involving the private sector is addressed through legal provisions and regulatory frameworks such as the Commercial Code (HGB), the Stock Corporations Act (AktG), the Limited Liability Companies Act (GmbHG), the Securities Trading Act (WpHG) and the Corporate Governance Code (DGCK).

Generally, German companies must apply German accounting standards; the International Financial Reporting Standards are mandatory for capital market-oriented companies in their consolidated financial statements. The Financial Reporting Enforcement Panel and Federal Financial Supervisory Authority (BaFin) are authorized to examine the financial statements of capital market-oriented companies. Section 283 of StGB and sections 238, 239, 246 and 264 of HGB prohibit the accounting practices listed under article 12, paragraph 3, of the Convention. Violations of accounting regulations can be punished as administrative offences pursuant to article 334 of HGB. Serious breaches of bookkeeping and accounting obligations are criminal offences under section 331 of HGB and section 283 of StGB.

Federal authorities and the private sector have established joint initiatives (e.g. the Alliance for Integrity) to develop common anti-corruption strategies and promote integrity and transparency domestically and abroad.

The Commercial Register, the Register of Cooperatives and the Transparency Register contain information on the identity of legal and natural persons involved in the establishment and management of companies, as well as on the companies' beneficial owners.

In line with the duty of due care (sections 76(1) and 93(1), AktG; and sections 35(1) and 43(1), GmbHG), company management may be held liable for failure to supervise company affairs in a way to prevent corruption, depending on the company's risk profile, as confirmed by recent jurisprudence. Furthermore, DCGK contains a set of non-statutory recommendations on anti-corruption measures for listed companies. Listed companies must disclose whether they comply with these recommendations and if not, explain the reasons on their websites (sect. 161, AktG).

No specific legal framework on whistle-blowing in the private sector exists in Germany. Under section 4(5) of the Income Tax Act, bribes or other expenses linked to corruption may not be deducted as business expenses.

Measures to prevent money-laundering (art. 14)

The system of preventive measures against money-laundering in Germany was enhanced with the revision and adoption of the amended AMLA in June 2017 within the framework of the Act Transposing the Fourth European Union Money Laundering Directive, Implementing the European Union Fund Transfer Regulation and Reorganizing the Financial Intelligence Unit. AMLA is supplemented by sector-specific laws such as the Banking Act and the Payment Services Supervision Act.

AMLA requires obliged entities (as defined in sect. 2(1)) to identify their customers, including the customers' beneficial owners (sect. 10 et seq.), to retain records obtained in the process (sect. 8), and to report suspicious transactions to the FIU (sect. 43). The scope of these measures must reflect the respective risk of money-laundering (sects. 4(1) and (2), and 5).

A register of beneficial owners became available on 27 December 2017. The register covers private legal persons and registered private companies, as well as trusts and similar legal arrangements. While there is no verification of the entered data, failure to comply with registration requirements will be sanctioned by the Federal Administrative Authority in charge of supervision of the register according to section 25 (6) of AMLA. Access to the register is granted to competent authorities as well as to anybody who can demonstrate a "legitimate interest", as defined in subsidiary legislation. Access to the registry will be broadened with the implementation of the Fifth European Union Anti-Money Laundering Directive (which was passed and will enter into force on 1 January 2020) granting access to every member of the public.

Germany is undertaking work on a national risk assessment, with particular focus on control measures for designated non-financial businesses and professions (DNFBPs). The national risk assessment was published in October 2019.

Anti-money-laundering supervisory and law enforcement authorities cooperate and exchange information domestically and internationally, as authorized by law (e.g., sects. 32, 33 et seq. and 44, AMLA; and sect. 31b, Fiscal Code). BaFin has signed memorandums of understanding with foreign counterparts, which provide a basis for information exchange and cooperation.

Movements of cash and cash equivalents across German borders are monitored by German Customs (sects. 1(4), 5(1) and (2), 12a and 31a, Customs Administration Act) and in accordance with Regulation (EC) No. 1889/2005 on controls of cash entering or leaving the Community. Cash and cash equivalents above a total value of 10,000 euros must be declared and, upon request by Customs, explained.

The European Union Funds Transfer Regulation (EU 2015/847) is implemented in Germany and requires payment service providers to ensure, inter alia, that funds transfers are accompanied by accurate and complete information on the payer.

Germany contributes to various international and multinational bodies, including the FATF, Eurojust, the European Union Agency for Law Enforcement Cooperation, the European Judicial Network, the Camden Asset

Recovery Inter-Agency Network and the Egmont Group of Financial Intelligence Units. Germany also provides development support to other countries to combat money-laundering and illicit financial flows.

2.2. Successes and good practices

- *Germany supports other States on corruption prevention through its development programmes (art. 5, para. 4).*
- *The annual reports of the FIU list occasions of international cooperation by country, for the most active countries; reports are published bilingually (art. 14, para. 1 (b)).*
- *The international support that Germany provides to combat money-laundering and illicit financial flows (art. 14, para. 5).*

2.3. Challenges in implementation

It is recommended that Germany:

- *Consider seeking, where appropriate, input from stakeholders outside the public sector on the implementation and future revisions of CPD; Germany is also encouraged to specify the application of the Directive to Ministers (art. 5, para. 1);*
- *Consider further enhancing transparency in political party financing by: (a) lowering the threshold for public disclosure of donations; (b) lowering or eliminating entirely the anonymous donations threshold; and (c) strengthening the record-keeping and disclosure requirements for parliamentarians and candidates (art. 7, para. 3);*
- *Consider strengthening measures and systems to facilitate the reporting of corruption to appropriate authorities by providing: (a) a comprehensive definition of protected disclosures in the legislation; (b) clear reporting channels and systems to make protected disclosures; (c) effective protections against discrimination for persons making protected disclosures; and (d) adequate awareness-raising among public officials. In this context, consideration should be given to providing protections for reports of irregularities or misconduct not rising to the level of actual or alleged violations of the law, and establishing evidentiary presumption of good faith for persons making protected disclosures (art. 8, para. 4);*
- *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);*
- *Ensure that an effective system of appeal is introduced for public procurements below the European Union thresholds (art. 9, para. 1);*
- *Strengthen oversight of the operation of IFG (art. 10 (a));*

- Strengthen measures to facilitate reporting of corruption in the private sector (art. 12, para. 2);
- In light of the decentralized approach to anti-money-laundering supervision of the non-financial sector, continue efforts towards strengthening anti-money-laundering oversight and supervision, in particular of the non-financial sector. Germany could also study the possibility of establishing a verification mechanism to ensure the validity of data entered in the transparency register and to facilitate access by persons and entities having a legitimate interest in accessing the register, with a view to enhancing transparency (art. 14, para. 1).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The IRG forms the basis for mutual legal assistance in criminal matters, including requests related to asset recovery.

Section 59 of IRG is a broadly-framed provision which enables investigative acts for tracing and freezing assets; in principle, this allows for the same scope of assistance as German courts or authorities could provide one another. Confiscation of assets based on a foreign decision is regulated in sections 48 et seq. Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system (sect. 73, IRG).

In addition, the provisions of the criminal procedure law (CPC) apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion that an offence has been committed. Germany passed new confiscation legislation that entered into force on 1 July 2017.

*The requirements for mutual legal assistance are laid out in *Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide* (2012) and the *Guide to Asset Recovery* (2014), which was under revision at the time of review.*

In practice, most mutual legal assistance requests are sent and executed through direct channels, especially within the European Union (for Germany, these are the prosecution offices and courts of the federal states). Requests under this Convention are channelled through the central authority of Germany, the BfJ. Germany does not collect statistics on mutual legal assistance requests at either federal or state level.

The spontaneous sharing of crime-related information by the relevant authorities is authorized (sects. 61a and 92c, IRG; and sects. 33 et seq., AMLA).

Germany has signed several multilateral agreements to facilitate cross-border asset recovery and can cooperate on asset recovery regardless of the existence of a treaty.

Germany considers this Convention as a basis for mutual legal assistance, although its provisions have not become directly applicable as national law (sect. 1(3), IRG). There have been no concluded cases of asset return or disposal based on this Convention. Two requests were pending at the time of review.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The anti-money-laundering regime of Germany requires obliged entities to identify their customers, including the customers' beneficial owners (sect. 10 et seq., AMLA) and to apply a risk-based approach to customer identification (sects. 4(1) and (2), and 5, AMLA). Enhanced due diligence is required, inter alia, in respect of politically exposed persons, their family members or known close associates (sect. 15(3) and (4), AMLA). Where there is a suspicion of money-laundering or terrorist financing, a report must be sent to the FIU (sect. 43, AMLA).

Records must be retained for five years (sect. 8(4), AMLA), in accordance with article 40 of the Fourth European Union Anti-Money Laundering Directive and FATF recommendation 10.

BaFin, working together with the German Banking Industry Committee, has developed interpretative notes and guidance on the prevention of money-laundering, to guide financial institutions on the due diligence requirements. BaFin regularly informs banks via circulars about countries that have been listed by the FATF as having inadequate systems to combat money-laundering.

The federal states of Germany, which are responsible for the supervision of the non-financial sector, have also drawn up guidance notes (available online), to assist obliged entities in the non-financial sector in fulfilling their due diligence obligations. The FIU also provides guidance and typology documents for each (financial and non-financial) sector. These documents are available at the FIU website for obliged entities after registration.

To conduct banking operations in Germany, a physical presence is required (sects. 32 and 33, Banking Act). Section 25m prohibits, inter alia, the establishment or maintenance of correspondent banking or other business relationships with "shell banks", as defined in section 1(22) of AMLA.

Germany has considered adopting financial declaration requirements for appropriate public officials but has opted for a system focused on the disclosure of interests, including certain financial interests such as income from secondary activities and donations, as discussed under article 8, paragraph 5, of the Convention.

Without prejudice to anti-money-laundering measures, including due diligence requirements for domestic and foreign politically exposed persons, Germany has considered but does not require public officials to disclose their interest in or control over foreign financial accounts. The Common Reporting Standard provides for the automatic exchange of financial account information.

AMLA created the legal framework for the reorganization of the FIU of Germany. The new FIU became operational on 26 June 2017 and is organized along administrative lines under the Federal Ministry of Finance. The FIU guarantees that each case is subject to immediate screening upon receipt, to ensure that cases with a fixed deadline, urgent cases, and reports involving potential terrorist financing, are prioritized.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Under German law, states and other legal persons (both domestic and foreign) have legal capacity to be parties to court proceedings (sect. 50, ZPO). The capacity of States to be parties to court proceedings is consistent with the rulings of the Federal Court of Justice.

Assets that have been taken from public funds due to a criminal offence may be returned as compensation for damages to injured persons, pursuant to section 823(2) of the Civil Code in conjunction with a statute intended to protect another person, for example breach of trust (sect. 266, StGB).

The confiscation of proceeds of offences from principal and secondary participants is mandatory irrespective of claims by injured parties (sect. 73(1), StGB). Any injured party, including a state, may claim victim compensation during enforcement proceedings. The criminal court judgment determines their status as injured party and the damage incurred; a civil law title or special judicial admission is not required. Notice is given to aggrieved persons (sect. 459i, CPC).

Assistance in criminal proceedings may be provided through enforcement of a penalty or other sanction having final and binding force in a foreign country (sects. 48 and 49, IRG). In confiscation cases, assistance can only be provided, inter alia, where such an order could have been made according to German law (sect. 49, IRG). These measures apply to any country, unless there are international treaties governing these provisions (sect. 1(3), IRG). Special provisions for European Union member countries are contained in sections 91a et seq. of IRG. Germany has returned assets through the enforcement of foreign orders, including under the European Union Directive on the freezing and confiscation of instrumentalities and proceeds of crime (2014/42/EU).

In addition to the mandatory confiscation of assets (sect. 73(1), StGB), objects originating from predicate offences to money-laundering committed abroad may also be confiscated (sect. 261(7) and (8), StGB).

Germany has established non-conviction-based confiscation (sect. 76a (1) and (2), StGB). A recent court judgment applying these measures was provided. The extended confiscation of assets is also possible (sect. 73a, StGB).

Assets may be traced even if there is merely an initial suspicion that an offence has been committed (sect. 59, IRG). Objects may be seized if there are sufficient factual grounds to assume that the conditions for their forfeiture or confiscation have been fulfilled (sect. 111b, CPC, in conjunction

with sect. 67, IRG). Seized objects may be handed over to the competent authority of a foreign State (sect. 66, IRG).

Section 111b of CPC grants the law enforcement authorities a margin of discretion to take decisions on provisional measures and preservation of seized assets, which are also applicable in international cooperation cases.

The rights of bona fide third parties are protected (sects. 58(3) and 66(2), IRG).

Some guidance on the content of requests is contained in the Guidelines for Relations with Foreign Countries in Matters of Criminal Law (RiVAsT) and the Guide to Asset Recovery (2014). Where the request faces a remediable obstacle, the requesting State is provided the opportunity to supplement the request (No. 18, RiVAsT). Consultations are held before provisional measures are lifted (No. 196, RiVAsT).

Return and disposal of assets (art. 57)

In general, confiscated property vests in the German State once the order becomes final (sect. 56(4), IRG, and sect. 75, StGB). However, when enforcing a confiscation order from a requesting State, the authority in charge of granting assistance may enter into an ad hoc agreement with the competent requesting authority about the disposal, return or distribution of the assets if reciprocity is assured (sect. 56b, IRG). Such decisions are taken on a case-by-case basis and must be based on objective reasons (No. 189, RiVAsT). For European Union member States, sect. 88f of IRG applies, which stipulates rules on the disposal of assets for competent authorities of requesting member States.

The compensation of injured parties is required, inter alia, if the injured persons show that they could not obtain full satisfaction of their claim from the enforcement of the title (sect. 56a, IRG).

There is no provision requiring the return of confiscated assets to a requesting State in cases of offences under the Convention, although the principles of the Convention would be applied in each ad hoc agreement.

Germany generally waives all claims of reimbursement of costs, except if costs are exorbitant (sect. 75, IRG).

Germany has entered into asset disposal agreements with other European Union member States in specific cases. No statistics are kept in this regard.

3.2. Successes and good practices

- The possibility under article 56a of IRG of compensation from public funds if an injured person cannot obtain full satisfaction of a claim from enforcement of the title (art. 57).

3.3. Challenges in implementation

It is recommended that Germany:

- *Continue efforts towards improving the system of data collection concerning mutual legal assistance requests by exploring ways to compile relevant information and statistics (art. 51);*
- *Include updated information on the required content for mutual legal assistance requests in the next version of the asset recovery guide, in order to provide greater certainty to requesting countries (art. 55, para. 3);*
- *In the absence of cases and given that the Convention is not directly applicable, adopt measures providing for the mandatory return of assets in line with article 57. It would also be beneficial to include a reference to the obligations under article 57 in the updated asset recovery guide (art. 57, para. 3);*
- *Continue steps to capacitate the newly established FIU, including through the provision of necessary resources and satisfaction of increased staff requirements to effectively carry out its mandate (art. 58).*

IV. Implementation of the Convention

A. Ratification of the Convention

Ratification of the Convention

The Convention was signed on 9 December 2003. Germany deposited its instrument of ratification with the Secretary-General of the United Nations on 12 November 2014.

The Convention and Germany's legal system

Article 25 of the Constitution states that generally accepted rules of international law shall form an integral part of Germany's domestic law and shall override any other contrary provision of domestic law. The UN Convention against Corruption has become an integral part of Germany's domestic law following ratification of the Convention (see above), and entry into force on 12 December 2014 in accordance with Article 68 of the Convention.

B. Legal system of Germany

The constitutional, political and legal system

1. The Basic Law of 23 May 1949 continues to be the Constitution of the Federal Republic of Germany following the achievement of German unity. Since reunification, completed in 1990, there have been a number of constitutional amendments, two of which should be emphasised here. Particular significance attaches first and foremost to the constitutional reform of 1994, which largely devoted

itself to the questions arising in connection with German unity. The constitutional reform of 2006 served to modernise the federal order of the Basic Law. Both reforms led all in all to a strengthening of the legislative competences of the Länder.

2. The political framework for the action and organisation of the State is determined by the Basic Law via, on the one hand, the basic rights and, on the other hand, through the constitutional law governing State organisation. The main principles of the Basic Law governing the structure of the State include the republican principle, the principle of democracy, the federal State principle, the rule of law principle and the social State principle, which has already been mentioned.

I. The State form of the Republic

3. The structural principle of the State, entrenched in article 20, paragraph 1, and article 79, paragraph 3, of the Basic Law, unequivocally rejects the State form of monarchy. A monarch as Head of State is not permissible; the Head of State is elected.

II. Head of State and the State leadership

4. The Head of State and the highest representative of the Federal Republic of Germany is the Federal President. He/she is elected by the Federal Assembly, which is convened in each case only for this election, and is made up of members of the Federal Parliament and an equal number of members elected by the Land parliaments. The Federal Assembly does not have any other tasks. The period of office of the Federal President is five years, and re-election is only possible once.
5. The constitutional powers of the Federal President are largely representative and integrative in nature. The Federal President represents the Federal Republic of Germany at home and abroad, signs the federal laws and proclaims them, appoints and dismisses the Federal Chancellor, federal ministers, federal judges, federal civil servants and officers and non-commissioned officers of the Federal Armed Forces. Over and above this, he/she has several extraordinary competences to which he/she is entitled in certain crisis situations. For instance, the Federal President in particular has the power to dissolve the German Federal Parliament under certain preconditions and to declare a legislative state of emergency.
6. In terms of policy contents, however, the State leadership lies with the Federal Government, which is formed by the Federal Chancellor -currently by Federal Chancellor Angela Merkel - and the Federal Ministers. The Federal Chancellor determines policy direction and bears the responsibility for it. He/she is the only member of the Government who is elected by the Federal Parliament, and can, where appropriate, also be removed by a vote of no confidence. The Federal Ministers, by contrast, are nominated or dismissed by the Federal President at the proposal of the Federal Chancellor. A vote of no confidence against one or more Federal Ministers is not possible.

III. The Federal State principle

7. The Federal Republic of Germany is a federal State consisting of 16 Länder: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, the Saarland, Saxony, Saxony-Anhalt and Thuringia.

8. The Länder are members of the Federation, and as such play the role of States. This means that they have their own constitutions, parliaments and governments. Under certain preconditions, they are even entitled to conclude international agreements with foreign States. The constitutional spheres of the Federation and the Länder are hence equivalent. Article 28, paragraph 1, sentence 1, of the Basic Law states, however, that the constitutional system in the Länder must correspond to the fundamental principles of the republican, democratic and social State based on the rule of law within the meaning of the Basic Law. This so-called homogeneity principle ensures that the same constitutional principles apply in the Federation and the Länder.
9. In line with the character of a federal State, the Basic Law breaks down the State competences between the Federation and the Länder. For instance, the Basic Law contains comprehensive lists of competences with regard to those areas where the Federation is allowed to pass legislation. If the Basic Law does not grant legislative competence to the Federation, the Länder have legislative competence. They may therefore in particular regulate by law on culture (schools, sections of higher education, radio and television), communal self-administration and the police, and since the constitutional reform of 2006 also prison law. The constitutional practice of recent decades shows that the perception of the legislative competences is concentrated on the Federation. In the administration of justice and the implementation of statutes, the emphasis is, however, clearly on the Länder. The federal model thus lives on the tension between a unitarian tendency on the one hand and a federal tendency on the other.
10. In the final analysis, the federal principle combines a decentralised State structure with a vertical division of powers, which supplements the classical division between legislative, executive and judicial powers. By dividing legislative, executive and judicial competences between the Federation and the Länder, independent areas of competence, and thus of responsibility, are created.

IV. Municipalities and associations of municipalities

11. Municipalities and associations of municipalities (counties, associated municipalities, associations of towns and the surrounding area) are part of the Länder in accordance with the Basic Law. They form the lowest level of general public administration, and they are self-governing bodies. Municipal self-government is guaranteed as an institution in the Basic Law (cf. art. 28, para. 1). Self-government comprises a cluster of sovereign rights including territorial, personnel, financial, planning, organisational and legislative sovereignty. Municipalities and associations of municipalities are subject to State supervision, which in matters of self-government is, however, limited to supervision on points of law.

V. Democracy and the electoral system

12. A further major characteristic of the State structure is democracy. All State power in the Federal Republic of Germany is exercised by the people. In accordance with the Basic Law, the resulting constitutional structural option for a democratic State takes the shape of representative and parliamentary democracy. The people hence exercise State power primarily through elections by forming representative organs in the Federation, Länder and local authorities, and giving them legitimacy to exert the State's power in its name. Outside elections, participation by the people in State policy-making at federal level is only provided for in absolute terms in cases of a reorganisation of the Länder (art. 29 of the Basic Law) (referendum, petition for a referendum).

Other forms and cases of direct democracy are theoretically conceivable, but do not exist in practice. They are, however, practised to differing degrees in the Länder and at local level.

(a) Political parties

13. In accordance with the Basic Law, the parties are constitutionally necessary tools for the forming of political opinion by the people, and they are raised to the status of a constitutional institution. They are the links between the citizens and the State, but are outside the organised State structure. The parties are independent factors of constitutional life and carry out their activities not only in elections at federal level to the German Federal Parliament or to the European Parliament, but also in elections of representatives to the Länder and of local authorities.
14. The free formation of parties is constitutionally guaranteed. Their formation does not require State approval or other State act of recognition. Also, the free activity of the parties is guaranteed by the Basic Law. The parties decide freely, within the framework of the general statutes, as regards the legal form, name, internal organisation, manifesto and activities of party work. However, a party must adhere to certain regulations. In constitutional terms, the internal order of the party must correspond to fundamental democratic principles. In accordance with the Parties Act (Parteiengesetz), the political goals of the party are to be set out in a written manifesto and regulations adopted in statutes regarding its internal organisation.

(b) Election and tasks of the German Federal Parliament

15. At federal level, the Members of the German Bundestag, the Parliament of the Federal Republic of Germany, are elected in general, direct, free, equal and secret elections. These principles of electoral law, which are entrenched in the Constitution (art. 38 of the Basic Law), also apply to elections in the Länder and municipalities.
16. The Members are representatives of the whole people, are not bound by mandates and instructions and are subject only to their consciences. Accordingly, an elected Member does not lose his/her mandate if he/she leaves the party for which he/she was elected or changes to another party. The popular representation has comprehensive legislative rights and monitors the Government. Furthermore, the German Federal Parliament elects the Federal Chancellor, and participates in the election of the Federal President, as well as in the election of the judges of the Federal Constitutional Court. The decision-making principle in the German Federal Parliament is the majority principle.

VI. The Federal Council

17. Another important constitutional body is the Federal Council, via which the Länder participate in the legislation of the Federation. The Federal Council consists of members of the Land governments, who are bound by instructions. It adopts resolutions by majority vote. The number of votes to which a Land is entitled in the Federal Council is the number of inhabitants of the Land in question. As to the contribution of the member Länder to the legislative procedure of the Federation, a distinction is to be made between so-called objection and approval statutes. The approval of the Federal Council is necessary for a statute to come into being. The Federal Council may submit an objection to the planned statute, but the Federal Parliament may reject it. Over and above this, it is

the task of the Federal Council to contribute towards the administration of the Federation (in particular by approving legal ordinances) and to contribute in matters related to the European Union.

VII. The principle of the rule of law

18. The rule of law State structure principle requires a division of powers and binds all State powers to law and order, and in particular to the basic rights. Executive power and jurisdiction are bound by legal provisions of all kinds, including unwritten law. The legal provisions take precedence over all other State acts. A special form of this priority of the law is constituted by the principle of the precedence of the Constitution, in accordance with which no State act may contradict the Constitution. The legislature itself is also bound by the Constitution.
19. Judicial independence, the guarantee of court legal protection against rights violations by public powers for all and the establishment of constitutional jurisdiction are particular manifestations of the principle of the rule of law, and are separately regulated in the Basic Law.
20. Additionally, the constitutional principles of legal certainty and of the so-called provision of legality, in accordance with which the rights of the individual citizen may only be encroached upon by the State administration on the basis of statutes, as well as the principle of proportionality, are among the content guarantees of the principle of the rule of law.

VII. Jurisdiction and the Federal Constitutional Court

21. In the rule of law system of the division of powers, the judicial power has received especially strong status through the Basic Law. It is entrusted to judges who are independent and only subject to the law. Judges can neither be removed nor transferred during their period of office. Judicial power is broken down into ordinary jurisdiction (civil and criminal jurisdiction), as well as into four specialist jurisdictions: labour jurisdiction, general administrative jurisdiction, social jurisdiction and finance jurisdiction. Ordinary jurisdiction is largely structured in a three-tiered arrangement among the Federation and the Länder. There are as a rule two instances within specialist jurisdiction at Land level. The third, supreme instance of the federal courts is added at federal level.
22. In addition to the jurisdictions that have already been named, there is the Federal Patent Court, as well as the organs of disciplinary and professional jurisdiction. The latter hear mainly breaches of duty which someone has committed in his/her capacity as a civil servant, judge or soldier or in connection with his/her affiliation to a statutory-regulated profession (for instance as a lawyer, tax advisor, auditor, architect, physician, veterinarian or chemist).
23. A very special role is finally carried out by constitutional jurisdiction. It is exercised at federal level by the Federal Constitutional Court, and at Land level by the Land Constitutional Courts. Constitutional jurisdiction is outside the system of instances of the specialist jurisdictions, and only deals with violations of specific constitutional law.
24. The Federal Constitutional Court consists of two Senates of eight judges each. The period of office of the judges is 12 years, but it lasts at most until the age limit of 68 has been reached. Re-election is not possible. One half of the judges of each Senate are elected by the German Federal Parliament and one half by the Federal Council.

25. The Federal Constitutional Court only acts if it is called upon. It performs its tasks as the supreme guardian of the Constitution in different ways. It monitors the legislature as to whether in handing down statutes it has acted in accordance with the provisions of the Basic Law in formal and material terms. By means of a constitutional complaint, which anyone may lodge, asserting that his/her basic rights have been violated, it also monitors authorities and courts as to whether they have complied with the Constitution in their measures and decisions. Over and above this, the Court arbitrates in disputes between the supreme State bodies and rules in proceedings between the Federation and the Länder. Furthermore, it finds, for instance, on the validity of Federal Parliament elections, on the constitutionality of political parties and on the forfeiture of basic rights.

IX. The social State principle

26. A further major pillar of German constitutional law is the social State principle. It obliges the State to carry out social policy and welfare activity, and to bring about social justice. The principle primarily addresses Parliament, which has the obligation to ensure freedom from need, an existence worthy of human beings and suitable participation in the general prosperity. The guiding principle is to compensate for social differences and resolve conflicts, to structure society via State planning, to ensure the provision of services for the public and economic growth, as well as progress in prosperity. However, the principle of the social State is not intended to do away with all inequalities, nor does it contain any general obligation to maintain the status quo. Its primary aim is, rather, to deal with situations of social need and disadvantage, such as those caused by illness, age, disability, unemployment and other disadvantageous circumstances.

27. The inclusion of this principle in the Basic Law constitutes a decision to guarantee the social human rights by means of a mandate to Parliament regarding political structure. The social State principle does not compete with the other four structural principles, but rather the principles are structured in such a way as to supplement and limit each other.

X. The fiscal administration

28. In order to guarantee the financial independence of the Federation and the Länder, and hence to guarantee that it carries out tasks on its own responsibility, the Basic Law ensures that they are provided with sufficient funds. The Constitution therefore governs what taxes the Federation, the Länder, or both together are entitled to (art. 105, para. 3, and art. 106 of the Basic Law). The Federation and the Länder jointly receive income tax, corporate income tax and turnover (value added) tax, which make up about 70 per cent of all taxes levied. The Federation alone has the right to most excise duties (such as mineral oil tax, tobacco tax and coffee tax). The Länder alone receive, inter alia: revenue from gift/inheritance tax, land acquisition tax and beer tax. The local authorities keep for themselves revenue from trade tax, land tax and other local authority taxes such as revenue from dog licences. They are also entitled to a portion of the income and turnover tax gathered. The local authorities also receive a share of the Länder revenue from the combined taxes and the other Länder taxes in accordance with the relevant legislation. The Federation and the Länder are given a share of the trade tax.

29. Over and above this distribution of the sources of tax, and as a result of the solidarity existing between the Federation and the Länder, the Basic Law sets the stage for a redistribution of the income made in the entire federal territory to give rise to equivalent living conditions. This means, for instance, that those Länder which have little tax revenue of their own are enabled to carry out

their tasks. To this end, the Basic Law facilitates two special regulatory systems: the horizontal financial equalisation between the Länder with stronger and weaker financial situations on the one hand, and supplemental federal allocations to less financially solid Länder (art. 107 of the Basic Law) on the other. Accordingly, the differences in financial strength remaining after the distribution of fiscal income between the Länder are suitably compensated for.

XI. Law on the State Church

30. Another element of constitutional law is the public law on churches, which largely has as its subject-matter guaranteeing freedom of religion, the separation of Church and State and the Church's self-determination right.
31. The constitutional basis for guaranteeing individual and collective freedom of faith can be found in article 4, paragraphs 1 and 2, of the Basic Law. Accordingly, individual freedom of religion encompasses the freedom to form a faith or belief and to act in accordance with its requirements, as well as the freedom to reject a religious or philosophical conviction. In contradistinction to this, collective freedom of religion entails the freedom rights of a religious community.
32. The separation of Church and State is manifested in the Basic Law, in particular in the prohibition of all legal forms of State church (cf. art. 140 of the Basic Law and art. 137, para. 1, of the Weimar Reich Constitution (WRV)). The fundamental principle of the separation of Church and State, however, has several lacunae, which are reflected, for instance, in the reference to God contained in the Preamble or in the provisions on religious instruction in public schools (art. 7, para. 3, of the Basic Law). In each case, however, the State is obliged to observe philosophical neutrality with regard to the religious communities. Parallel to this, the Churches' self-determination right, which is derived from article 140 of the Basic Law and article 137, paragraph 3, of the Weimar Reich Constitution, guarantees the Churches the power to govern their own matters independently and free of State influence. Their own matters include, for instance, questions of organisation, membership, levying of contributions and fees, or indeed the structure of the circumstances of their services.

XII. Recognition of non-governmental organisations

33. Non-governmental organisations do not require State approval in the Federal Republic of Germany, but they are subject to the provisions of the general law on associations. They are granted charitable status on the basis of section 52, subsection 1, sentence 1, of the Tax Code (Abgabenordnung). Accordingly, a corporation is considered to be charitable if its activity aims to promote the public in a selfless manner in a material, intellectual or moral field.

XIII. Membership of the European Union

34. Germany is a member of the European Union (EU), established by the Treaty on European Union. The EU presently consists of 27 Member States. In line with the three-pillar model, it forms the common roof for the three pillars of the alliance of States, including, firstly, the European Communities established by separate treaties, i.e. the EC (European Community) and the EAEC (European Atomic Energy Community), secondly, the common foreign and security policy and,

thirdly, police and judicial cooperation in criminal matters. The EC has its own organs (the European Parliament, the Council and the Commission) with various legislative powers. The EC Treaty authorises the passing of legal acts, especially in the form of regulations and directives, in many fields. Regulations - like, in principle, the Treaties - are directly applicable in the Member States, while directives have to be transposed into national law. The Treaties establishing the European Communities, as well as the provisions passed on the basis of the Treaties, take precedence over the national law of the Member States. The Court of Justice of the European Communities (ECJ) ensures observance of Community law.

35. The law applicable in Germany is also largely influenced by European Community law. Parliament is obliged to properly transpose the directives into German law. It cannot pass any national law that would be in conflict with Community law. This is monitored by the Commission, which may initiate proceedings before the ECJ for violation of a treaty. The German courts have to apply directly-applicable Community law in their decisions, and they have to interpret German law in conformity with Community law. In cases of doubt they are entitled and partly even obliged to obtain a binding interpretation from the ECJ. The German executive has to enforce directly-applicable Community law as the European Community enforces Community law itself only as an exception, enforcement by the Member States being the rule.

XIV. Basic rights in the European Union

36. The protection of basic rights is embodied in the following general clause in article 6, paragraph 2, of the EU Treaty: “The Union shall respect basic rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.” To the extent that the Federal Republic of Germany has transferred sovereign power to the European Community, the protection of basic rights is largely safeguarded by the rulings of the ECJ. On 7 December 2000, as well as on 12 December 2007, after approval by the European Council, the European Parliament, the Council and the Commission solemnly proclaimed the Charter of Basic Rights of the European Union which, in 54 articles, regulates basic rights in the European Union. When the Treaty of Lisbon amending the Treaty on European Union enters into force, the rights, freedoms and principles regulated in the 54 articles of the Charter will become legally binding in accordance with article 6 of the EU Treaty. It will then apply to the bodies and facilities of the Union. It will apply to the Member States exclusively on implementing the law of the Union.

Relevant laws, policies and/or other measures that are cited in the response

The following is an extract of the most important legislative measures cited in the response.

Basic Law (Grundgesetz/GG)

Act on Federal Civil Servants (Bundesbeamtengesetz/BBG)

Federal Budget Code (Bundeshaushaltsordnung/BHO)

Administrative Procedure Act (Verwaltungsverfahrensgesetz/VwVfG)

Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen/GWB)
Federal Elections Act (Bundeswahlgesetz/BWahlG)
Criminal Code (Strafgesetzbuch/StGB)
Code of Criminal Procedure (Strafprozessordnung/StPO)
Members of the Bundestag Act (Abgeordnetengesetz/AbgG)
Members of the European Parliament Act (Europaabgeordnetengesetz/EuAbgG)
Act on Political Parties (Parteiengesetz/PartG)
The Fiscal Code of Germany (Abgabenordnung/AO)
Act on the Legal Status of Military Personnel (Soldatengesetz/SG)
Civil Code (Bürgerliches Gesetzbuch/BGB)
Code of Civil Procedure (Zivilprozessordnung/ZPO)
Anti-Corruption Act North Rhine-Westphalia (Korruptionsbekämpfungsgesetz Nordrhein-Westfalen/KorruptionsbG NRW)
Freedom of Information Act (Informationsfreiheitsgesetz/IFG)
Federal Data Protection Act (Bundesdatenschutzgesetz/BDSG)
Act to promote electronic government (E-Government-Gesetz/EGovG)
Commercial Code (Handelsgesetzbuch/HGB)
Securities Trading Act (Wertpapierhandelsgesetz/WpHG)
Limited Liability Companies Act (Gesetz betreffend die Gesellschaften mit beschränkter Haftung/GmbHG)
Money Laundering Act (Geldwäschegesetz)
Act on International Cooperation in Criminal Matters (IRG)
Directive on International Cooperation in Criminal Matters (Richtlinien für den Verkehr mit dem Ausland in Strafrechtlichen Angelegenheiten/RiVAST)

Measures considered by Germany to be good practices in the implementation of the chapters of the Convention that are under review

Please see the information under Article 54, paragraph 1 (c) for the possibility of non-conviction based confiscation in cases of organized crime.

Please further see the information under Articles 14 and 52 for the new anti-money laundering legislation.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level:

At federal level, there is now a tried and tested corruption prevention strategy for the entire federal administration. This strategy also serves as a model for the 16 federal states (*Länder*) and also influences strategies in the private sector. The coordinated system of provisions under criminal law, public service law, disciplinary regulations, labour law and various rules for the administration demonstrates that preventing corruption is a high priority in Germany.

“Anti-corruption policies that promote the participation of society”

Stakeholders outside the administration are also integrated into efforts to prevent corruption, for example stakeholders in civil society and the private sector (for specific examples, see question 3 below).

“Anti-corruption policies that reflect the principles of the rule of law“

A cornerstone of corruption prevention is the constitutional principle of **lawfulness of the administration** which is anchored in Article 20 (1) and (3) of the German Constitution, the Basic Law. According to this article, the executive “shall be bound by ... law and justice”. This means that all administrative action must apply and comply with all valid statutory norms (the Constitution, legislation, ordinances, statutes, etc.). This attachment to higher law is also known as the “precedence of the law”. It means that all those employed in the administration are obligated to apply and comply with all valid statutory norms.

In addition to this principle, all those employed in the public service must bear individual **responsibility for lawful administrative action**. For civil servants, this is covered by Section 63 of the Act on Federal Civil Servants (BBG) and Section 36 of the Act on the Status of Civil Servants (BeamtStG):

- (1) *Civil servants shall take full personal responsibility for the legality of their official actions.*
- (2) *Civil servants shall report any reservations as to the lawfulness of an official order to their immediate supervisor without delay. If the order is upheld without the reservations being remedied, civil servants shall apply to their next higher supervisor. If the order is confirmed, civil servants must carry it out and are relieved of personal responsibility. This shall not apply if the action ordered violates human dignity or criminal or administrative law, and the civil servants are aware that it constitutes a criminal or administrative offence. The confirmation shall be provided in writing upon request.*
- (3) *If a supervisor demands that the order be carried out immediately due to imminent threat and the next higher supervisor cannot be consulted in time, subsection 2, third through fifth sentences shall apply accordingly.*

Equivalent rules apply to persons employed in the public service on the basis of a work contract under private law (public employees).

“Anti-corruption policies that reflect proper management of public affairs and public property, integrity, transparency and accountability”

The Federal Budget Code (BHO) governs the orderly **use of public funds**. According to the BHO, the state may spend only what is determined in the budget. The budget is adopted by the German Bundestag (Parliament) and Bundesrat (representing the federal states). The budget must clearly show all expenditures and commitment appropriations. According to sections 44 and 23 of the BHO, expenditures and authorizations for future commitments in respect of payments to be made to agencies *not* belonging to the federal administration in order to fulfil specific tasks (allocations) may only be budgeted if the federal government has considerable interest in the performance of such tasks by the agencies concerned and this interest cannot be satisfied at all or to the necessary extent without the allocations.

An autonomous, independent constitutional body, the Bundesrechnungshof (German SAI), monitors the use of budgeted funds (more on this topic under Article 6 (1) and (2)).

Additional important principles which help prevent corruption in the use of public funds are the **principles of efficiency and economy**. All employees in the public service must abide by these principles when budgeting funds. These principles are established in Section 7 of the Federal Budget Code:

- (1) *The principles of efficiency and economy shall be observed in preparing and executing the budget. These principles shall impose an obligation to examine the extent to which government tasks or economic activities serving public purposes may be accomplished through divestiture and denationalization or privatization.*
- (2) *Appropriate economic feasibility studies shall be conducted for all measures that have a fiscal impact. The risk allocation associated with such measures shall also be*

taken into consideration in the process. In suitable cases, private- sector providers shall be given the opportunity to demonstrate whether and to what extent they can perform government tasks or economic activities serving public purposes with equal or greater efficiency (expression of interest procedure).

(3) Cost and activity accounting shall be introduced in suitable areas.

Public administration in Germany provides a high level of **transparency**. One core task of all public bodies is therefore to make available general information about their tasks and responsibilities and about their internal organization. For example, the Federal Office for Migration and Refugees (BAMF), which among other things decides which refugees are eligible to enrol in integration courses, has published on its website information on how to fill out the application to enrol in an integration course (see

<http://www.bamf.de/DE/Willkommen/DeutschLernen/Integrationskurse/Formulare/formulare-node.html>). This information is available in a number of foreign languages (see http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Integrationskurse/Kursteilnehmer/Merkblaetter/630-009_merkblatt-zum-antrag-auf-zulassung.html?nn=4261610).

This transparency obligation extends to data as well. Transparency and open data enable citizens to participate to a greater extent and enable public agencies to work more intensively with civil society. In early 2017, the Open Data Act was adopted in order to improve access to publicly funded data. The act requires all agencies of the direct federal administration to make open data available free of charge. The data are offered in unprocessed, machine-readable form without access restrictions and are free to be used and circulated by anyone, as long as this does not conflict with the rights of third parties.

The Administrative Procedure Act (VwVfG) ensures transparency by requiring that anyone affected by an administrative procedure must be heard and allowed to inspect documents connected with the proceedings:

Section 28 Hearing of participants

- (1) Before an administrative act affecting the rights of a participant may be issued, the participant shall be given the opportunity to comment on the facts relevant to the decision.*
- 2. This hearing may be dispensed with if it is not required by the circumstances of an individual case and in particular if 1. an immediate decision appears necessary in the public interest or because of the risk involved in delay; 2. the hearing would jeopardize the observance of a time limit vital to the decision; 3. the intent is not to diverge, to his disadvantage, from the actual information provided by a participant in an application or statement; 4. the authority wishes to issue a general order or similar administrative acts in considerable numbers or administrative acts using automatic equipment; 5. measures of administrative enforcement are to be taken.*
- (2) No hearing shall be granted if it would conflict with urgent public interests.*

Section 29 Inspection of documents by participants

- (1) *The authority shall allow participants to inspect the documents connected with the proceedings where knowledge of their content is necessary in order to assert or defend their legal interests. Until administrative proceedings have been concluded, the first sentence shall not apply to draft decisions or work directly connected with their preparation. Where participants are represented as provided under sections 17 and 18, only the representatives shall be entitled to inspect documents.*
- (2) *The authority shall not be obliged to allow the inspection of documents where this would interfere with the orderly performance of the authority's tasks, where knowledge of the content of the documents would be to the disadvantage of the country as a whole or of one of the federal states, or where proceedings must be kept secret by law or by their very nature, i.e. in the rightful interests of participants or of third parties.*
- (3) *Inspection of documents shall take place in the offices of the record-keeping authority. In individual cases, documents may also be inspected at the offices of another authority or of the diplomatic or consular representatives of the Federal Republic of Germany abroad; the authority keeping the records may make further exceptions.*

However, non-participants may also apply to inspect documents concerning administrative proceedings which do not personally affect them, on the basis of the Freedom of Information Act (for more information, see Article 10 (a)).

Another key element of the strategy for preventing corruption in the German federal administration are the specific **provisions on integrity** for those employed in the public service. The general rights and obligations of civil servants are covered in detail in sections 60 and following of the Act on Federal Civil Servants (BBG). For example, according to Section 60 BBG, every civil servant has the following basic obligations:

- (1) *Civil servants shall serve the people as a whole, not a political party. They shall carry out their tasks impartially and fairly and shall consider the common good in exercising their office. In everything they do, civil servants must affirm the free, democratic basic order within the meaning of the Basic Law and work to uphold it.*
- (2) *When engaging in political activity, civil servants shall maintain the moderation and reserve required by their status relative to the general population and by their consideration for the duties of their position.*

Another example of provisions on integrity is the fundamental ban on accepting rewards, gifts or other advantages according to Section 71 BBG:

Even after their civil service employment ends, civil servants may not demand or accept any rewards, gifts or other advantages or the promise of such for themselves or third persons in connection with their position. Exceptions shall require the approval of the highest service authority or the last highest service authority¹. The authority to provide approval may be delegated to other agencies.

In addition, the BBG contains special rules, for example on working hours and on whether outside

¹ Pursuant to Section 3 (1) of the Act on Federal Civil Servants, the highest service authority of a civil servant is the highest authority of the employer in whose remit the civil servant is employed. In the direct federal administration, this is mostly a ministry. In the indirect federal administration, the highest service authority is usually specified separately in the respective establishing acts or statutes.

activities are allowed (see Article 8 (5) below).

Agency-internal regulations specify the legal provisions cited above in further detail, for example on the exceptional permission to accept gifts (see Article 8 (2) and (3) for more information).

Equivalent provisions on integrity apply to staff who are not civil servants (section 3 (2) and (3) of the Federal Civil Servants' Remuneration Act).

At federal state level:

The general principles just described, such as the precedence of the law and the obligation of transparency, also apply to public administration at state level.

Further, in 1995 the federal states adopted their own strategy for preventing and fighting corruption (**IMK Strategy on Corruption**) in the framework of the Standing Conference of the Interior Ministers of the federal states (IMK). The strategy is based on 16 guidelines and recommendations for prevention and punishment which define the framework for balanced corruption-fighting efforts involving all of society. The strategy recommends 12 preventive and six punitive measures in the following fields of action: legislation, law enforcement, administrative organization and awareness-raising/further training for employees of the public service (only available in German at <https://www.im.nrw/sites/default/files/media/document/file/Konzept%20IMK.pdf>).

The IMK regularly produces reports on the implementation of its strategy to fight corruption. The sixth and latest report covers the period 2010 to 2014 and shows how the individual measures recommended in the IMK strategy to prevent and fight corruption were carried out and what new developments there were during the reporting period. Each report builds on and updates the previous one. The following responses and explanations concerning the Federal states are largely based on the information from the 6th IMK implementation report.

In Berlin, for example, fighting and preventing corruption is based on a four-pillar model within the judicial administration. The four pillars are a special division of the public prosecutor's office, a central office for fighting corruption, an anti-corruption working group and a contact person for the public or public employees to submit information about possible corruption anonymously (*Vertrauensanwalt*). In addition, since 2015 the Berlin police (state criminal police office, LKA) have had a system for the public to submit tips about possible corruption anonymously. Website on Berlin's four-pillar model: <https://www.berlin.de/sen/justiz/strafverfolgung/korruptionsbekämpfung>.

In North Rhine-Westphalia, the Act to Improve the Fight against Corruption and to Establish and Manage a Contract Award Register, has been in force since 2005. The Act applies at state and local level. It is flanked by circular instructions which cover managerial responsibility, the use of internal control systems, etc. in detail. All executive agencies of the North Rhine-Westphalia Interior Ministry, which has lead responsibility for fighting corruption, have internal audit units. Their tasks and powers are described in detail in the guidelines for internal audit units of the Interior Ministry's executive agencies. The internal audit units regularly conduct audits in their agencies and in subordinate agencies as appropriate, thereby monitoring compliance with provisions to prevent corruption. Managerial responsibility has a high priority in the agencies; as a result, new managers receive extensive training, for example.

The Anti-corruption Guidelines of the Free State of Bavaria ("Guidelines for the Prevention and Suppression of Corruption in Public Administration") include regulations on objectives, organizational

control mechanisms, public relations, conduct in the event of suspicion of corruption, prosecution of acts of corruption, as well as regulations on preventing manipulation in the field of procurement. The Guidelines particularly emphasize the importance of educating and raising awareness among employees and for providing employees in areas where there is a risk of corruption with general information and incident-based information (eg changing posts). For this purpose, the Bavarian State Ministry of the Interior has developed a model "Code of Conduct against Corruption" that has been made available to the state and local authorities. These measures are supplemented by a guide for executives.

Civil servants are made aware of the anti-corruption strategy mainly through workshops and advanced training, also via an e-learning tool. For newly employed staff a mandatory introductory training course contains a module on corruption prevention. Information is also provided on the intranet, at information events and in relevant publications. Information for the public is provided online. In addition, the FMI has been participating in the Federal Government's "open house", informing the public about integrity in the federal administration at an information stand and discussing the topic with visitors. The feedback has been very good; the topic is quite popular.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The system for preventing corruption at federal level is explained in further detail below, under Article 5 (2) and (3) and Article 8 (2) and (3).

One practical example of how other stakeholders are integrated in the corruption prevention efforts of the German Federal Government is the Private Sector/Federal Administration Anti-Corruption Initiative: Together Against Corruption, launched in 2010. Its members include representatives of the largest federal ministries on the one hand, and associations and chief compliance officers of various large and medium-sized companies on the other. Their goal is to improve corruption prevention at the interface between the private sector and the federal administration with the help of a joint strategy. The members usually meet once or twice a year to discuss current challenges related to corruption, from the perspective of both the public administration and the private sector; to work out strategies and solutions; and to publish guides for the public sector on selected topics. For example, one of these guides provides information on effective compliance measures. Companies can select the measures most appropriate for themselves or evaluate their existing compliance system (available in German at

<https://www.bmi.bund.de/SharedDocs/downloads/DE/themen/moderne-verwaltung/praktische-hilfestellungen-antikorrptionsmassnahmen.pdf>).

Another guide in the form of a list of questions and answers provides information on accepting rewards and gifts (available in German at

https://www.bmi.bund.de/SharedDocs/downloads/DE/themen/moderne-verwaltung/initiativkreis_korruptionspraevention.pdf).

(b) Observations on the implementation of the article

Germany has a comprehensive legal and regulatory framework for the Convention's prevention provisions. It consists of a coordinated system of provisions under criminal law, public service law, disciplinary regulations, labour law and various rules for the administration such as the Federal Budget Code and measures to ensure high levels of transparency and civic participation in the public administration. Other notable measures include specific legislative **provisions on integrity** for public service employees, transparent use of public funds, lawfulness of public administration, and access to information.

This overall approach serves as a model for the 16 federal states (Länder) and also influences policies in the private sector. The general principles described above, such as the precedence of the law and the obligation of transparency, also apply to public administration at state level. Further, in 1995 the federal states adopted their own strategy for preventing and fighting corruption (IMK Strategy on Corruption) in the framework of the Standing Conference of the Interior Ministers of the federal states (IMK).

The anti-corruption policies are implemented and monitored equally at federal and state level, anti-corruption policy documents are developed and implemented at all level of administration, and there are bodies (e.g. internal audit units) that monitor implementation of anti-corruption policies, report on the implementation and publish regularly reports on the effectiveness and results of implementation of these policies.

During the country visit, the authorities provided further details on the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 30 July 2004. This Directive sets out key elements of the federal administration's preventive strategy. Under the Directive, each federal administration body is required to undertake its own analysis to develop effective internal measures to prevent corruption. The Directive applies to all categories of federal employees, federal authorities and offices, including the supreme federal authorities, the military, and State-owned companies. Federal Ministers and members of the federal judiciary and prosecutors may fall under the Directive to the extent that they head federal bodies and as long as the implementation of the Directive does not prejudice their independence (in case of judges). At the same time, there are intentions to consider the possibility of specifying and clarifying which categories of officials in the federal administration the Directive should cover, including specifically Ministers. The Federal Ministry of the Interior, Building and Community (BMI) annually reports to the Public Accounts Committee of the German Bundestag on the implementation of the Directive and corruption prevention in the federal administration. The annual report also evaluates the Federal Government's anti-corruption efforts. It is made public online and is perceived to have strong impact to further drive its implementation.

It was also highlighted that the implementation of the Directive was coordinated through periodic meetings of prevention contact persons in public bodies organized by the Ministry of Interior. The agenda of these meetings is set by the Ministry of Interior and includes consideration of annual reports on the implementation of the Directive, sharing of good practices and developing methodologies to gather information for the implementation reports. A revision of the Directive was underway at the time of review involving complex coordination between all federal ministries.

The German Supreme Audit Institution (BRH) regularly conducts thematic audits concerning certain aspects of the implementation of the Directive concerning the Prevention of Corruption in the Federal

Administration and related issues. The recommendations of the BRH are taken into consideration when developing or revising guidelines, recommendations and similar documents as well as for the current review of the directive. The BRH has found that, in general, the degree of implementation of the Directive tends to decrease the further an institution is removed from the government. For example, entities of the federal administration have largely implemented the Directive whereas federal grant recipients – who are also under the duty to apply the Directive correspondingly – are lagging.

According to the authorities, external stakeholders do not take part in the revisions of the Directive since it is considered an internal document and related civil service secrecy rules prevent sharing draft revisions with external parties. Concerning specific budget allocations to implement the Directive, it was clarified that it was not provided for and that implementation is captured by the regular budget of the Ministry of Interior.

Regarding the IMK, it was explained that the implementation of the IMK was regularly monitored (every 5 years). Examples of how different Lander approach the implementation of the Strategy were given: North Rhein Westfalia had enacted a law to implement the IMK and issued decrees regulating, inter alia, blacklists in procurement and rotations of civil servants. Similarly, Saxony introduced administrative regulations on corruption prevention in 2015 and public entities were individually responsible for their implementation.

Germany is largely in compliance with its obligations under this provision of the Convention. **With respect to monitoring the implementation and future revisions of the Corruption Prevention Directive, Germany is encouraged to consider seeking, where appropriate, input from stakeholders outside the public sector. Germany is also encouraged to specify the application of the Directive to Ministers.**

Paragraph 2 of article 5

Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Both the Federation and all 16 federal states have created their own **binding rules on preventing corruption**, with various specific provisions. Some rules of conduct are accompanied by examples intended to give employees greater security and make it easier for them to deal with situations of possible corruption.

The federal and state rules are based on the original sample administrative provisions drafted by a federal and state working group. They are included as an **annex to the above-mentioned IMK Strategy on Corruption of 18-19 May 1995**. The federal and state rules therefore are similar in

content, ensuring a significant degree of uniformity at these two levels of government.

The Federation and the federal states also have specific **rules on allowing advertising and sponsoring and how to deal with it**. These rules help ensure transparency and prevent corruption, in line with the **framework directive** on principles for sponsoring, advertising, donations and charitable donations to finance public tasks adopted by the IMK on 18-19 November 2014.

For the Federation, sponsoring is governed by the **General Administrative Regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts) of 7 July 2003 (VV Sponsoring)**. Directions for implementing the regulation were last amended on 5 January 2015.

At federal level:

Federal Government Directive concerning the Prevention of Corruption in the Federal Administration

The main measure to prevent corruption is the **Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (Corruption Prevention Directive)**, available at <http://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.html>). It sets out key elements of the federal administration's preventative strategy, for instance:

- the obligation to conduct measures at regular intervals and as warranted by circumstances to identify areas in all federal agencies which are especially vulnerable to corruption;
- the obligation to conduct risk analyses in respect of those areas identified as especially vulnerable to corruption and, based on the results of the risk analysis, to determine what changes are to be made in regard to organization, procedures and/or personnel assignment;
- strict adherence to the principle of greater scrutiny and the principle of staff rotation;
- appointing contact persons for corruption prevention within the supreme federal authorities who are not bound by instructions and who act as contacts for staff, the general public and heads of authorities;
- specific basic and advanced training for supervisory staff and staff members in areas especially vulnerable to corruption;
- increasing awareness among staff for where the boundary lies between what is permissible and what is not;
- management staff must have effective control measures in place. The implementation of these measures is set out under Question 3.

The Directive is flanked by further regulations and recommendations, such as

- the Anti-Corruption Code of Conduct,
- guidelines for supervisors and heads of authorities,
- recommendations for implementing the Directive (for more information on the content of the Directive as the centrepiece of corruption prevention in the federal administration and on the obligations for public employees, see below under Article 8 (2) and (3) UNCAC),

- the general administrative regulation to promote activities by the federal government through contributions from the private sector (sponsoring, donations and other gifts),
- directions for implementing the administrative regulation, and
- the Circular on the Ban on Accepting Rewards or Gifts in the Federal Administration (current version 2004).

Further, the individual agencies have in-house regulations with additional rules for their specific areas of responsibility or specifying the provisions in the Corruption Prevention Directive (often making them stricter).

Similar regulations exist in all federal states and also in the cities and municipalities.

Revising the Corruption Prevention Directive

The Directive and the recommendations for implementing it are currently being revised. This revision is intended above all to incorporate the practical experience gained from applying the rules and recommendations over the past 13 years. The revision is being prepared by an interministerial working group which includes contact persons for corruption prevention and experts from the internal audit units. The revised draft will ultimately be submitted to all federal ministries for approval and to the Federal Cabinet for adoption.

Guides from government and the private sector

In addition, there are several guides drawn up jointly by government agencies and the private sector, such as those by the Private Sector/Federal Administration

Anti-Corruption Initiative: Together Against Corruption (see above, the example under Article 5 (1)), by the German Association of Towns and Municipalities, and by the federation of small and medium-sized construction companies (BVMB).

Competition Register for Public Procurement

Another measure to meet the obligations of Article 5 (2) UNCAC is the introduction of a nationwide competition register, in which companies will be listed that have committed economic crimes and therefore can or must be excluded from the award of public contracts.

Companies which commit economic crimes should not profit from public contracts or concessions. Compiling a competition register will enable contracting authorities to check a nationwide electronic database to find out whether a company has violated relevant laws. **The Act to Introduce the Competition Register for Public Procurement** entered into force on 29 July 2017, and the register is currently being set up at the Bundeskartellamt (Federal Cartel Office). The new competition register is scheduled to go into operation by the end of 2020 if possible.

The Act covers all the criminal and regulatory offences to be entered in the register. These are final and binding convictions, penalty orders and final decisions on fines as the result of offences which according to Section 123 (1) and (4) of the Act against Restraints of Competition (GWB) *must* bar companies from taking part in the contract award procedure, including in particular bribery, money laundering, tax evasion and terrorist financing. According to Section 124 GWB, offences which *may* bar companies from participating include violations of anti-trust law and of certain labour law provisions.

The private sector also has rules on preventing corruption and rules of conduct which are described in

greater detail under Article 12 (1) and (2).

At federal state level:

All the federal states have rules on corruption prevention (in the form of directives or laws) and on related issues.

To optimize the structuring of operations, the federal and state governments take different measures. In general, but especially in areas especially vulnerable to corruption, the principle of review by a second staff member is rigorously applied, creating the highest level of transparency, for example in documenting files and processes. Checks are conducted regularly or randomly. In the area of procurement in particular, optimization in the relevant agencies and organizational units is achieved by keeping the requesting unit, the procurement unit and the unit responsible for managing funds separate. The procurement process is computer- assisted. In the federal states, the structuring of operations is accompanied by written rules (agency-internal rules such as in-house directives, etc.). Compliance with these rules is checked periodically or as occasion demands.

Effective corruption prevention also requires greater administrative and expert supervision using information and participation procedures as well as sufficient monitoring measures. The importance of administrative and expert supervision is expressed in corresponding state law and agency-internal regulation.

To carry out the variety of tasks related to preventing and fighting corruption, organizational units were set up in the federal states some time ago to perform specific preventive and punitive anti-corruption measures. As a rule, these are internal audit units. Existing organizational units were also assigned additional tasks; in some cases new responsibilities and tasks were created, for example in-house contact persons for corruption prevention.

All federal states also have rules on the ban on accepting gifts and on sponsoring. Half of the federal states have also introduced a corruption register in the form of procurement registers in which companies are entered which can or must be excluded from contract award procedures. These registers will be replaced when the nationwide competition register goes into operation (see Question 2 above for more information).

The Act on the Status of Civil Servants of 17 June 2008 (BeamtStG) also applies to all civil servants at state level. For example, according to Section 37 (2) no. 3, the obligation to maintain confidentiality does not apply in case of corruption- related crime, and Section 42 prohibits the acceptance of rewards, gifts and other advantages. The federal states have utilized the possibility to make their own rules in addition to the Act on the Status of Civil Servants, in order to establish generally binding codes of conduct and indicate possible consequences of failing to abide by them.

Reporting on corruption prevention measures

Federal level

The German Bundestag has made the federal administration especially accountable for its corruption prevention efforts. Based on several decisions in 2004, the entire federal administration is required to report to the Bundestag's Auditing Committee every year on its corruption prevention efforts. This Annual Report on Preventing Corruption in the Federal Administration covers more than 570,000 staff employed in the federal administration and more than 900 agencies, offices and other institutions (for more on this report, see under Article 10 (c)). It includes all reported cases of suspected corruption as

well as statistics on the implementation of the Corruption Prevention Directive and its measures to prevent corruption (available to the public at

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2016/corruption-prevention-report-2015.html>)

Also, since 2005, every two years the Federal Ministry of the Interior has submitted to the Bundestag a report on sponsoring to benefit the federal administration (available to the public at

<https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/moderne-verwaltung/korruptionspraevention/sponsoringbericht-2017.html>)

The federal states also report regularly on the various efforts to prevent corruption at all levels of government. Since 1999, they have submitted to the IMK (see footnote 1) reports on the implementation of the strategy to prevent and fight corruption. This report is currently produced every five years. The next report is scheduled to appear in 2020.

National Situation Report on Corruption

The National Situation Report on Corruption contains the latest information and statistics on the situation of and trends in corruption-related crime in Germany. It is based on information supplied by the Federal Criminal Police Office and its counterparts in the federal states, the Federal Police and the Customs Criminological Office using a nationally standardized questionnaire. The report is produced every January at the Federal Criminal Police Office for the previous year and published upon approval by the Federal Ministry of the Interior. In addition to a detailed description of corruption-related crime during the reporting period, the report also contains areas targeted by corruption, amount of damage, detailed analysis of givers and takers of bribes and of where proceedings originated as well as an overall assessment of corruption-related crimes reported to the police. The National Situation Report on Corruption is available to the public at

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Korruption/korruption_node.html.

Queries from journalists and initiatives by non-governmental organizations demonstrate that the public intensively analyses the National Situation Report on Corruption which can serve as the basis for further demands and descriptions of problems.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

At federal level:

In the following, some examples of strategies and practices in the Corruption Prevention Directive to prevent corruption will be explained in further detail. The figures below from 2015 can also be found in the Annual Report for 2015 on Preventing Corruption in the Federal Administration (available in

English at

<https://www.bmi.bund.de/EN/topics/administrative-reform/corruption-prevention/integrity-node.html>):

- **Identifying and analysing areas of activity especially vulnerable to corruption (No. 2 of the Corruption Prevention Directive)**

According to No. 2 of the Corruption Prevention Directive, measures to identify areas of activity which are especially vulnerable to corruption must be carried out in all federal agencies (more than 930 agencies and offices in total) at regular intervals, in order to be able to take corruption prevention measures specifically for them. In 2015, 50,784 jobs in the federal administration were classified as especially vulnerable to corruption. In terms of staffing numbers, this means that about 8.8% of areas of activity in the federal administration examined are especially vulnerable to corruption.

Various methods are available to gather this information. Collection is mainly based on the indicators of tasks especially vulnerable to corruption and on the likelihood of being involved in corruption when engaged in these tasks. The federal administration has guides to this issue, available in German at

<https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/moderne-verwaltung/korruptionspraevention/korruptionspraevention-handreichung-korruptionsgefahrdete-arbeitsgebiete.html>.

These guides present methods for identifying areas of activity especially vulnerable to corruption; these methods are already in use and have proven helpful in practice. With the methods described, the evaluation is prepared and assisted using electronic questionnaires. The organizational unit or staff member in question first conducts a self-assessment on the risk of corruption. Then questions are asked about existing safety measures in the internal control system (IKS). The organizational unit conducting the examination compiles and evaluates the data gathered in this way. The results are compiled in a risk atlas for the entire agency.

Some agencies, such as the Federal Statistical Office, interview all staff members to determine whether an area of activity is especially vulnerable to corruption. For those areas found to be especially vulnerable to corruption, a risk analysis is then carried out. This analysis evaluates the potential risk in each area, the existing system of internal control (IKS) and measures taken to increase supervisors' and staff awareness. Based on the results, recommendations for reducing the risk of corruption are drafted. These may call for changing the organizational structure and work process, staff assignments or special measures to increase awareness.

- **Administrative and expert supervision (No. 9 of the Corruption Prevention Directive)**

The federal administration consists of multiple levels: supreme federal authorities (usually federal ministries) and higher, intermediate and lower federal authorities. If an authority has one or more executive agencies, it also performs administrative and expert supervision in the framework of corruption prevention. Expert supervision means that the supervising authority assists, monitors and instructs its executive agency with regard to its tasks as needed. The same is true of administrative supervision, although here the focus is on the supervision of staff rather than the tasks to be carried

out. According to Section 3 (1) of the Joint Rules of Procedure of the Federal Ministries (GGO), federal ministries are required to conduct expert supervision. The Joint Rules of Procedure are available at https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/moderne-verwaltung/ggo_en.html).

As part of their duty of administrative and expert supervision, supervisors must also pay attention to signs of corruption. And they must alert their staff to the risk of corruption regularly and as circumstances require. In 2015, 446 out of more than 900 federal agencies conducted administrative supervision and 444 conducted expert supervision (a single agency may conduct both administrative and expert supervision). Further, 261 federal agencies issued specific rules for the administrative and expert supervision of areas of activity especially vulnerable to corruption

• Transparency and the principle of greater scrutiny (No. 3 of the Corruption Prevention Directive)

According to the principle of greater scrutiny, multiple staff members or organizational units are involved in checking operations. This can be done in two ways: Either a task is assigned to multiple staff members (second staff member checks work results), or additional staff members check the work results (plausibility check). In areas of activity classified as especially vulnerable to corruption, more intensive administrative and expert supervision is one measure the Corruption Prevention Directive calls for (see No. 3.1 of the Directive). In 2015, more than 600 out of a total of more than 900 federal agencies had a second staff member check work results and/or conducted plausibility checks. About 560 federal agencies used IT-assisted workflows to comply with the principle of greater scrutiny.

The federal agencies continue to develop their measures for preventing corruption. For example, in 2015, 458 agencies in the federal administration were definitely planning to take at least one new measure, 363 had already initiated at least one new measure, and 197 had implemented at least one new measure.

The agencies listed the following examples of new measures: issuing new implementation directives, planning/carrying out new training measures, conducting organizational measures and measures related to areas of activity/jobs, designating ombudsmen, introducing electronic channels to report possible corruption.

At federal state level:

The federal states of Hesse and North Rhine-Westphalia will be presented as examples. In addition to the Act on the Status of Civil Servants, the following state regulations apply to state employees in Hesse:

- Ordinance to prevent and fight corruption within the remit of the Ministry of the Interior and for Sport of 21 May 2014 (Official Gazette of 2 June 2014, p. 482). There are plans to extend the scope of the ordinance to cover the entire Hessian state administration.
- Administrative regulations for employees of the state of Hesse on accepting rewards and gifts of 18 June 2012 (Official Gazette of 25 June 2012, p. 676)
- Joint circular instructions on the principles for sponsoring, advertising, donations and charitable donations to finance public tasks of 8 December 2015 (Official Gazette of 18 January 2016, p. 86)

Parts I to III of the ordinance “Avoiding corruption in Hessian local governments” provide recommendations for municipalities on how to take general organizational measures and measures specifically in the framework of contract award procedures to prevent corruption. Part IV of the ordinance contains binding rules for municipalities regarding grants from the state of Hesse. The existing ordinance was evaluated in 2013 and 2014. The new ordinance entered into force on 9 June 2015.

In North Rhine-Westphalia, heads of public bodies are required to take corruption prevention measures corresponding to the level of risk. Areas vulnerable to corruption and the jobs concerned are to be identified internally (corruption risk atlas). Staff whose jobs are classified as especially vulnerable to corruption are supposed to be reassigned to non-vulnerable positions at least every five years (rotation). If such rotation is not possible, the factual and legal grounds and the measures taken in compensation in the individual case (such as more intensive checks) are to be documented and reported to the responsible supervisory authority.

(b) Observations on the implementation of the article

Germany highlighted a few examples of how successful anti-corruption measures are promoted both at the federal and state levels.

With reference to the observations under article 5(1) on the Corruption Prevention Directive, it is noted that the Directive is a programmatic anti-corruption document that sets out principles, priorities and areas in suppression of corruption. To carry out the variety of tasks related to preventing and fighting corruption, organizational units were set up in the federal states some time ago to perform specific preventive and punitive anti-corruption measures.

Also, according to the Directive, measures to identify areas of activity which are especially vulnerable to corruption must be carried out in all federal agencies, and to determine what changes should be made in regard to organizational, procedural or personnel matters based on the results of the risk analysis. However, Germany has not measured the impact of the Directive, particularly in sectors considered prone to corruption.

Furthermore, the Federation and the federal states have specific rules for sponsoring, advertising, donations and charitable donations to finance public tasks, in line with the General Administrative Regulation (VV Sponsoring) and the corresponding framework directive adopted by the IMK on 18-19 November 2014. Another measure is the introduction of a nationwide competition register which will list companies that have committed economic crimes and therefore can or must be excluded from the award of public contracts.

The entire federal administration is required to report to the Bundestag’s Auditing Committee every year on its corruption prevention efforts which includes all reported cases of suspected corruption as well as statistics on the implementation of the Corruption Prevention Directive. Furthermore, since 2005, every two years the Federal Ministry of the Interior has submitted to the Bundestag a report on sponsoring to benefit the federal administration.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 3 of article 5

Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

RETASAST

Initiatives to amend existing criminal laws or create new ones, including anti-corruption legislation, often include support from RETASAST, which is part of Section IZ 14, the advising unit for practical legal issues and policy in the field of law enforcement at the Federal Criminal Police Office. RETASAST is responsible for collecting and analysing information and data of legal relevance, that is, matters from law enforcement practice in which police work is hindered by legal or legislative shortcomings. RETASAST also provides statistics and evaluates court decisions in light of their relevance for practical law enforcement.

Its goal is to assist in the passage of legislation. RETASAST is intended to provide an empirical basis for initiating legislative amendments or to support initiatives to do so. It is also intended to evaluate existing legal instruments. It actively collects relevant information and also takes it from regular reports of its cooperation partners. Staff at police stations can submit their comments and questions to RETASAST via the designated contact person in their central unit or state criminal police office.

The information is analysed, recorded and prepared for inclusion in RETASAST's regular reports. These reports are provided twice yearly to the specialized departments of the federal and state governments and to the Federal Ministry of the Interior as a collection of cases at federal and state level. The information also serves as the basis for comments and responses to instructions, expert opinions and individual questions from law enforcement and policy-makers.

RETASAST depends on information supplied by police stations at federal and state level. State police stations can submit their comments and questions to RETASAST via the designated contact person at the responsible state criminal police office.

Monitoring by the Bundesrechnungshof

The Bundesrechnungshof (German SAI; BRH) regularly checks whether the federal administration is following the rules on corruption prevention. These checks typically focus on certain aspects of corruption prevention or on the implementation of corruption-prevention measures in individual agencies or institutions of the federal administration. Checking corruption prevention is also often part

of a larger examination of budgeting and management at the agency in question. The BRH also repeatedly checks individual areas or cross-sections of areas at high risk of corruption (e.g. procurement, grants, construction measures). Further, horizontal checks of corruption prevention are carried out regularly. The BRH uses all the usual forms of auditing (selective audits, horizontal audits and follow-up audits).

The main task of the BRH is to point out vulnerabilities in administrative processes and inadequate preventive measures which could be favourable to corruption. With its findings and recommendations, the BRH systematically helps promote thorough corruption prevention in the federal administration. It also advises the administration on improving its regulatory framework.

The BRH has found that the number of criminal investigations of actual or suspected corruption, as reported by the Federal Ministry of the Interior in its annual reports since 2004, can be regarded as minimal in relation to the number of all staff employed in the direct and indirect federal administration. In the 2015 reporting year, criminal investigations were initiated against only 0,005 % of more than half a million employees of the federal administration in connection with corruption offences, with typical related offences such as fraud or breach of trust or with corruption-related service offenses (see annual report for 2015 on preventing corruption in the federal administration, available in English at <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2016/corruption-prevention-report-2015.html>).

In the 2016 reporting year, criminal investigations were initiated against 0,006% of the federal employees (see annual report for 2016 on preventing corruption in the federal administration; only available in German at

<https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/2016/jahresbericht-2016-korruptionspraevention.pdf>).

Thankfully, corruption in the federal administration is relatively rare. Based on its auditing activity, the BRH has gained no other insights into the number of corruption cases in the federal administration. The BRH comes to the conclusion that the federal administration largely implements the Corruption Prevention Directive in an orderly fashion, although the implementation status of individual provisions and by the various addressees of the directive varies.

Overall implementation is advanced, which partly results from the fact that the usual work processes of a federal agency provide in any case for written or electronic record-keeping, division of tasks, involvement of supervisors and other organizational units, etc. These organizational practices help prevent corruption, even if this is not always their primary purpose. However, they are also flanked by a variety of targeted corruption-prevention measures.

The BRH has found that, in general, the degree of implementation tends to decrease the further an institution is removed from the government: For example, federal agencies generally have progressed much further than grant recipients, which must also apply the Corruption Prevention Directive if they receive federal funding. The number of staff can also influence the implementation of corruption-prevention measures, especially staff rotation. Smaller institutions in particular often find it difficult to comply with strict staffing rules such as the principles of greater scrutiny, staff rotation and the division of tasks. The BRH has often found methodological flaws in the threat and risk analyses of audited institutions.

Overall, however, the BRH has found that the federal administration carries out extensive and visible activities to comply with the strict rules of the Corruption Prevention Directive.

At federal state level:

The federal states too have instruments to monitor measures to prevent and fight corruption, such as the state-level equivalent of the National Situation Report on Corruption, which almost all federal states produce annually, as well as the IMK reports on the implementation of its strategy to fight corruption (see paragraph 2 above).

For example, the state criminal police office of Baden-Württemberg produces an annual report on corruption-related crime based on the crime statistics compiled by the police and on information-sharing related to corruption. Among other things, the report describes current trends in corruption-related crime. Its findings are submitted to the Federal Criminal Police Office to be included in the national report.

The North Rhine-Westphalia Interior Ministry produces reports every two years which are presented to the interior minister and state secretary. They are currently at the state audit institution (*Landesrechnungshof*). The report contains the findings of the ministry's audits and of the internal audits of its executive agencies. Other ministries, such as the Justice Ministry, also compile their findings in a report presented to the minister and state secretary. According to the decision of 19 May 2010, a report on sponsoring must be presented to the Hesse state parliament every two years in order to make the contribution of third parties to finance public tasks more transparent.

All federal states have autonomous, independent audit institutions which, like the BRH, regularly check the corruption-prevention measures taken by the administration.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

One example of a BRH audit of corruption prevention can be found in the remarks on further results of the 2015 audit (remark no. 2 in the audit report). This audit checked corruption prevention at the Federal Ministry of Justice and Consumer Protection (BMJV), in particular measures to identify and analyse areas of activity especially vulnerable to corruption (No. 2 of the Corruption Prevention Directive).

The BRH's findings were as follows:

The federal ministry's core tasks include initiating and working on new legislation. In the past, the ministry classified the divisions entrusted with this task as "apparently not especially vulnerable to corruption" in its risk analysis. The ministry explained this assessment by stating that, although the divisions often influenced the content of legislation, the parliament always made the formal decision to adopt a law. The BRH disagreed, arguing that, although laws are adopted by the parliament, this does not rule out every possibility of potential corruption in the divisions involved. Bills submitted by the Federal Government to the German Bundestag are normally drafted in ministry divisions. The initial phase of drafting, in which the division has a high level of responsibility, is especially sensitive. Passing on inside information, for example, can give third parties an advantage and significantly influence the public or parliamentary debate. The federal ministry then conducted a new risk analysis following the BRH recommendations.

This example shows that, in a multi-step decision-making process, not only the final step is decisive

for identifying risks. Instead, according to the BRH, precisely the initial phases of such processes can come with (special) corruption risks. The BRH's remarks on this audit increased the federal administration's awareness of this fact.

Similar audits are also conducted in the federal states. For example, the state audit institution checks the implementation of and compliance with the Corruption Prevention Directive. Its comments are being incorporated into the current revision of the directive. In North Rhine-Westphalia too, the state audit institution is currently examining corruption prevention within the remit of the state's Interior Ministry.

(b) Observations on the implementation of the article

One of the main tasks of the BRH's checks of public bodies' efforts in corruption prevention is to point out vulnerabilities in administrative processes and inadequate preventive measures in individual agencies or institutions of the federal administration which could be favourable to corruption. The BRH's findings and recommendations are seen to promote thorough corruption prevention in the federal administration.

Also, the BRH regularly provides comments on annual reports on the implementation of the Corruption Prevention Directive submitted to the Bundestag. Their comments on the most recent report, for example, suggested that the report was made broader and included matters on secondary employment of public officials.

Similarly, all federal states have autonomous, independent audit institutions which, like the BRH, regularly check the corruption-prevention measures taken by local administrations.

The reviewers also note the functions of RETASAST in assisting in the passage of legislation by evaluating existing legal instruments and providing an empirical basis for initiating legislative amendments or supporting relevant initiatives.

During the country visit, the authorities explained that periodic reviews of the anti-corruption framework may be triggered by the enactment of new relevant EU legislation, mutual evaluations or new Government programmes. For example, the ongoing reforms of the match-fixing rules and corruption in sports are part of the current Government's programme. Federal states may also conduct their own reviews including of the federal legislation to identify gaps.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 4 of article 5

States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level:

Germany has participated in cross-border cooperation to prevent and fight corruption for years. This applies to bilateral relations and to multilateral cooperation. Among others, Germany is active in the Council of Europe's Groupe d'Etats Contre la Corruption (GRECO) and in the anti-corruption bodies of the United Nations, the OECD and the G-20, as well as at European Union level.

Experts from the federal and state administrations are involved in world-wide sharing of ideas and experience on fighting corruption. For example, they participate in EU twinning projects and advise on the basis of memorandums of understanding. They also advise in the framework of advanced training projects which are funded by the Federal Foreign Office, for example.

At federal state level:

The same is true of the federal states. For example, Berlin's state agencies (police, building administration, central unit for fighting corruption) are constantly involved at home and abroad, especially in eastern Europe, in the context of administrative assistance and knowledge transfer.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

GRECO evaluations

Germany has been the subject of all GRECO evaluations so far. These evaluations focused on both preventing and fighting corruption in Germany. For example, a priority in the latest round of evaluations was the prevention of corruption in respect of members of parliament, judges and prosecutors. Both the evaluation reports and the compliance reports are available at <https://www.coe.int/en/web/greco/evaluations/germany>.

The most recent fourth evaluation round of GRECO issued a number of recommendations to enhance the prevention of corruption in respect of members of parliament, judges and prosecutors. A first compliance report was issued on 20-24 March 2017 and a second one was adopted on 21 June 2021. Based on this, GRECO concluded that Germany has implemented satisfactorily or dealt with in a satisfactory manner three of the eight recommendations contained in the Fourth Round Evaluation Report. Three recommendations have been partially implemented. See articles 7(4) and 8(5) below.

German development cooperation in the area of anti-corruption

German development cooperation works with partner countries and institutions on implementing these provisions. Overall, German development cooperation supports over 60 projects following a twin-

track approach: supporting stand-alone anti-corruption projects and integrating preventive measures in specific sectors such as water, education and health.

For example, in water projects in Albania and DR Congo, the development bank Kreditanstalt für Wiederaufbau (KfW) worked with water supply companies to enhance their integrity management. In Kyrgyzstan, integrity management and transparency in procurement was improved in a health sector programme. In Afghanistan staff of the clinic and of the Ministry of Health were supported through awareness-raising measures in 2016. In forestry projects in both Vietnam and China, multi-phased performance monitoring increased integrity, while in the Amazon region the partner countries received assistance in combating the illegal trade in wildlife. Decentralization projects in Benin and Mali supported local audits in municipalities. In Ghana, the supreme audit institution was strengthened by improving its field office structure. Through public finance projects in Rwanda and Uganda, transparency and integrity in the public sector were enhanced through work with the Auditor General and the tax administration, thereby improving public procurement and strengthening financial controls.

Furthermore, technical cooperation projects implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH explicitly focusing on corruption are currently being implemented in Kenya, Indonesia and Tunisia, while numerous bilateral governance projects address corruption as one part of their work. Whereas the programme in Indonesia focuses on corruption prevention with the Anti-Corruption Commission, the project in Kenya addresses the entire law enforcement chain with the goal of improving the capabilities of state and non- state actors to fight corruption and the misuse of power effectively. The project in Kenya was recently redesigned on the basis of the recommendations of the first cycle of the UNCAC review.

Alongside bilateral programmes, GIZ developed on behalf of German development cooperation a tool called Anti-Corruption Works (AC Works) for assessing corruption risk and planning counter-measures in programme planning. It combines the expertise of programme staff with the knowledge of anti-corruption experts in a workshop setting and was implemented in projects worldwide more than ten times in the last three years.

(b) Observations on the implementation of the article

Experts from the federal and state administrations are involved in sharing of ideas and experience on combatting and preventing corruption internationally. German development cooperation programmes support over 60 projects following a twin-track approach: supporting stand-alone anti-corruption projects and integrating preventive measures in specific sectors such as water, education and health.

Germany actively participates in various international and regional anti-corruption initiatives, projects and programmes. This applies to bilateral relations and to multilateral cooperation. Germany is a member of the Group of States against Corruption of the Council of Europe (GRECO), the OECD Working Group on Bribery in International Business Transactions, the OECD Working Party of Senior Public Integrity Officials and the G-20 Anti-Corruption Working Group.

Germany is in compliance with its obligations under this provision of the Convention.

(c) Successes and good practices

The support provided by Germany to other States on corruption prevention through its development programmes is highlighted as a good practice.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*
- (b) Increasing and disseminating knowledge about the prevention of corruption.*

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Germany, due to the competences shared between the Federal Government and the Länder (federalism) and the division of tasks defined within the respective administration, the tasks referred to in Article 6 paragraph 1 of the UNCAC are carried out by different bodies. Both on the Federal and on the *Länder* level, there are lead units responsible for corruption prevention. Usually they belong to the Ministries of Interior. They have issued binding regulations on corruption prevention for their respective administrations requiring for example the appointment of contact persons for corruption prevention. They are being supported by other bodies or organizational structures such as internal audit units, anonymous whistleblower systems, bodies responsible for authorizing secondary employment and the acceptance of rewards and gifts or for authorizing sponsoring or the Agencies for Civic Education. In addition, Supreme Audit Institutions at the Federal and the *Länder* level oversee and examine the anti-corruption efforts in the administration. The components listed below are all part of this overall concept.

At federal level

A lead division on preventing corruption was set up in the Federal Ministry of the Interior (Division O4). Another lead division on fighting corruption was established in the Federal Ministry of Justice and Consumer Protection (Division IIA4).

Re (a) - Establishing contact persons for corruption prevention

Pursuant to no. 5.1 of the Rules on Integrity (see <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>), depending on its size and function each executive agency within a federal ministry's remit is required to appoint a contact person for corruption prevention. These contact persons may be charged with the

tasks described in no. 5 of the Rules on Integrity, for example:

- 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.

Internal audits

Internal audit units have been established in nearly all federal agencies. They are responsible for auditing corruption prevention measures and, where necessary, issuing recommendations on improving measures taken.

Establishing bodies responsible for authorizing secondary employment and the acceptance of rewards and gifts

As already detailed in regard to Article 5 paragraphs 1 and 2, public officials are required to notify their employer of any secondary employment they engage in as well as any rewards and gifts they are offered and to obtain authorization therefor. There are clear rules on which unit/division within an agency or authority is responsible for granting such authorization.

Within the Federal Ministry of the Interior, for instance, it is the Staff Division which is responsible for these matters. Staff in the Division examine applications/notifications relating to the acceptance of gifts and the exercise of secondary employment and check them against statutory requirements and specific circulars and internal rules relating to them. They then decide whether to authorize the secondary employment or allow the gift to be accepted. Decisions are always cross-checked by a second member of staff. In cases of doubt, a member of staff of the higher grade of service who is qualified to hold judicial office will take the decision.

Establishing bodies responsible for authorizing sponsoring

Sponsoring is subject to permission being granted by the responsible authority. Pursuant to no. 3.3 of the General Administrative Regulation on Sponsoring, the acceptance of offered or solicited sponsoring requires the written consent of the highest administrative authority. The latter may delegate its powers in this respect. If the government body to which the power of consent is delegated is the intended beneficiary of the sponsoring, the consent of the next-highest body must be obtained beforehand, unless the benefitting body is authorized to take the final decision. A post with responsibility for sponsorship issues (sponsorship officer) must be established within each of the supreme federal authorities. The holder of this post is involved in matters relating to sponsorship and cooperates closely with the contact person for corruption prevention.

Where there are plans to solicit sponsoring, a decision is to be obtained from the head of the government body prior to approaching potential sponsors. The head of the government body involves the sponsorship officer in cases to be decided by the supreme federal authority. The head may delegate decision-making powers within the supreme federal authorities.

Bundesrechnungshof (Germany's Supreme Audit Institution, SAI)

For further details regarding the Bundesrechnungshof please refer to Article 6 paragraph 2 Question 2.

Financial Intelligence Unit

For further details regarding the Financial Intelligence Unit please refer to Article 58.

Re (b) - Increasing and disseminating knowledge Federal Agency for Civic Education

Corruption is an issue which is also dealt with by the Federal Agency for Civic

Education (BpB), a subordinate agency within the Federal Ministry of the Interior's remit. It is tasked with promoting an understanding of political issues through political education measures, with fostering an awareness of what democracy is and with encouraging people to be politically active. The BpB takes an interdisciplinary approach to corruption (philosophy/anthropology, history, political science, media/journalism, the arts/culture). Its key activities focus on defining the legitimate means of lobbying and exerting an influence in pluralistic, democratic societies, the extent to which these are culturally, historically and regionally determined and their interdependencies, and the impact which corruption and accepting and granting advantages in dealings between the state and its citizens have on the credibility and effectiveness of political systems.

Furthermore, knowledge about the prevention of corruption is increased and disseminated inter alia by means of the following measures:

- The Rules on Integrity, a brochure containing all those regulations which are applicable to the federal administration, is generally available (to public officials, members of the public, the press etc.) both in hardcopy and online (see
 - <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).
- The Code of Conduct for Members of the German Bundestag contains various texts detailing which information each Member of the German Bundestag must supply to the President of the Bundestag (e.g. regarding secondary employment, possibly including income earned, shares held in companies, donations and other allowances paid for their political activity) and is also generally available (in German, see
 - https://www.bundestag.de/blob/194754/d90bf2976b8a03a86fc0c65f3717bb23/w%20e_b_verhaltensregeln_2017-data.pdf).
- E-learning programs for public officials offered for example by the Federal Academy of Public Administration (BAKÖV)
- In-house training for staff in the federal ministries and agencies within their remit

- Information about corruption prevention activities within the federal administration is presented to the general public in the course of the annual Federal Government Open Day, the emphasis being on the Federal Ministry of the Interior. The Open Day is held on two consecutive days, during which all the federal ministries are open to the general public for eight hours. The event provides the general public with the opportunity to discuss and find out more about these anti-corruption activities.
- The federal administration organizes events and provides information on fighting and preventing corruption in various federal ministries (e.g. Federal Foreign Office, Federal Ministry of the Interior) on International Anti- Corruption Day (9 December).
- Various federal ministries (e.g. Federal Ministry of the Interior, Federal Ministry for Economic Cooperation and Development, Federal Ministry of Justice and Consumer Protection) and subordinate agencies (e.g. Federal Criminal Police Office) regularly tweet about fighting and preventing corruption and organize events on these issues.
- Regular training events on preventing corruption in the federal administration are organized for higher-ranking foreign administrative staff by Federal Government experts as part of the Federal Foreign Office's European Academy.
- The Federal Ministry of Justice and Consumer Protection, Federal Ministry of the Interior, Federal Foreign Office, Federal Ministry for Economic Cooperation and Development and the GIZ in particular organize regular information-sharing events lasting several hours with colleagues from other countries. (The Federal Ministry of the Interior alone organizes around 30 events each year.). Information and instruction is provided to embassy staff.
- Experts in the federal administration and executive agencies are actively engaged in EU twinning projects and upon request (events of varying length).
- Regular information-sharing events are held with civil-society experts such as Transparency International.

At Länder level

Re (a) and (b)

To be able to implement the diverse (preventive and repressive) tasks associated with fighting corruption, organizational units were established in the *Länder*.

These tasks were assigned to existing organizational units or specific persons were appointed to take responsibility for certain preventive and/or repressive anti- corruption measures (contact person for corruption prevention, internal auditors, other organizational structures).

The *Länder* also increase and disseminate knowledge about prevention of corruption. For example, staff across the North Rhine-Westphalian state administration have access to a brochure entitled "Corruption - Other People's Problem" published jointly by the Ministry of the Interior and the North Rhine- Westphalian Criminal Police Office. It contains information on dealing with rewards and gifts (available only in German at <https://fah.nrw.de/sites/default/files/asset/document/korruption.pdf>).

Hesse has posted information about corruption prevention measures on its intranet which staff can access. In addition, the Central Training Unit in the Hessian state administration regularly runs seminars on various issues related to fighting corruption (e.g. "Successfully Fighting Corruption", "Fighting Corruption - From Risk Analysis to Mapping Risks", "Compliance in the Public Sector" and

“Compliance Management in Procurement Law”). Two versions of a “Corruption Prevention in the Hessian State Administration” e-learning program are also available: one for staff and one for management. The program is available to all for self-learning via the Hessian state administration’s training platform. Those applying to take part in either of two seminars on fighting corruption must first complete the program. There are also plans to oblige all staff in the Hessian state administration to regularly take part in training courses. Corruption prevention courses are, further, part of police officer training.

The Free State of Bavaria also focuses on raising awareness and educating its employees about corruption prevention. In addition to the anti-corruption guideline, they are familiarized with the "Code of Conduct against Corruption". The State Government has also procured an E-Learning program (one for staff, one for managers) to combat corruption in the public administration. It has been set up on the Free State Administration and Police e-learning platforms.

Participation in the E-Learning Program is mandatory in the Bavarian State Ministry of the Interior for all managers and for all employees in areas that have been classified as high-risk areas as part of the risk analysis. It is also available to staff of other departments.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

At federal level

The Annual Report on Preventing Corruption in the Federal Administration contains concrete examples of measures taken to implement Article 6 paragraph 1 (a). The Annual Report covers all authorities and other bodies of the federal administration (922 authorities/bodies and over 570,000 public officials). In 2015, 540 bodies had a contact person for corruption prevention. In 319 agencies these tasks were carried out by a contact person in another agency. There were 48 agencies which reported that they have no contact person for corruption prevention; 557 contact persons contacted the head of their agency in 2015 regarding corruption prevention.

Another example of how the aforementioned provision is being implemented is the cross auditing carried out by the *Bundesrechnungshof* in relation to basic issues of administrative integrity and preventing corruption in the federal administration. The following cross audits have recently been carried out:

- *Scope of requirements as regards integrity in the federal administration* The *Bundesrechnungshof* examined the scope of the Federal Government’s requirements as regards integrity in the federal administration (preventing corruption, accepting rewards and gifts, sponsoring and the use of external parties).

It then recommended that the scope of these provisions be defined more uniformly and that all facilities in the federal administration should be included in their scope.

- *Risk analyses and mapping of risks in select higher federal authorities; cross audit findings*

In 2012 and 2013 the *Bundesrechnungshof* examined whether and if so how 10 specific higher federal authorities carried out threat and risk analyses pursuant to no. 2 of the Rules on Integrity and then mapped out the relevant risks. It uncovered methodological weaknesses in regard to some of the risk assessment procedures. In 2016 it then also reviewed to what extent those improvements which the higher federal authorities had promised to make had actually been implemented.

- *Preventing corruption in the case of recipients of institutional funding*

Under certain conditions, the recipients of federal institutional funding are obliged to apply the Rules on Integrity analogously. The *Bundesrechnungshof* is currently examining whether various federal ministries and the recipients of their institutional funding are applying the Rules on Integrity correctly. It is thereby reviewing which organizational measures the funding recipients have taken to reduce the risk of corruption in their organization. It is also checking whether the federal ministries have obliged the recipients of their funding to apply the Rules on Integrity and whether they are then monitoring compliance with those rules.

A three-day event organized by the Federal Agency for Civic Education in the summer of 2017 will serve as a further example of how Article 6 paragraph 1 (b) (increasing and disseminating knowledge) is being implemented: The international symposium on the phenomenon of corruption was held from 16 to 18 June 2017. The aim was to foster an awareness of the phenomenon of corruption among a broad-based group of people through events at which various disciplines and actors shared their experience. Around 200 participants from more than 40 countries took part. Discussions were held in interdisciplinary panels over the course of the three days, with renowned experts in the field of corruption research and corruption prevention taking part. Academics, journalists, activists, artists and film-makers from Romania, Ukraine, Belarus, Georgia, Germany, Estonia, Sweden and Russia debated theories of corruption, globalized networks, civil society and the media as players in the fight against corruption. Each evening different artists active in the field of corruption were profiled in films and talks.

At Länder level

The following examples indicate how Article 6 paragraph 1 is being implemented at *Länder* level:

Due to Berlin's two-tier administrative structure (comprising a central administration and district administrations), different contact persons for corruption prevention have been appointed at the different levels, including Anti-corruption Officers, Internal Auditors and Ombuds People/Trusted Lawyers. [Berlin has a two-tier administration comprising a central administration and district administrations. The *central administration* is the superordinate administrative level. It comprises the Senate Administrations and their subordinate authorities. The central administration is responsible for all areas of relevance to the whole of Berlin, for example the police, finance and the judiciary. It is led by Berlin's state government, the Senate, which is headed by the Governing Mayor.

The *12 district administrations* form the lower administrative level and are primarily responsible for local matters, such as culture, green spaces and schools. Each district administration is made up of a district parliament and a district authority. The district authority is a collegiate administrative authority comprising the district mayor and councillors.]

In North Rhine-Westphalia, each ministry has an internal audit unit or contact point for corruption prevention. These are listed in the Circular on Preventing and Fighting Corruption in the Public Administration. The Ministry of the Interior's Internal Audit Unit, for instance, also audits its subordinate departments and organizes awareness-raising events. Please refer to the responses to Question 2 for further examples.

In the Free State of Bavaria, internal audit units were set up comprehensively taking into account department-specific features. In part, the internal audit was located directly in the Ministry and is responsible for the entire business area, some of the internal audits also exist decentralized in the subordinate authorities.

(b) Observations on the implementation of the article

There are several bodies in Germany at both federal and Länder level charged with coordinating and overseeing the implementation of the anti-corruption policies mentioned under article 5 above. Some of these bodies also carry out other corruption prevention activities such as the dissemination of knowledge about corruption, including publication of promotional materials, and organizing seminars and conferences.

A lead division on preventing corruption has been set up in the Federal Ministry of the Interior (Division DG I 3) which is also listed as Germany's Prevention Authority under Article 6(3) in UNODC's Directory of Competent National Authorities. Another lead division on fighting corruption has been established in the Federal Ministry of Justice and Consumer Protection (Division IIA4).

Internal audit units in most federal ministries, which conduct independent investigations in cases of suspected corruption, as well as contact points for corruption prevention are actively involved in preventive activities.

Additionally, specific roles in the monitoring of anti-corruption policies are given to the BRH, among other oversight functions. It is a constitutionally independent body which monitors certain aspects of the implementation of CPD by federal administration bodies and provides comments on the BMI's annual CPD implementation reports submitted to the Bundestag. The Bundestag has the final oversight over the implementation of the CPD and can issue decisions that have to be taken into account by the federal administration. According to the authorities, the BRH has great impact in monitoring and detecting corruption measures and its findings and recommendations must be taken into account by responsible bodies in monitoring and assessing their corruption prevention measures.

Some examples were provided about the BRH's findings in relation to the Directive's implementation. The BRH observed that the number of staff in a given body may limit the implementation of specific corruption-prevention measures. Smaller institutions often find it difficult to comply with strict staffing rules such as the principles of greater scrutiny, staff rotation and the division of tasks. The BRH has also found methodological flaws in the threat and risk analyses of audited institutions.

All federal states have autonomous and independent audit institutions with mandates largely similar to that of BRH.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 2 of article 6

Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level

Independence of contact persons for corruption prevention

According to no. 5.5 of the **Rules on Integrity**, contact persons are independent of instructions when carrying out their duties of corruption prevention. They do not have to go through official channels when it comes to information sharing, but may report directly to the head of the agency (no. 5.5 of the Rules on Integrity). In cases of suspected corruption, contact persons notify the head of their agency and make suggestions regarding internal investigations, measures to prevent concealment and notifying the law enforcement authorities. Contact persons may not be delegated any powers to carry out disciplinary measures, nor can they themselves lead investigations in disciplinary proceedings in corruption cases (no. 5.3 of the Rules on Integrity). Contact persons have a wide-ranging right to be given all the information they need to perform their duties in cases of suspected corruption (no. 5.4 of the Rules on Integrity).

Independent investigations by internal auditors in cases of suspected corruption

Internal audit units are actively involved in preventive activities. These units were established on the basis of the Recommendations on Internal Audits in the Federal Administration adopted by the federal ministries on 21 December 2007. The Recommendations (available in German at: https://www.bav.bund.de/DE/3_Aufgaben/3_Interne_Revision/Empfehlungen_Innenrevision.pdf) were drawn up by internal auditors in the federal administration with the help of the academic community and industry under the lead responsibility of the Federal Ministry of the Interior. They contain tips concerning the structure and work of internal audit units.

These units are tasked with identifying shortcomings and minimizing risks by examining the legality and correctness, effectiveness, appropriateness and efficiency of administrative action. Internal audit units have extensive audit and information rights (see no. 5 of the Recommendations) within their remit. Internal corruption prevention tasks and/or investigations in the case of suspected corruption may be transferred to these units (see no. 3 (4) of the Recommendations), unless they are already the responsibility of other units/persons (e.g. internal administrative investigation units).

The majority of federal ministries have now established internal audit units. The abovementioned Recommendations are binding on all departments subordinate to the Federal Ministry of the Interior.

The Recommendations are supplemented by the Guidelines on Internal Audits published by the *Bundesrechnungshof* in 2012 (available at:

<https://www.bundesrechnungshof.de/en/veroeffentlichungen/leitsaetze-der-externen-finanzkontrolle/leitsatzsammlung/ordnungsmaessigkeit/01-02-ordnungsmaessigkeit-interne-revision-als-steuerungsinstrument-der-behoerdenleitung>).

The independence of the *Bundesrechnungshof*

The independent status of the *Bundesrechnungshof* and that of its members is enshrined in the German Constitution, the Basic Law. It is an independent body of government auditing which is subject only to the law. No other government institution can instruct it to perform an audit. It is a unique institution,

being neither part of the legislative, judicial nor executive branches of government. The *Bundesrechnungshof* applies the criteria of performance, regularity and compliance as set forth in Article 114 para. 2 of the Basic Law to its auditing activities.

The staff of the *Bundesrechnungshof* comprises members (the 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. The President and Vice-President are both elected by the Bundestag and the Bundesrat upon the proposal of the Federal Government and are appointed by the President of the Federal Republic of Germany for a non- renewable term of 12 years. The principle of rotation ensures that the heads of audit units do not remain in the same unit for more than a set number of years.

The regulations on independence and disciplinary measures within the supreme federal judiciary apply to the members of the *Bundesrechnungshof*.

The *Bundesrechnungshof* selects all its audit matters at its own discretion and decides on the scope of its audits. It advises the Federal Government, German Bundestag and Bundesrat when it comes to preparing budget estimates as well as financial developments and high risks in the overall budget and budget estimates. Its work is governed by legislation: the *Bundesrechnungshof* Act, federal financial regulations (Federal Budget Code) and the Budgetary Principles Act. The *Bundesrechnungshof*'s procedures and audit approaches are set forth in its Standing Orders and Audit Rules. Its mission statement reflects its objectivity and values: independence, neutrality, objectivity and credibility.

The Senate is the *Bundesrechnungshof*'s highest decision-making body. It comprises 16 members: the President, Vice-President, all the senior audit directors, three audit directors and two rapporteurs. The Senate can set up committees. The most important and obligatory committee provided for under the *Bundesrechnungshof* Act is its Standing Committee. It is involved in decision- making processes regarding the allocation of audit assignments within the *Bundesrechnungshof*. The schedule of responsibilities ensures full audit coverage. It determines the distribution of functions within the *Bundesrechnungshof* 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 as far as possible to avoid any audit gaps.

The *Bundesrechnungshof* submits an annual report on major audit findings and audit recommendations to both the Bundestag and Bundesrat and to the Federal Government (see section 97 of the Federal Budget Code).

The *Bundesrechnungshof* budget is one of those departmental budgets which go to make up the overall federal budget. The *Bundesrechnungshof* prepares its annual budget estimate at its own discretion. This estimate is submitted to the Federal Ministry of Finance, which scrutinizes the budget estimates of all government departments and draws up the federal budget. It may amend the estimates in consultation with the relevant departments and agencies. If, however, it decides to amend the *Bundesrechnungshof*'s budget estimate, it must notify the Federal Government of any deviations where such amendments have not been approved by the *Bundesrechnungshof* (see section 28 of the Federal Budget Code). The *Bundesrechnungshof*'s draft estimate, which is part of the federal budget estimate, is then submitted to the Bundestag and Bundesrat for adoption together with the amendments proposed by the Federal Ministry of Finance on which agreement has not been reached. If the Federal Ministry of Finance wishes to amend the *Bundesrechnungshof*'s budget request, it has to present its wishes to the Bundestag and Bundesrat for modification along with the original request.

The Bundestag and Bundesrat then take the final decision on the *Bundesrechnungshof*'s budget.

At Länder level

In some cases federal rules also apply in the *Länder*, in other cases the *Länder* have issued their own regulations to ensure the independence of corruption prevention units. In Lower Saxony, for example, contact persons for corruption prevention are authorized to report matters directly to the head of their agency (no. 6.3 of the Lower Saxony Corruption Prevention Directive).

In North Rhine-Westphalia the Guidelines on Internal Audits within the Remit of the Ministry of the Interior stipulate that internal auditors are independent when it comes to examining and evaluating specific matters. The Ministry's Internal Audit Unit is authorized to directly contact the State Secretary in writing or in person.

Internal auditors in agencies within the Ministry of the Interior's remit may also directly contact and/or speak to the head of their authority or body. Staff in the Internal Audit Unit are not bound by instructions in regard to their findings and assessments. Staff have neither police nor public prosecution powers, such as are required to conduct interrogations or deprive a person of their liberty.

However, they do have the right to question staff about specific matters in the context of their audits. In specific cases, the Internal Audit Unit will make its findings available to police and public prosecution office investigations upon request.

In Hesse an Ordinance on Preventing and Combating Corruption within the Remit of the Ministry of the Interior and Sports of 21 May 2014 (Official Gazette, 2 June 2014, p. 482) stipulates that contact persons report directly to the head of the agency and are directly subject to their disciplinary and technical supervision in the conduct of their duties. In cases of suspected corruption, the contact person notifies the head of the agency and makes suggestions regarding internal investigations, measures to prevent concealment and notifying the law enforcement authorities. Contact persons may be assigned no disciplinary powers, nor can they lead investigations in disciplinary proceedings. There are plans to extend the scope of the Ordinance to cover the entire Hessian state administration.

The Federal Ministry of the Interior (Division O4) is the lead division on preventing corruption. According to the Directive, the contact person, and thus the head of division and the organizational unit responsible for corruption prevention, is not subject to instructions, although both are part of the organizational structure of a Directorate-General. Division DG I 3 has a required full-time equivalent of five staff. This number might seem low but the anti-corruption strategy provides for a network of experts at the many ministries and authorities who support Division DG I 3 in implementing corruption prevention. According to the latest count, this equals 421,07 full-time positions. A total of 1028 persons were responsible for the tasks of a contact person for corruption prevention. The staff at Division DG I 3 was trained accordingly. Reference is made to the information on training provided under article 7(1)(d).

As regards the independence of the contact persons for corruption prevention in federal agencies, it is noted that under the Rules on Integrity (no. 5.2) contact persons must inform the agency management once they become aware of facts leading to a reasonable suspicion of corruption, and the agency management shall take the necessary steps to deal with the matter, including informing the law enforcement authorities where necessary.

Regarding external reporting of corruption, German case law and accordingly the protection of employees vis-à-vis their employers has been complemented by a 2011 decision from the European

Court of Human Rights which restates the principle that an employee can, as a last resort, disclose information to a third party when it is clearly not expedient to report the matter internally. The decision also confirmed that the freedom of expression of the employee has to be balanced against the right of the employer to expect loyalty and avoid damage to its reputation. The protection of whistleblowers rests upon the general provisions on termination in section 626 Civil Code (*Bürgerliches Gesetzbuch, BGB*) and section 1 Employment Protection Legislation (*Kündigungsschutzgesetz, KSchG*), the prohibition of victimization under section 612a Civil Code as well as the constitutional rights (freedom of expression under article 5, general freedom of action under article 2 and the rule of law under article 20 paragraph 3). However, due to fundamental principles a court may have to decide whether the protection offered by the law applies in a concrete case.

Furthermore under no. 10.1 of the Rules of Integrity, where there is reasonable suspicion that a corruption offence has been committed, the head of the agency shall inform the public prosecutor's office and the highest service authority without delay; furthermore, an internal investigation and measures to prevent concealment shall be initiated. See article 8(4) below for details on internal reporting by public officials and the Office of the Ombudman in the Federal Ministry of Interior. Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

A handout containing instructions for contact persons for corruption prevention in cases of suspected corruption (as at 20 Sept. 2013) is available in German at:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/moderne-verwaltung/korruptionspraevention/korruptionspraevention-handreichung-bei-verdachtsfaellen.pdf>

The Federal Ministry of the Interior's Recommendations on Internal Audits in the Federal Administration (as at 21 Dec. 2007) are available in German at:

<https://www.bmi.bund.de/DE/themen/moderne-verwaltung/integritaet-der-verwaltung/interne-revision/interne-revision-node.html>.

(b) Observations on the implementation of the article

The reviewers note that there are sufficient measures in place to ensure the independence of Germany's corruption prevention bodies, including the independence of internal audit units and contact persons for corruption prevention in various public bodies as provided under the Rules on Integrity. There have been no reports of them being unable to carry out their functions effectively or of undue influence being exercised to curb the implementation of anti-corruption policies.

Furthermore, the necessary independence of the BRH and that of its members is enshrined in the German Basic Law.

In some cases, federal rules also apply in the Länder, in other cases the Länder have issued their own regulations to ensure the independence of corruption prevention units. In Saxony, as explained during the country visit, internal audit units are responsible for corruption prevention. In addition, allegations of corruption maybe reported to designated contact persons and a contact person for the police. In case of attempts to improperly influence the contact persons, there is an obligation to report it to the head of the entity who in turn shall report it to the police. Anonymous reporting to contact persons for corruption prevention is also possible and contact persons are required to take action in that case.

It was clarified that anonymous reporting to the contact persons for corruption prevention was not

available at the federal level but that disciplinary consequences were provided for contact persons for mishandling reports.

Germany is in compliance with the provision under review.

Paragraph 3 of article 6

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.

Is your country in compliance with this provision?

(Y) Yes

Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

The Federal Ministry of the Interior was nominated as the (federal) agency within the meaning of paragraph 3 to have lead responsibility for corruption prevention within the Federal Government. It is also listed as Germany's Prevention Authority under Article 6(3) in UNODC's Directory of Competent National Authorities.

(b) Observations on the implementation of the article

Germany is in compliance with its obligations under this provision of the Convention.

Article 7. Public sector

Paragraph 1 of article 7

Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;*
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;*

- (c) *That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;*
- (d) *That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.*

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following presentation of the principles and measures which strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and other non-elected public officials is only an extract. For further and more detailed information please refer to the brochure “The Federal Public Service” which is available in English for download at:

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/federal-public-service.html>

Below references are made to the relevant pages of the brochure.

Re (a) and (b): Principles of efficiency and transparency; objective criteria; adequate procedures for the selection and training of individuals

Principle of selecting only the best candidates

When it comes to recruiting civil servants, the principle of selecting only the best candidates is applied in Germany. This principle is enshrined in constitutional law, namely in Article 33 para. 2 of the Basic Law, as well as in the relevant federal and *Länder* laws concerning civil servants (see, e.g., sections 8 and 9 of the Federal Act on Civil Servants and section 9 of the Federal Civil Servant Status Act). Candidates are to be selected solely on the basis of their aptitude, qualifications and professional achievements. Posts to be filled with external personnel are generally publically advertised. Once all applications have been received, the most qualified candidates are filtered out using the aforementioned criteria.

In addition to professional suitability, candidates also need to be personally suitable to take on a post in the public service. A criminal record check is therefore always carried out. The Federal Criminal Central Register contains records of (among other things) criminal convictions made by German courts.

The selection criteria and processes apply at federal level regardless of whether the position to be filled is vulnerable to corruption or not. The **Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (Corruption Prevention Directive)** (referred to under

article 5(2) above) also calls for particular care to be taken when selecting staff to work in areas especially vulnerable to corruption.

The same applies to *Länder* level: Various *Land* law provisions stipulate that particular attention must also be paid to applicants' reliability when recruiting staff for jobs in areas classified as vulnerable to corruption.

See also “**The Federal Public Service**”, p. 40 et seq.

The results of competitions will be communicated personally for reasons of data protection.

Raising awareness/training

The Corruption Prevention Directive contains guidance on established guidelines about integrity and transparent conduct which apply to staff at all levels of the federal administration. They concern specific education and training programmes for supervisors and staff in areas especially vulnerable to corruption. In addition to specific context-related awareness-raising measures in their respective authority, staff in areas especially vulnerable to corruption are increasingly able to take part in special training courses.

No. 8 of the Corruption Prevention Directive provides:

8. Basic and advanced training

Facilities providing basic and advanced training shall include corruption prevention in their programmes. In doing so, they shall take into account above all the training needs of supervisory staff, contact persons for corruption prevention, staff in areas especially vulnerable to corruption, and staff in the organizational units referred to in No. 6.

Rotation

Further, the Corruption Prevention Directive requires that the principle of rotation be applied to staff in functions deemed to be especially vulnerable to corruption. At federal level, the period of time a person is assigned to a post should not exceed five years (see Corruption Prevention Directive no. 4.2). Exceptions to this principle of rotation must be justified in writing. Additional compensatory measures also need to be taken in such exceptional cases, including greater scrutiny, rotational assignments within an organizational unit, shifting responsibility, more intensive expert and administrative supervision, and greater use of electronic control mechanisms.

The *Länder* also apply the principle of rotation as a corruption prevention measure. Four of the *Länder* limit the maximum period anyone can remain in an area especially vulnerable to corruption to seven years; six of the *Länder* have limited this period to five years, three to four years; and three of the *Länder* set the maximum period on a case-by-case basis.

It should, however, be noted that it is often difficult to apply the principle of rotation in practice given the cuts in the public service and the resulting scarcity of personnel resources. In 2015, for example, the federal authorities reported that 9,381 of the more than 50,000 staff employed in areas especially vulnerable to corruption had been assigned to the same task for more than five years. Reasons cited for not adhering to the principle of rotation included the fact that the member of staff in question had specific skills which would be hard to replace and that continuity could not be guaranteed. Appropriate compensatory measures were taken in regard to 83.5% who did not move on to another role, such as expansion of the four-eye principle, introduction of team work, change of tasks within the team,

particularly intensive technical supervision (see Annual Report for 2015 on Preventing Corruption in the Federal Administration).

Ways need to be found of dealing with the loss of know-how when a post holder moves to another position, even in times of increasing complexity, as well as of ensuring the most efficient staffing levels possible. In order to establish whether more reports of suspected corruption are indeed made in “positions especially vulnerable to corruption”, in the course of drawing up the Annual Report for 2016 on Preventing Corruption in the Federal Administration the Federal Ministry of the Interior also asked how long those employees against whom investigations on account of suspected corruption had been initiated had been in post. Neither an analysis of responses to this enquiry nor the findings of the Federal Criminal Police Office’s Corruption National Situation Report 2015 (“Bundeslagebild Korruption”) were able to provide any further insights. A statistical analysis did not indicate that it is more likely that suspected corruption will be reported in connection with a position especially vulnerable to corruption than in connection with one not especially vulnerable to corruption. Given that the number of reported cases is small, however, the meaningfulness of this statement is rather limited.

The issue of job rotation is one topic being discussed with the supreme federal authorities in the context of revising the corruption prevention regulations concerning the federal administration. The aim of this revision process is to adapt legal provisions to the changing framework conditions (more limited personnel resources, more complex tasks to be performed, the need for specialist knowledge and skills shortage) and to guarantee compliance in practice.

Re (c): Civil servants’ salaries

German law also meets the requirements set out in (c) regarding the adequate remuneration of civil servants and other non-elected public officials. Compliance is guaranteed by applying the “maintenance principle”, which is enshrined in Article 33 para. 5 of the Basic Law, and by means of detailed rules in the Federal Civil Servants’ Remuneration Act plus its Annexes. This principle obliges the state (federal and *Länder* level) to appropriately support civil servants and their families throughout their lifetime and to pay reasonable maintenance commensurate with their grade, the level of responsibility their office carries with it and the significance of the civil service to public life in line with general economic and financial trends and the general standard of living (Federal Constitutional Court, judgment of 14 February 2012, file no. 2 BvL 4/10, margin no. 145; consistent past decisions).

Salaries have to be regularly adapted by law to general economic and financial trends. As a result, civil servants’ salaries also need to be assessed in relation to the general population’s income situation and development. The Nominal Wages Index is a suitable reference point. It maps changes in the average gross monthly earnings, including bonuses, of full-time, part-time and casual workers in Germany and must take regular wage and salary increases into account. When adjusting civil servants’ salaries, account must also be taken of general price trends for consumer goods and services used by private households which are tracked using the Consumer Price Index. This prevents salaries being eaten up by rising general living costs (average cost of living per household and month in Germany in 2016: € 2,480;

https://www.destatis.de/EN/FactsFigures/SocietyState/IncomeConsumptionLivingConditions/ConsumptionExpenditure/Tables/PrivateConsumption_D.html) and civil servants being denied the ability to maintain their standard of living on account of a loss of purchasing power.

Finally, assessments of the adequacy of civil servants’ salaries must be based on total amount that is

basic salary plus additional components such as family allowances or job bonuses. The basic salary is based on the pay grade of the assigned office and therefore does not depend on what function the civil servant actually performs. The offices and pay grades are specified in four federal pay scales: Federal pay scales A and B govern the remuneration of civil servants with life tenure and soldiers. Federal pay scale B applies to high-ranking positions such as state secretaries, directors-general, directors, head of divisions, generals and presidents of higher federal authorities. Federal pay scale W governs that of professors at higher education institutions and federal pay scale R that of judges and public prosecutors. These are all set out transparently in the Federal Civil Servants' Remuneration Act, which is available in German online (<https://www.gesetze-im-internet.de/bbesg/>). Performance-related bonuses and allowances can also be paid. The annual budget for performance-related pay is set in the Federal Civil Servants' Remuneration Act. Specific reasons must be cited for each bonus paid. The awarding of bonuses, including the amount of each bonus, is transparent.

The requirements of Article 33 para. 5 of the Basic Law also apply in cases where the *Länder* are responsible for regulations applicable to the salaries of civil servants employed by the *Länder* and municipalities.

For more detailed information see “The Federal Public Service”, p. 82 et seq.

Staff employed under collective agreements

In addition to civil servants, the Federation employs more than 100.000 public service staff under a separate collective agreement, the Collective Agreement for the Public Service (“TVöD”). It sets out key employment conditions which have been agreed with the trade unions. Salaries are listed in pay tables and are based, firstly, on the task performed and, secondly, on work experience.

Staff subject to collective agreements receive monthly pay calculated on the basis of the task performed and work experience, which is graded in “steps”. Bargaining rounds in recent years have led to significant increases in pay scales for federal staff employed under collective agreements. These increases were higher than the general trend as documented in the Collective Wages Index (sometimes considerably so). In some cases, pay is higher than income opportunities in the private sector, and even in the lowest pay scales it is significantly higher than the minimum wage (8.87 EUR/Hour since 2017). The collective agreements and pay scale tables are freely accessible:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/themen/oeffentlicherDienst/tarifvertraege/TVoED.pdf>

Special and performance-related bonuses can also be paid to staff employed under collective agreements if they meet certain predetermined criteria. These bonuses must be substantiated and transparent.

In addition to the adequate income opportunities which have been negotiated with the trade unions, there are other attractive benefits of working for the Federal Government Staff enjoy non-monetary benefits, including job security and flexible working time arrangements.. These all contribute to preventing corruption in the federal administration.

Moreover, public employees of the *Länder* are paid in accordance with the collective bargaining agreement for the public service of Hessen (TV-H) or the collective bargaining agreement for the public service of the states (in all other federal states, TV-L).

Further information can be found on p. 93 et seq. in the brochure “The Federal Public Service”.

Re (d): Education and training programmes

Enhancing awareness of the risks of corruption and regular staff training programmes on preventing corruption and recognizing the risks of corruption are seen as the priorities of corruption prevention work. The focus of all corruption prevention efforts is on staff and their convictions and values, since these determine their actions in the federal administration.

The Federal Government and the *Länder* have introduced regulations on raising awareness specifically for corruption prevention. The issue is also an integral part of education and training programmes.

New staff are regularly taught about the basic principles of corruption prevention and the relevant codes of conduct in the public service as part of their induction. All staff are instructed as to their duties at the time of recruitment. In the federal administration they are handed a copy of the relevant provisions, which they have to sign for. It is also part of an employer's duty of care to provide staff with comprehensive information about vulnerability to corruption and to act as a source of information and as a contact person.

The Federal Government's central training institution, the Federal Academy of Public Administration (BAköV), for instance, and the training facilities of the Federal Police and of the Federal Armed Forces offer courses on preventing and fighting corruption, too. The Federal Academy each year organizes events on related topics such as sponsoring, compliance and internal audits, some of which are open to anyone and others which are specially designed for specific groups of participants. It also has a learning program on corruption prevention, including exercises, on its e-learning platform. A certificate is awarded to participants who answer all the test questions correctly. Staff must hand this certificate to their personnel department so that it can be added to their file. Many authorities oblige staff employed in positions vulnerable to corruption to work through individual units of this e-learning program at regular intervals. Seminars geared to management and junior management staff, those employed in internal audit units and staff involved in the award of public contracts have formed an integral part of the Federal Academy of Public Administration's annual programme since 2005.

Upon request, the Federal Academy can also organize tailor-made seminars for individual federal authorities. On the federal level contact persons regularly meet to discuss current challenges they are faced and to share information. The objective is to ensure, wherever possible, that a uniform approach is adopted across the federal administration for dealing with similar problems.

There are also training courses on dealing with corruption prevention which are attended by both staff at various levels of the federal administration and those employed in the private sector and NGO representatives. A number of private-sector providers run such courses. Experts from the federal and *Länder* administrations also teach on these commercial training events.

In addition to regular training on corruption prevention, a change in the tasks takes place regularly after a few years (see rotation above).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No such statistics are available.

(b) Observations on the implementation of the article

The reviewers note that in the recruitment of civil servants, the principle of selecting only the best

candidates applies at both federal and Länder level. This principle is enshrined in Article 33 para. 2 of the Basic Law, as well as in the relevant federal and Länder laws concerning civil servants (e.g., sections 8 and 9 of the Federal Act on Civil Servants and section 9 of the Federal Civil Servant Status Act). Adequate remuneration and equitable pay scales for public officials are provided.

Posts to be filled with external personnel are generally publicly advertised. Candidates are to be selected solely on the basis of their aptitude, qualifications and professional achievements. Criminal records of candidates are always checked. Adequate education and training programmes aimed at raising awareness of the risks of corruption, especially in areas vulnerable to corruption, are provided.

Procedures for the selection, training and rotation of individuals in public positions considered especially vulnerable to corruption are available. Specifically, the Corruption Prevention Directive calls for particular care to be taken when selecting staff to work in such positions and provides for specific training for such staff, as well as supervisory staff, contact persons for corruption prevention, and staff in the corruption prevention units.

During the country visit, the authorities explained that public bodies may outsource some issues related to the recruitment of civil servants to the Federal Office of Administration. These include screenings of applications or developing guidance on recruitment. Furthermore, based on the Corruption Prevention Directive, public bodies have developed guidelines on application of rotation of staff in corruption risk positions. Decisions to conduct rotations are at the discretion of supervisors and may involve rotation of tasks among staff instead of rotating staff to different posts.

Information, principles and measures for the recruitment, hiring, retention, promotion and retirement of civil servants and other non-elected public officials can be found in the brochure “The Federal Public Service” which is available in English.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 2 of article 7

Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

I. Eligibility for election

Eligibility to be elected to hold public office is regulated in Article 38 of the Basic Law, in the Federal Electoral Act and in the German Criminal Code: Anyone who has attained the age of majority may be elected (Article 38 para. 2 of the Basic Law and section 15 of the Federal Electoral Act).

Pursuant to section 15 (2), number 2, of the Federal Electoral Act, whoever is not eligible to be elected or does not have the capacity to hold public office in consequence of a judicial decision cannot be elected. German criminal law contains provisions governing the loss of eligibility to be elected. Pursuant to section 45 (1) of the Criminal Code, a person automatically loses the ability to hold public office and be elected in public elections for a period of five years after being sentenced to imprisonment for at least one year for a felony. A court may also deprive a convicted person of the ability to be elected for a period of between two and five years if the law expressly so provides (section 45 (2) of the Criminal Code). According to section 358 of the Criminal Code, a court may deprive a person of the capacity to hold public office where, for instance, a term of imprisonment of at least six months has been imposed for taking a bribe (section 332 of the Criminal Code).

A separate regulation applies to elected officials: Pursuant to section 108e (5) of the Criminal Code, in addition to imposing a sentence to imprisonment for at least six months for taking or offering a bribe in one's capacity as an elected official, a court may deprive a person of their ability to acquire rights from public elections and the right to be elected or vote in public matters.

II. Incompatibility of public office and elected office

1. Members of parliament

a. German Bundestag

Section 5 read in conjunction with section 7 of the Act on the Legal Status of the Members of the German Bundestag determines that the rights and duties of civil servants, judges, professional soldiers and fixed-term volunteer soldiers who are elected as Members of the German Bundestag rest for the duration of their term of office.

b. European Parliament

Pursuant to section 7 of the Act on the Legal Status of Members of the European Parliament, membership of the European Parliament is incompatible with those offices, functions and mandates which are listed in section 22 (2) nos 7 to 15 of the Act on Electing Members of the European Parliament from the Federal Republic of Germany, namely

- accepting election as Federal President,
- appointment as a judge in the Federal Constitutional Court,
- appointment as Parliamentary State Secretary,
- appointment as Parliamentary Commissioner for the Armed Forces,
- appointment as Federal Commissioner for Data Protection,
- accepting election or appointment as a member of a *Land* government,
- appointment to one of the functions referred to in Article 7 para. 1 or para. 2 of the Act to Introduce General Direct Elections for Members of the European Parliament,
- appointment to one of the functions which is incompatible with being a Member of the European Parliament pursuant to other legal provisions and
- assuming the office of head of state, judge in the constitutional court, member of a government comparable to a *Land* government and an office comparable to that of

parliamentary state secretary in the Federal Republic of Germany in another Member State of the European Union.

2. Federal Chancellor and Federal Ministers

Pursuant to Article 66 of the Basic Law and the more specific terms of the Act on the Legal Status of Members of the Federal Government and of the Act on the Legal Status of Parliamentary State Secretaries, the Federal Chancellor and Federal Ministers may not hold any other salaried office, engage in any trade or profession, or belong to the management or, without the consent of the Bundestag, to the supervisory board of an enterprise conducted for profit.

3. Federal President

Pursuant to Article 55 of the Basic Law, the Federal President may be neither a member of the government nor of a legislative body of the Federation or of a state (*Land*). The Federal President may not hold any other salaried office, engage in any trade or profession, or belong to the management or supervisory board of any enterprise conducted for profit.

***Länder* and municipalities**

Comparable regulations regarding eligibility for election and incompatibility between public office and elected office have been put in place at *Länder* level, for example in the constitutions of the individual *Länder* and in their electoral laws.

The same applies at municipal level.

For limitations on external activities, see article 8(5).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No such statistics are available.

(b) Observations on the implementation of the article

In Germany, anyone aged 18 or above may vote and be elected to public office. Pursuant to section 15 of the Federal Electoral Act, whoever is not eligible to be elected or does not have the capacity to hold public office as a consequence of a judicial decision cannot be elected. An example of the latter is a criminal conviction for at least one year of imprisonment for a felony. Pursuant to section 108e (5) of the Criminal Code, in addition to imposing a sentence to imprisonment for at least six months for taking or offering a bribe in one's capacity as an elected official, a court may deprive a person of their ability to acquire rights from public elections and the right to be elected or vote in public matters.

It was explained during the country visit that the Federal Returning Officer, an electoral body at federal level in both parliamentary (Bundestag) and European elections, and other functions and bodies specified in the Federal Electoral Act such as the Federal Electoral Committee were tasked to ensure

that the above provisions of the Act were complied with.

There are also provisions which prescribe incompatibilities of holding public office or elected office, for members of Parliament (Bundestag, European Parliament, Federal Chancellor and Federal Ministers, Federal President), Länder and municipalities.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 3 of article 7

Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Funding of political parties

Under Article 21 para. 1, first sentence, of the Basic Law, political parties participate in the formation of the political will of the people. Parties receive government funding for the partial financing of the task incumbent upon them under the Basic Law. The following form the basis for calculating how this government funding is allocated: the party's success at elections to the European Parliament, to the German Bundestag and to *Land* parliaments; the sum of membership fees paid by ordinary party members and office holders; and total donations paid to the party (section 18 (1) of the **Political Parties Act**). According to 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 regulation is elaborated in sections 23 et seq. of the Political Parties Act. These provisions contain detailed rules concerning the form and content of the financial reports to be submitted and submission deadlines, on the auditing of the reports by independent agencies (usually independent auditing firms or chartered accountants) and subsequently by the President of the German Bundestag, on publication of these financial reports as Bundestag Printed Papers, and on administrative and criminal sanctions for violations of the provisions of the Political Parties Act. Political parties only receive government funding for the partial financing of their activities if their financial reports meet the requirements set out in the Political Parties Act (section 19a (1), second sentence, of the Political Parties Act).

Political parties which do not meet their duty to submit an annual financial report (section 23 (1), first sentence, of the Political Parties Act) receive no government funding for that specific year. Under section 2 (2) of the Political Parties Act, a party loses its legal status as a political party if it violates the duty to submit financial reports six years running. Under section 38 (2) of that Act, the President of the German Bundestag has the option of imposing a coercive fine to get a party to comply with this obligation. Political parties must disclose all donations made to the party in their annual report,

classifying it as party income (section 23 (1), first sentence, read in conjunction with section 24 (4) nos 3 and 4 of the Political Parties Act). Any party members, i.e. including Members of the German Bundestag and candidates, who receive party donations must immediately disclose this to that member of the executive board nominated under the party statute to handle financial matters (section 25 (1), third sentence, of the Political Parties Act). Pursuant to section 25 (3), first sentence, of the Political Parties Act, donations and fees paid to a party by members and elected officials above a total sum of 10,000 euros per calendar year must be listed in the financial report, stating the name and address of the donor and the amount of the donation.

Individual donations of more than 50,000 euros must be notified immediately to the President of the German Bundestag, who then publishes the donation, stating the donor's name, in a Bundestag Printed Paper (section 25 (3), second and third sentences, of the Political Parties Act).

According to Section 27 (1), third sentence, of the Political Parties Act, donations are voluntary payments provided free of charge that are not membership dues or contributions paid by elected representatives. Pursuant to Section 26 (1) of the Political Parties Act, income is any payment of money or any benefit of monetary value as well as exemption from payment of liabilities arising customarily; assumption of responsibility by others for organized events and activities explicitly aimed at canvassing for a political party; liquidation of reserves; and appreciation in value for capital assets.

Only "direct donations" made to Members of the German Bundestag which are expressly intended for the sole use of that Member and not for their party are not treated as party donations and are thus not governed by the Political Parties Act. Instead, they are subject to the transparency requirements set out in the Code of Conduct for Members of the German Bundestag (available in German online at:

https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/anlage1/245178).

Comparable transparency requirements also apply to members of the *Land* parliaments.

German law does not provide for upper limits to restrict the parties' right to receive donations (right to freedom of financing) and the citizens' right to participate in forming the political will by supporting political parties. Instead, German law 1) bans certain types of donations; 2) requires parties to make donations public, creating transparency regarding their income and expenditure; and 3) specifies limits of public funding. This means that 1) pursuant to Section 25 of the Political Parties Act, cash donations exceeding €1,000; donations from public corporations, political foundations, and from sources abroad exceeding €1,000; donations passed on; donations from publicly-owned enterprises; anonymous donations exceeding €500; and donations made in the expectation of an advantage are prohibited. 2) Donations exceeding €10,000 per annum must be recorded and published, together with the names and addresses of the donor in the party's statement of accounts. Single donations in excess of €50,000 must be reported immediately to the President of the German Bundestag and then published. 3) Tax reductions apply only to donations of up to €1,650 from natural persons (not legal persons and enterprises); and only donations of up to €3,300 will be taken into account for public funding of political parties (€0.45 for each euro donated). Section 18 of the Political Parties Act specifies an upper limit for public funding of political parties; it must not exceed the funds a party receives from society (relative upper limit).

In addition to the candidates on the party lists, individual candidates run in the 299 constituencies. Pursuant to Section 20 (2) of the Federal Electoral Act, these candidates may be suggested by the parties or, independent of parties, by 200 eligible voters. Election campaigns of candidates suggested by the political parties are funded by the respective party subject to the provisions of the Political

Parties Act. The transparency provisions of the Political Parties Act do not apply to candidates who are not supported by parties. As elected members of parliament they are subject to the transparency provisions of the Act on the Legal Status of Members of the German Bundestag. Never in the history of the Federal Republic of Germany has a candidate been elected who had not been nominated by a political party.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The financial reports published by the President of the German Bundestag as Bundestag Printed Papers are available in German online at:

<https://www.bundestag.de/parlament/praesidium/parteienfinanzierung/rechenschaftsberichte/rechenschaftsberichte/202446>.

Donations published as Bundestag Printed Papers in accordance with section 25 (3), third sentence, of the Political Parties Act are available in German online at:

https://www.bundestag.de/parlament/praesidium/parteienfinanzierung/fundstellen_50000.

For further information go to:

https://www.bundestag.de/service/glossar/glossar/R/rechenschaftsberichte/2471_46.

(b) Observations on the implementation of the article

Political parties must publicly account for their assets, liabilities and for the sources and use of their funds pursuant to sections 23 et seq. of the Political Parties Act.

Political parties which do not meet their duty to submit annual financial reports (section 23 (1), the Political Parties Act) receive no public funding for one specific year. Besides, a fine could be imposed on the committee of such a political party (section 38 (2)). Under section 2 (2) of the Political Parties Act, a party loses its legal status as a political party if it violates the duty to submit financial reports six years running.

Section 23a of the Political Parties Act further provides for the verification of financial statements by the President of the German Bundestag. Penalties for submission of incomplete or false information are provided in Part VI (Procedures in case of inaccurate statements of accounts, and penal provisions) of the Political Parties Act.

During the country visit, the authorities provided further clarifications regarding public funding of candidates as well as the statements of account of political parties. Candidates are not prevented from using their own money to finance their electoral campaigns but there is an incentive to use exclusively political party funds as the latter would be used to calculate the entitlement to public funding. A statement of account of a political party is a single document that covers income and expenditure of the party in both campaign and off-campaign periods.

The reviewers believe that Germany should consider lowering the 10 000 EUR threshold for public

disclosure of donations². The authorities indicate that the threshold has been introduced to alleviate privacy concerns of donors, i.e. the requirement to publish names and addresses of such donors. These concerns may be alleviated, for example, by removing the requirement to disclose publicly information that would identify donors' addresses instead of setting a high disclosure threshold.

Similarly, the reviewers believe that Germany should consider lowering or eliminating entirely the anonymous donations threshold. This is because the lack of proper record-keeping and disclosure requirements for individual donors and the possibility for individual donors to make cash donations of up to 500 EUR anonymously create a risk of corruption vulnerability of the entire scheme. While it is acknowledged that individual donors may claim tax deductions on their donations up to specified amounts and thereby create some record of their donations, it is not clear whether the authorities in charge of monitoring the regularity of party financing have access to the tax information of donors in order to be able to cross-check data during the verification process of statements of accounts of political parties.

In addition, parliamentarians or parliamentary candidates may receive donations, including in cash and anonymously, which they must then report to their political party and any violations of this requirement may result in fines pursuant to the Political Parties Act. However, the details of the donor must be disclosed by parliamentarians or parliamentary candidates only if the donation exceeds 5000 EUR. This, when combined with the above observations, creates additional concerns as to how the reporting obligation of parliamentarians or candidates could effectively be enforced.

In light of the above, it is recommended that Germany consider further enhancing transparency in political party financing by: 1) lowering the threshold for public disclosure of donations, 2) lowering or eliminating entirely the anonymous donations threshold, and 3) strengthening the record-keeping and disclosure requirements for parliamentarians and candidates.

Paragraph 4 of article 7

Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Germany has implemented the requirements set out in paragraph 4 as follows:

² In this context the reviewers note the observations made in relation to certain electoral funding issues in Germany in the context of the GRECO reviews. In particular, GRECO recommended that certain donation thresholds be lowered and additional measures be taken to regulate donations to parliamentarians.

Administrative procedure

Sections 20 and 21 of the Federal Administrative Procedure Act and the equivalent administrative procedure laws applicable in the individual *Länder* contain rules on those conflicts of interest which can arise in the course of administrative procedures. They include rules on excluding individuals from administrative procedures by law where various types of conflicts of interest are to be expected and on the conduct of individuals who are to act on behalf of an authority in an administrative procedure where there is reason to doubt their impartiality (in which case their superior must be notified and, where necessary, the superior may order that the person in question not participate in that procedure).

“Section 20 Persons excluded

(1) The following persons may not act on behalf of an authority:

- 1. a person who is himself a participant;*
- 2. a relative of a participant;*
- 3. a person representing a participant by virtue of the law or of a general authorisation or in the specific administrative proceedings;*
- 4. a relative of a person who is representing a participant in the proceedings;*
- 5. a person employed by a participant and receiving remuneration from him, or one active on his board of management, supervisory board or similar body; this shall not apply to a person whose employing body is a participant;*
- 6. a person who, outside his official capacity, has furnished an opinion or otherwise been active in the matter.*

Anyone who may benefit or suffer directly as a result of the action or the decision shall be on an equal footing with the participant. This shall not apply when the benefit or disadvantage is based only on the fact that someone belongs to an occupational group or segment of the population whose joint interests are affected by the matter.

(2) Paragraph 1 shall not apply to elections to an honorary position or to the removal of a person from such a position.

(3) Any person excluded under paragraph 1 may, when there is a risk involved in delay, undertake measures which cannot be postponed.

(4) [...]

(5) Relatives for the purposes of paragraph 1, nos. 2 and 4 shall be:

- 1. fiancé(e)s, auch im Sinne des Lebenspartnerschaftsgesetzes,*
- 2. spouses,*
- 2a. civil partners,*
- 3. direct relations and direct relations by marriage,*
- 4. siblings,*
- 5. children of siblings,*
- 6. spouses of siblings and siblings of spouses,*

- 6a. *civil partners of siblings and siblings of civil partners,*
- 7. *siblings of parents,*
- 8. *persons connected by a long-term foster relationship involving a shared dwelling in the manner of parents and children (foster parents and foster children).*

The persons listed in sentence 1 shall be deemed to be relatives even where:

- 1. *the marriage producing the relationship in nos. 2, 3, and 6 no longer exists;*
- 2. *1a. the registered civil partnership producing the relationship in nos. 2a, 3 and 6a no longer exists;*
- 3. *the relationship or relationship by marriage in nos. 3 to 7 ceases to exist through adoption;*
- 4. *in case no. 8, a shared dwelling is no longer involved, so long as the persons remain connected as parent and child*

Section 21 Fear of prejudice

(1) Where grounds exist to justify fears of prejudice in the exercise of official duty, or if a participant maintains that such grounds exist, anyone who is to be involved in administrative proceedings on behalf of an authority shall inform the head of the authority or the person appointed by him and shall at his request refrain from such involvement. If the fear of prejudice relates to the head of the authority, the supervisory authority shall request him to refrain from involvement where he has not already done so of his own accord.

(2) [...]”

Analogous provisions in regard to the law on tax procedures are set out in sections 82 to 84 of the Fiscal Code, in regard to the law on social procedure in sections 16 and 17 of the Tenth Book of the Social Code and in regard to the law on the award of public contracts in section 6 of the Regulation on the Award of Public Contracts.

Land legislation, in particular municipal law, contains additional, in some cases more wide-ranging, provisions on excluding individuals, including supplemental provisions on prohibitions of representation under municipal law.

The prescribed provisions on conflicts of interest apply to all persons involved in an authority's administrative procedures. This may include civil servants and other employees as well as persons charged with fulfilling state functions. Persons charged with fulfilling state functions include private parties commissioned to independently perform sovereign tasks. In this capacity, they also act as authorities.

Award procedures

Legal provisions on the award of public contracts also contain rules on avoiding conflicts of interest.

Pursuant to section 6 (1) of the Regulation on the Award of Public Contracts (VgV), board members

or staff of a contracting authority or of a procurement service provider acting on behalf of the contracting authority may not be involved in an award procedure if there is any conflict of interest. Section 6 (2) of the aforementioned Regulation defines when a conflict of interest arises:

“A conflict of interests arises when individuals are involved in conducting an award procedure or can influence the outcome of an award procedure and have a direct or indirect financial, economic or personal interest which could compromise their impartiality and independence in the course of the award procedure.”

Section 6 (3) of the Regulation lists when such a conflict of interest can be presumed to exist. This presumption rule also applies to the relatives of those individuals referred to in section 6 (1) of the Regulation (e.g. fiancé(e), spouse, civil partner, children, siblings):

“It shall be presumed that there is a conflict of interest where the persons referred to in subsection (1)

- 1. are candidates or tenderers,*
- 2. advise a candidate or tenderer or otherwise support them, or act as their legal representative or only represent them in the award procedure,*
- 3. are employed by or working for*
 - a) a candidate or tenderer for money or for them as a member of the board, supervisory board or similar body or*
 - b) an enterprise involved in the award procedure if this enterprise also has business relations with the contracting authority and with the candidate or tenderer.”*

The provision on avoiding conflicts of interest in section 6 VgV is published e.g. on the webpage www.gesetze-im-internet.de and on the homepage of the Federal Ministry of Economic Affairs and Energy (www.bmwi.de). The special provision for the procurement of works contains a reference to section 6 VgV (section 2 (5) EU VOB/A), is published on the Webpage of the Federal Ministry of the Interior (www.bmi.de).

Authorization and notification requirements regarding secondary employment

Rules intended to prevent conflicts of interests also apply in regard to any secondary employment which civil servants engage in. Section 99 (1), first sentence, of the Federal Act on Civil Servants and section 40 of the Federal Civil Servant Status Act stipulate that civil servants must always obtain authorization to engage in any paid secondary employment. Exceptions to this rule are only permissible in regard to those types of secondary employment which are listed in section 100 (1) of the Federal Act on Civil Servants as secondary employment not requiring authorization. Please refer to our responses to Article 8, paragraph 5 for more details on such authorization.

According to section 3 (3) of the TVöD, those employed under collective agreements must notify their employer in good time before taking up secondary employment. For more details, please refer to our response to Question 2 re Article 8, paragraph 1.

Civil servants are provided with training with regard to the above rules on conflicts of interest, as well as to identify, manage and prevent actual or potential conflicts of interest. Reference is made to the observations under Article 8(5) in respect of conflict of interest declarations.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No such statistics are available.

(b) Observations on the implementation of the article

Sections 20 and 21 of the Federal Administrative Procedure Act and the equivalent administrative procedure laws applicable in the Länder contain rules on conflicts of interest which can arise in the course of administrative procedures. They include rules on excluding individuals from administrative procedures where various types of conflicts of interest are to be expected and on the conduct of individuals who are to act on behalf of an authority in an administrative procedure where there is reason to doubt their impartiality (in which case their superior must be notified and, where necessary, the superior may order that the person in question not participate in that procedure).

Legal provisions on the award of public contracts also contain rules on avoiding conflicts of interest. Pursuant to section 6 (1) of the Regulation on the Award of Public Contracts, board members or staff of a contracting authority or of a procurement service provider acting on behalf of the contracting authority may not be involved in an award procedure if there is any conflict of interest. Violations of this rule may be a ground to reverse public contract award decisions.

Rules intended to prevent conflicts of interests also apply in regard to any secondary employment which civil servants engage in (sections 97-101 of the Federal Act on Civil Servants). In particular, Section 99 (1) of the Act and section 40 of the Federal Civil Servant Status Act stipulate that civil servants must always obtain authorization to engage in any paid secondary employment.

Germany has implemented the provision under review.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Germany, a distinction is drawn between two types of public service employees: civil servants (*Beamte*) and public service staff employed under collective agreements (*Tarifbeschäftigte*). The latter sign a private-law contract of employment. They are subject to the relevant labour laws and collective agreements negotiated between employers' organizations and workers' associations (trade unions). The most important of these is the Collective Agreement for the Public Service ("TVöD").

Civil servants, in contrast, enter into a special relationship of service and trust with their employer which establishes specific rights and duties. The very existence of the civil service is enshrined in Article 33 of the Basic Law. The civil service system is regulated in the Federal Act on Civil Servants and in supplementary legislation (e.g. the Civil Service Benefits Act) and numerous statutory instruments (e.g. the Working Time Ordinance). Unlike collective agreements, these regulations are enacted by the legislature and regulatory authorities.

Due to Germany's federal structure, a distinction is also drawn between administrative civil servants in the federal, *Land* and municipal administrations. Civil servants have the same status at federal and *Länder* level, though. The Federal Government sets the regulatory framework for the *Länder* in the form of the Federal Civil Servant Status Act. Rules governing the status of civil servants in the municipalities are set out in the respective *Land* regulations. The provisions of the Federal Civil Servant Status Act were fully incorporated into the Federal Act on Civil Servants and therefore also apply to civil servants in the federal administration.

I. Civil servants

Sections 60 et seq. of the Federal Act on Civil Servants and sections 33 et seq. of the Federal Civil Servant Status Act make binding determinations concerning the duties incumbent upon civil servants. They encompass the core values of the civil service and are characteristic of the special relationship of service and trust between civil servants and their employer (e.g. the duty to exercise one's office impartially, fairly, loyally and in the interests of the common good). There are provisions on integrity (e.g. the ban on accepting rewards, gifts and other advantages [section 71 of the Federal Act on Civil Servants] and the need for approval to be issued for secondary employment [sections 97 et seq. of the aforementioned Act]), the duty of honesty (e.g. requirements in respect of performing one's tasks and on conduct [section 61 of the aforementioned Act]) and on responsibility (e.g. for the lawfulness of official activities [section 63 of the aforementioned Act]). These provisions in combination with the relevant *Land* legislation concerning the civil service apply accordingly at *Länder* level. The statutory provisions are supplemented by guidelines and administrative regulations at both federal and *Länder* level.

Under section 71 of the Federal Act on Civil Servants and section 42 of the Federal Civil Servant Status Act, even after their civil service employment ends civil servants may not demand, allow themselves to be promised or accept, in connection with their position, rewards, gifts or other advantages either for themselves or third parties. This prohibition is a more concrete expression of the duty of trust and the duty not to pursue any vested interests. Its aim is to guarantee that the general public has confidence in the integrity and functioning of the civil service. That is why even the mere appearance that civil servants may be influenced or may be pursuing their own personal interests in conducting official matters on account of being granted small favours must be avoided. Accordingly, violations of section 71 of the Federal Act on Civil Servants and of section 42 of the Federal Civil Servant Status Act constitute a breach of duty and an offense according to section 331 of the Criminal Code (acceptance of advantages).

Under section 5 of the Federal Disciplinary Act and the provisions of the disciplinary legislation applicable in the *Länder*, a written reprimand, a fine, a salary cut, demotion and removal from office are possible penalties for breaches of duty. Retired civil servants may have their pension cut or may be deprived of their pension altogether. If the offense of section 331 of the Criminal Code is fulfilled, a prison sentence of up to 3 years can be imposed.

Conducting official business without any vested interests and without consideration for personal

advantage is one of the cornerstones of the civil service system. A civil servant who accepts benefits in connection with his or her position will create the impression that official matters are not directed by objective criteria and that public officials are corruptible. This is unacceptable in the interests of a law-abiding administration and creating general confidence that administrative activities are based on the rule of law. Civil servants who intentionally breach section 71 of the Federal Act on Civil Servants or section 42 of the Federal Civil Servant Status Act lose their employer's trust and the trust of the general public in the fact that they are duly conducting official business and they must therefore be removed from office if they carry out an official act contrary to duty in return for the advantage granted or if they accept cash as payment, unless there are serious mitigating circumstances (see Federal Administrative Court, judgment of 8 June 2005, file no. 1 D 3/04, with further references). Civil servants are also dismissed when a non-suspended prison sentence of at least six months is imposed for bribery or a non-suspended prison sentence of at least one year is imposed for accepting an undue advantage. "Accepting an undue advantage" means that a civil servant accepted a benefit for performing a lawful act.

Please see our response to Article 8, paragraph 5 regarding civil servants' secondary employment.

II. Employees (subject to collective agreements)

Those public officials who are not civil servants but employees subject to collective agreement are also banned from accepting rewards, gifts, commission or any other benefits from third parties in connection with their work (section 3 (2) of the TVöD). The aim is to prevent the impression arising that they are amenable to accepting personal advantages and to ensure that all doubts as to the objectivity of their action and integrity are kept at bay. Both the duty of allegiance and the duty of loyalty are secondary obligations of employment relationships.

Accepting favours constitutes a breach of these secondary labour law obligations and generally justifies dismissal without due notice (Federal Labour Court, judgment of 17 March 2005, file no. 2 AZR 245/04).

See our response to Article 8, paragraph 5 for details regarding secondary employment.

Responsibility to promote integrity, honesty and responsibility among public officials

Within the federal administration it is primarily the contact persons for corruption prevention and staff in the internal audit units and/or training facilities who are responsible for raising awareness for the issues of integrity, honesty and responsibility among public officials. Prevention of corruption is part of the management responsibility. On the one hand management personnel have to lead by example. They have to set an example through their own behavior that they never tolerate or support corruption (see no. 1 of the Anti-Corruption Code of Conduct in Annex 1 to the Corruption Prevention Directive). On the other hand the management personnel play a central monitoring role. This includes inter alia:

1. Promote staff awareness and education.
2. Take organizational measures such as implementing the principle of greater scrutiny in areas of activity that are especially vulnerable to corruption or assigning tasks randomly.
3. Look after, supervise and lead staff.

The Guidelines for Supervisors and Heads of Public Authorities/Agencies (Annex 2 to the Corruption

Prevention Directive) indicate the state of the art leading and managing personnel have to take into account.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

At federal level

Awareness-raising measures

In 2015, a total of 101,200 staff (out of a total of 354,513, i.e. 28.5%) across the whole of the federal administration (excluding the Federal Ministry of Defence's remit) took part in measures to raise awareness on the issue of corruption prevention, including 7,800 management-level staff. Of these, some 28.8% were employed in positions especially vulnerable to corruption. In the Federal Ministry of Defence 118,390 staff (out of a total of 221,779, i.e. 53.4%) took part in awareness-raising measures, including 5,984 management staff.

Those employed in positions especially vulnerable to corruption in around half of all authorities and in more than three quarters of the Federal Ministry of Defence's subordinate agencies take part in awareness-raising measures on an annual basis.

Staff in units/departments with positions especially vulnerable to corruption also take part in in-house awareness-raising training courses which address specific risks. These are organized by the contact persons for corruption prevention/staff in internal audit units and/or specialist lecturers.

Training measures

Education and training programmes go beyond mere awareness-raising. They encompass an interactive, generally multi-step, process in which a multiplier (a member of teaching staff) teaches knowledge based on a concept and applying a systematic (didactic) approach. A lecture is an awareness-raising measure; e-learning is a training measure. In 2015, a total of 13,346 people took part in education and training measures in the highest federal authorities and agencies within their remits (excluding the Federal Ministry of Defence and its remit). Of these, at least 4,240 are employed in positions especially vulnerable to corruption. (Not all authorities consistently record whether those who take part in educational and training courses work in positions especially vulnerable to corruption.) In the Federal Ministry of Defence and its remit a total of 3,645 staff took part in corruption prevention education and training measures; 310 of these were identified as being employed in positions especially vulnerable to corruption. In 2015 a total of 3,030 management staff also took part in corruption prevention training; 121 management staff were themselves involved in training measures as trainers, teachers or consultants. In the Federal Ministry of Defence and subordinate agencies within its remit, 427 management staff took part in training measures and 14 were actively involved in teaching these courses.

Practical example: Approval of gifts at the Federal Ministry of the Interior

The Federal Ministry of the Interior (BMI) regularly receives groups of visitors as part of its public relations work. Often visitors come from the constituency of members of parliament to get information

about the work of the BMI. Employees from the various departments explain to the groups their and the other areas of responsibility of the BMI and answer visitors' questions. It is not unusual for a group of visitors to hand over a gift to the lecturer at the end of the event. As employees in the civil service are in general not allowed to accept gifts, the lecturers have to ask the responsible personnel department for approval. For this purpose, an application form is available on the intranet. The lecturer must complete the form and submit it together with the gift. The personnel department then determines the usual selling price of the gift, e.g. by means of internet research. In accordance with a BMI-internal regulation, employees are allowed to accept gifts up to a value of € 25 per year per donor on the basis of a general, publicly disclosed approval. If a gift from a group of visitors does not exceed this value, the employee may keep it. If it exceeds this value, the gift is collected and sold, for example, at a public auction.

At Länder level

An example from Hesse:

Hesse has enacted the Administrative Regulations for State Employees in Hesse on Accepting Rewards and Gifts of 18 June 2012 (Official Gazette, 25 June 2012, p. 676). Under these regulations, staff's attention must be drawn to those obligations which result from section 42 of the Federal Civil Servant Status Act or the corresponding rules applicable under collective agreements (ban on accepting rewards, gifts and other advantages). All new members of staff are handed a copy of these rules when they are hired; they must sign to confirm receipt. Supervisors are required to hold regular meetings, for example service meetings, in which they discuss these rules and corruption issues with staff in order to continuously raise their awareness for this matter. A record must be made of each such meeting. Staff in positions especially vulnerable to corruption are to be given job-related and needs-based instruction. These rules are also regularly (at least annually) made known to all staff in the police through repeated instruction. A record must be kept and staff must sign to confirm that such instruction has been given.

Section 3 of the Collective Agreement for Hesse, according to which staff are banned from accepting rewards, gifts, commission or other advantages in connection with their work, applies to state public service employees in Hesse.

(b) Observations on the implementation of the article

Germany promotes integrity, responsibility and honesty among public officials and civil servants (impartiality, fairness, loyalty and serving in the interests of the common good) through relevant provisions of, inter alia, the Federal Act on Civil Servants (Sections 60 et seq.) and the Federal Civil Servant Status Act (sections 33 et seq.). There are restrictions on accepting rewards, gifts and other advantages [section 71 of the Federal Act on Civil Servants] and on secondary employment [sections 97 et seq. of the aforementioned Act], among other rules on integrity. These provisions in combination with relevant Länder legislation concerning the civil service apply accordingly at Länder level. The statutory provisions are supplemented by guidelines and administrative regulations at both federal and Länder level.

Those public officials who are not civil servants but employees subject to collective agreement are also banned from accepting rewards, gifts, commission or any other benefits from third parties in connection with their work (section 3 (2) of the TVöD).

Under section 71 of the Federal Act on Civil Servants and section 42 of the Federal Civil Servant Status Act, even after their civil service employment ends civil servants may not demand, allow themselves to be promised or accept, in connection with their previous position, rewards, gifts or other advantages either for themselves or third parties.

Also, at both federal and *Länder* levels education and training programmes for awareness-raising, especially for positions which are especially vulnerable to corruption are regularly held.

Within the federal administration it is primarily the contact persons for corruption prevention and staff in internal audit units and/or training facilities who are responsible for raising awareness on integrity, honesty and responsibility among public officials.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 2 and 3 of article 8

In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

At federal level

The Corruption Prevention Directive and all the other rules on integrity which are applicable to staff in the federal administration are set out in the Rules on Integrity brochure, which is available in both German and English on the Internet. The federal agencies all regularly use and distribute this brochure in the context of training courses and awareness-raising measures, as well as on other occasions, for instance visits by foreign delegations. The regulations detailed in the following are all set out in the Rules on Integrity brochure (see

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

Anti-Corruption Code of Conduct; Guidelines for Supervisors and Heads of Public Authorities/Agencies

The Corruption Prevention Directive is supplemented by an Anti-Corruption Code of Conduct (Annex 1 to the Directive) and by Guidelines for Supervisors and Heads of Public Authorities/Agencies (Annex 2 to the Directive).

The Anti-Corruption Code of Conduct is intended to inform staff of situations in which they might inadvertently become involved in corruption. It is also aimed at urging staff to fulfil their duties properly and lawfully and at alerting them to the consequences of corrupt behaviour. It contains the following key behavioural rules:

1. *Set an example: Show, through your behaviour, that you neither tolerate nor support corruption.*
2. *Immediately refuse any attempt to involve you in corrupt activities and inform the contact person for the prevention of corruption and your supervisor without delay.*
3. *If you suspect that somebody wishes to ask you for preferential treatment contrary to your duty, consult a colleague as a witness.*
4. *Do your work in such a manner that it can pass review at any time.*
5. *Separate your job strictly from your private life. Check to see whether your private interests might conflict with your work duties.*
6. *Help your workplace in detecting and clearing up corruption. Inform your supervisor and the contact person for corruption prevention in case of specific indications of corrupt behaviour.*
7. *Support your workplace in detecting defective organizational structures that favour corruption.*
8. *Take part in basic and advanced training on preventing corruption.*
9. *And what should you do if you have already been caught up in corruption? Free yourself from the constant fear of being found out! Get it off your chest! If you confess on your own initiative, and your information helps clear up the facts, it may reduce the severity of punishment and consequences under public service law.*

Further on, these rules are explained in more detail.

The Guidelines for Supervisors and Heads of Public Authorities/Agencies (Annex 2 to the Directive) specifically address leading personnel of public authorities and agencies. They are both responsible for and serve as an example to those working under their supervision. Conduct and attentiveness of the leading personnel are extremely important in preventing corruption. For this reason, the Guidelines ask the supervisors to be pro-active in personnel management and evaluation. In particular, they should ensure that responsibilities are clearly designated, that job descriptions are transparent, and that staff performance is assessed with appropriate frequency.

Recommendations on Preventing Corruption in the Federal Administration

These Recommendations were issued to supplement and clarify each of the provisions of the Corruption Preventive Directive. Handouts containing practical hints on implementing the Directive are continuously updated based on past experience. The aim is to ensure that a uniform standard is applied across the whole of the federal administration (see No. 3. in the Rules on Integrity brochure

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

The Recommendations are currently being updated based on an analysis of the experience gained and regularly exchanged among the federal authorities over the course of more than ten years.

General Administrative Regulation on Sponsoring to Promote Activities by the Federal Government through Contributions from the Private Sector

The General Administrative Regulation to Promote Activities by the Federal Government through Contributions from the Private Sector of 7 July 2003 is another important preventive tool (Federal Gazette, p. 14906, see 5. in the Rules on Integrity brochure

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

The Administrative Regulation provides guidance on when it is possible to use sponsoring to support the administration in fulfilling its tasks. As a general principle, a restrictive approach has to be applied when taking decisions on the solicitation and acceptance of sponsoring.

Sponsoring is strictly prohibited in connection with interventional administration (e.g. the Federal Police's security-related duties). It is, for example, permissible in the areas of culture, sport, health, environmental protection, education and science, the promotion of foreign trade, political PR work and during representative events organized by the Federal Government, provided there is no possibility of influence being brought to bear on the administration in the discharge of its duties and of the impression arising that such influence is possible. Accordingly, each sponsoring measure must be made transparent. To further increase transparency, the Federal Ministry of the Interior is required to submit a sponsoring report every two years in which cash and non-cash contributions and services are disclosed. All federal ministries have to contribute to this report. The report is published in German on the Federal Ministry's website (see

<https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/2017/sponsoringbericht-2017.html>).

Circular issued by the Federal Ministry of the Interior on the ban on accepting rewards or gifts

The Circular on the ban on accepting rewards or gifts in the federal administration of 8 November 2004 (Joint Ministerial Gazette, p. 1074, see 4. in the Rules on Integrity brochure

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>)

makes it clear that gifts and rewards may never be accepted in connection with public office or official matters (section 71 of the Federal Act on Civil Servants). Exceptions can only be made in areas in which there are no concerns of any influence being exerted on staff. However, staff must seek their employer's approval before accepting the gift. No exceptions can be made to the prohibition of accepting cash.

As an exception, the employer's tacit approval may be assumed to have been given in the case of minor gifts. The Circular contains a full list of what are defined as "minor gifts". Accordingly, the employer's tacit approval may be assumed in the following exceptional cases:

- *The acceptance of minor gifts up to a value of 25 euros (e.g. simple promotion articles such as ballpoint pens, notepads, calendars). The market value in the Federal Republic of Germany is the decisive criterion. In this case, the recipient is obliged to notify the employer, however. The object concerned is to be specified, together with its estimated value, the grounds for granting the object and the person granting the object.*

- *Hospitality provided by public institutions or grant recipients who are predominantly financed by the public sector.*
- *Participation in hospitality measures by private parties on the occasion of or in connection with official activities, meetings, inspections or similar, where such measures are customary and appropriate or where they are based on the rules of social intercourse and courtesy which members of the public service cannot evade - with due regard to their special obligation to discharge their duties in an impartial manner - without breaching social etiquette. This shall also apply where the nature and scope of the hospitality represents a substantial value, whereby the official function of the employee concerned shall also be considered in determining the extent to which the hospitality is commensurate in the individual case concerned.*
- *Hospitality in the context of general events in which employees participate on official duty or with due regard to the social obligations pertaining to the discharge of their duties (e.g. introduction and/or discharge of official staff, official receptions), provided that such hospitality remains commensurate and within the customary bounds.*
- *Minor services which facilitate or expedite official business (e.g. collection by car from a railway station).*

Despite these exceptions, such minor gifts still need to be notified. The federal ministries have issued their own regulations to give concrete expression to the rules set out in the Circular in line with their respective remits. In practice, approval is generally given for minor gifts up to a maximum value of EUR 25, although this upper limit varies. In the Federal Ministry of the Interior's Procurement Agency, for instance, it is EUR 0.

The Circular also stipulates that public service employees must immediately notify their employer without being asked if they are offered rewards or gifts in connection with official business. It also contains guidance on how staff are to deal with invitations involving hospitality. These rules and the equivalent rules at *Länder* level play a key role when it comes to raising employees' awareness.

Transparency requirements applicable to Members of the Bundestag

The Code of Conduct for Members of the German Bundestag and the Implementing Provisions which give more concrete expression to the Code of Conduct require that Members of the Bundestag disclose specific information to the President of the Bundestag concerning

- activities pursued prior to taking on their mandate,
- activities pursued alongside the exercise of their mandate (incl. any income from such activities),
- shareholdings in companies,
- agreements on future activities or allowances,
- donations and other benefits received in respect of political activity and
- gifts received from guests or hosts.

Newly elected Members of the Bundestag therefore have to submit a form to the President of the

Bundestag at the start of their first electoral term. They must also notify any changes and additions to the reported information which arise in the course of the electoral term within three months of the notifiable situation arising. Possible penalties for breaching this disclosure requirement include a reprimand, publication of a Printed Paper and an administrative fine.

Most of this information is published on the Bundestag's website and in the Official Handbook of the German Bundestag, although income is only indicated in the form of ten income brackets. The purpose of this declaration and publication is to disclose facts "which may indicate combinations of interests with implications for the exercise of the said mandate" (section 44a (4) of the Members of the Bundestag Act). A special rule applies in the case of combinations of interests which are not readily apparent from the information published on the Internet:

Committee members who deal on a remunerated basis with a matter which is on the committee's agenda for deliberation must disclose any combination of interests before deliberations begin.

For more information, please see the information under Article 52 paragraph 5.

At Länder level

The same principles are also applied at *Länder* level. Lower Saxony, for example, has adopted an Anti-Corruption Code of Conduct (Annex 1 to the Corruption Prevention Directive) and a Circular on the Ban on Accepting Rewards, Gifts and other Advantages of 24 Nov. 2016, which also contains rules on hospitality expenses. Both are available in German at:

https://www.mi.niedersachsen.de/themen/oeffentliches_dienstrecht_korruptionspraevention/korruptionspraevention_bekaempfung/korruptionspraevention-und--bekaempfung-62734.html.

Hesse enacted an Ordinance on Preventing and Combating Corruption within the Remit of the Ministry of the Interior and Sports of 21 May 2014 (Official Gazette, 2 June 2014, p. 482), for instance. There are plans to extend its scope of application to the whole of the *Land* administration. The Administrative Regulations for State Employees in Hesse on Accepting Rewards and Gifts of 18 June 2012 (Official Gazette, 25 June 2012, p. 676) also apply. To make life easier for them, employees can fall back on model letters when they need to refuse gifts or invitations (staff in the federal administration can find similar examples on p. 53 et seq. of the German version of the Rules on Integrity brochure <https://www.bmi.bund.de/SharedDocs/downloads/DE/themen/moderne-verwaltung/regelungen-zur-integritaet.pdf>).

The Joint Circular on the Principles of Sponsoring, Advertising, Donations and Promotional Donations for the Financing of Public Tasks of 8 December 2015 (Official Gazette, 18 January 2016, p. 86) likewise apply in Hesse. Following a resolution adopted on 19 May 2010, a sponsoring report must be submitted to the Hessian *Land* Parliament every two years. This ensures greater transparency in regard to services provided by third parties to finance public services.

With effect from 1 November 2010, Bavaria has issued a guideline for dealing with sponsoring, advertising, donations and patronage donations in the state administration ("Sponsoring Guidelines"). The guideline applies to the payment of corresponding benefits to authorities, courts and other institutions of the Free State of Bavaria. It provides for all essential forms of monetary support that the neutrality of the public administration is to be protected, that any appearance of outside influence in the performance of public functions is to be avoided, that the proper and impartial performance of the

task must be ensured, and that competition is not restricted. Advertising and sponsorship measures must be transparent, inter alia by signing a sponsorship agreement. The sponsoring services worth a value of € 1,000 or more must be disclosed in a biennial sponsoring report presented by the Bavarian State Ministry of the Interior, for Construction and Transport to the state parliament. These reports are available in German at <https://www.stmi.bayern.de/sug/engagement/sponsoring/index.php>.

A further example from Berlin: The Administrative Regulations on Dealing with Sponsoring and Other Forms of Donation by Private Individuals Applicable to the Berlin Senate Administrations were adopted to introduce uniform rules on sponsoring applicable across the central administration. The district administrations still have their own regulations, although they are advised to adopt the aforementioned Administrative Regulations. The Senate Administration for the Interior and Sports draws up a sponsoring report for the central administration every two years listing all third-party donations of over EUR 5,000. These reports are available in German at: <http://www.berlin.de/sen/inneres/buerger-und-staat/weitere-themen/korruptionsbekaempfung/artikel.102993.php>.

The above-mentioned General Administrative Regulation to Promote Activities by the Federal Government through Contributions from the Private Sector of 7 July 2003 also applies in Brandenburg. It requires that sponsoring activities are collated and published every two years in a sponsoring report.

As part of its corruption prevention activities, Rhineland-Palatinate has drawn up a list of questions and answers plus examples of how to accept benefits and made the list available to those employed by the *Land* administration (“Are employees of the *Land* administration allowed to accept benefits?” as at: 28 September 2016). The aim of the list is to help staff in the *Land* administration to recognize where the boundaries are between what is desirable, what is still permissible and what is not permissible in regard to donations.

The acts on civil servants are adopted by parliament. It is safe to assume that the parliament is aware of the relevant initiatives of regional, interregional and multilateral organizations and takes them into account. One example is Art. 9 of the Council of Europe Civil Law Convention on Corruption of 4 November 1999. This convention is reflected in Section 67 (2), first sentence, no. 3 of the Act on Federal Civil Servants (cf. Bundestag printed paper 16/4027, p. 32).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The rules set out in the Circular on the ban on accepting rewards or gifts in the Federal Administration are applied to varying degrees across the federal administration. While, for instance, the Federal Ministry of the Interior has adopted its own house rules on the basis of which staff need not disclose minor gifts worth up to EUR 25 (per year and donor), the Federal Ministry of Finance strictly applies the requirements of the Corruption Prevention Directive in practice. As a result, staff in the Federal Ministry of Finance have to notify all gifts they accept regardless of their value.

For examples at *Länder* level please refer to the above responses to Question 2.

For statistics regarding the number of public officials who have undergone training please see our responses to Article 8, paragraph 1.

(b) Observations on the implementation of the article

The Corruption Prevention Directive contains an Anti-Corruption Code of Conduct (Annex 1 to the directive) and Guidelines for Supervisors and Heads of Public Authorities/Agencies (Annex 2 to the directive). It is available, together with all the other rules on integrity which are applicable to staff in the federal administration, in the Rules on Integrity brochure, in both German and English on the Internet. The Anti-Corruption Code of Conduct is intended to inform staff of situations in which they might inadvertently become involved in corruption. It is also aimed at urging staff to fulfil their duties properly and lawfully and at alerting them to the consequences of corrupt behaviour.

The Code of Conduct for Members of the German Bundestag and the Implementing Provisions which give more concrete expression to the Code of Conduct require that Members of the Bundestag disclose specific information to the President of the Bundestag that may give rise to a conflict of interest. Included are:

- activities pursued prior to taking on their mandate,
- activities pursued alongside the exercise of their mandate (incl. any income from such activities),
- shareholdings in companies above a certain threshold,
- agreements on future activities or allowances,
- donations and other benefits received in respect of political activity and
- gifts received from guests or hosts.

The same principles are also applied in codes of conduct at Länder level. Lower Saxony, for example, has adopted the Directive's Anti-Corruption Code of Conduct and a Circular on the Ban on Accepting Rewards, Gifts and other Advantages of 24 Nov. 2016, which also contains rules on hospitality expenses.

The rules set out in the Circular on the ban on accepting rewards or gifts in the Federal Administration are applied across the federal administration, but every authority can issue supplementary or additional orders. While, for instance, the Federal Ministry of the Interior has adopted its own house rules on the basis of which staff need not disclose minor gifts worth up to EUR 25 (per year and donor), the Federal Ministry of Finance strictly applies the requirements of the Circular on the ban on accepting rewards or gifts in the Federal Administration in practice. As a result, staff in the Federal Ministry of Finance have to notify all gifts they accept regardless of their value.

As reported under Article 8(6) below, the Codes referenced above are enforceable and disciplinary or other measures may be taken against public officials (civil servants, employees and Members of the Bundestag) who violate the Codes.

It was also explained that the Anti-Corruption Code of Conduct annexed to the Corruption Prevention Directive while applicable to federal ministries, does not specify application to Ministers and the authorities indicated that they would consider this in the next revision of the Directive. Please see the observation made under article 5(1) above.

Paragraph 4 of article 8

Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level

Civil servants

Duty to maintain confidentiality

Under section 67 (1) of the Federal Act on Civil Servants, all civil servants are required to maintain confidentiality. In line with Article 33 para. 5 of the Basic Law, this is a traditional principle of the civil service. The duty to maintain confidentiality takes precedence over the right to freedom of expression under Article 5 para. 1 of the Basic Law. Section 67 (1) of the Federal Act on Civil Servants stipulates the following:

“[c]ivil servants shall maintain confidentiality concerning all official matters of which they become aware in the course of their official activity. This shall also apply beyond the remit of an employer and following termination of civil service employment. [...]”

Exceptions to the duty to maintain confidentiality: whistle-blowing

Section 67 (2), first sentence, no. 3 of the Federal Act on Civil Servants and section 37 (2), first sentence, no. 3 of the Federal Civil Servant Status Act stipulate that the duty to maintain confidentiality about official matters explicitly does not apply when civil servants notify the responsible highest service authority or another agency or non-service body (e.g. an ombudsperson) designated under *Land* legislation of a reasonable suspicion of corruption in accordance with sections 331 to 337 of the German Criminal Code. This ensures that civil servants who notify the competent agencies of a reasonable suspicion of corruption in good faith are protected against suffering unreasonable disadvantages (see p. 77 et seq. of the Rules on Integrity brochure regarding section 67 of the Federal Act on Civil Servants <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

Section 14 (1) no. 3 of the Act on the Legal Status of Military Personnel contains an identical rule applicable to soldiers (see p. 78 of the Rules on Integrity brochure <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

Employees

Employees who report actual or alleged violations of the law are protected by general provisions governing the termination of employment contracts (section 626 of the German Civil Code, section 1 of the Act on the Protection against Unfair Dismissal), by the prohibition of victimization under labour law (section 612a of the German Civil Code) and by constitutional law (Article 2 para. 1 of the Basic Law [general freedom of action], Article 5 of the Basic Law [freedom of expression] and Article 20 para. 3 of the Basic Law [rule of law]) in conjunction with the jurisprudence of the Federal Labour Court (judgment of 3 July 2003, file no. 2 AZR 235/02, NZA 2004, 427) and of the Federal Constitutional Court (orders of 25 Feb. 1987, file no. 1 BvR 1086/85, NJW 1987, 1929 and of 2 July 2001, file no. 1 BvR 2049/00, NJW 2001, 3474). According to these consistent past decisions of the highest courts, when employees act in good faith, they carefully check whether the information they are supplying is correct and reliable, and the report does not constitute a disproportionate reaction, then an attempt must always be made to clarify the matter internally. In its judgement in the case of *Heinisch v. Germany*, the European Court of Human Rights substantiated employees' right to draw attention to wrongdoing in the workplace (judgment of 1 July 2011, Application no. 28274/08). The labour courts will in future have to take this judgment into account in their rulings. A review is currently being conducted to see whether the protection afforded to whistle-blowers complies with other applicable international requirements, too.

At Länder level

The same applies at *Länder* level. Saxony, for instance, has appointed contact persons for corruption prevention in the highest *Land* authorities and, in some cases, also in the state ministries' respective subordinate authorities.

Further, some of the *Länder* have set up anonymous, in some cases interactive, whistle-blower systems. Public service employees, too, can use these to report suspicions of corruption. The systems are, however, primarily geared to the general public, which is why further details will be provided in our responses to Article 13, paragraph 2, "reporting by society".

For the operational mechanism that officials may follow to report wrongdoing in public bodies please refer to Art. 6 para. 2.

There is no systematic work being done to sensitize public officials on how to spot and report wrongdoings. This is part of the general training on corruption prevention.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In addition to a contact person for corruption prevention, the **Federal Ministry of the Interior has also appointed an anti-corruption ombudsperson**. Anyone can contact the ombudsperson, that is both public service employees and citizens, to pass on information concerning suspected cases of corruption relating to the Federal Ministry of the Interior and/or its subordinate authorities. The ombudsperson (who is a lawyer) is both *ex officio* and contractually obliged to maintain confidentiality, which is why the report itself is passed on to the Federal Ministry of the Interior but not the whistle-blower's identity. Information reported to the anti-corruption Ombudsperson at the Federal Ministry of the Interior is forwarded to both the responsible unit at the executive agency and,

for information and for billing purposes, to the internal audit division at the Federal Ministry of the Interior, where the contract with the Ombudsperson is administered. If the information concerns the head of the executive agency, the Ombudsperson will forward the report only to the internal audit division at the Federal Ministry of the Interior, who will examine the information. Appointing an ombudsperson has proved its worth, as cases of corruption within the Federal Ministry of the Interior's remit have already been brought to light through the ombudsperson which then led to the institution of criminal investigations.

A reporting system has also been established for citizens in **Brandenburg**. Brandenburg Police launched its Internet Police Station, a web-based app which is accessible 24/7 from anywhere in the world, on 13 February 2003. This virtual police station is Brandenburg Police's central Internet portal where citizens can both report a criminal offence and obtain information (interactively) and also find out about the work of the police in Brandenburg. A new user interface, the "virtual letterbox", was launched in 2004. It enables citizens to communicate directly with the police. In 2007 the "virtual letterbox" was then realigned to focus on tip-offs about corruption offences. Since then, citizens in Brandenburg have been able to use a procedure similar to email to communicate directly with the police, citing their personal details or pseudonymized personal details, or entirely anonymously. They can also use this method of communication simply to find out more about corruption. There is also the option of passing information regarding cases of corruption to the prosecuting authorities via the Brandenburg Land Administration Corruption Prevention Staff Unit, ombudspeople and official anti-corruption officers.

(b) Observations on the implementation of the article

There is no standalone legal or administrative framework to comprehensively address the requirements of the provision under review. The duty of confidentiality takes precedence and could be breached without legal consequences only if civil servants report a reasonable suspicion of corruption in accordance with sections 331 to 337 of the German Criminal Code to the responsible highest service authority or another agency or non-service body (e.g. an ombudsperson) designated under state (Länder) legislation.

Additionally, the reporting must be done in good faith, as ultimately determined by the courts, in order for the reporting person to be protected against suffering unreasonable disadvantage. Employees who report actual or alleged violations of the law are protected by general provisions governing the termination of employment contracts (section 626 of the German Civil Code, section 1 of the Act on the Protection against Unfair Dismissal), by the prohibition of victimization under labour law (section 612a of the German Civil Code) and by constitutional law (Article 2 para. 1 of the Basic Law [general freedom of action], Article 5 of the Basic Law [freedom of expression] and Article 20 para. 3 of the Basic Law [rule of law]) in conjunction with the jurisprudence of the Federal Labour Court (judgment of 3 July 2003, file no. 2 AZR 235/02, NZA 2004, 427) and of the Federal Constitutional Court (orders of 25 Feb. 1987, file no. 1 BvR 1086/85, NJW 1987, 1929 and of 2 July 2001, file no. 1 BvR 2049/00, NJW 2001, 3474). According to the related jurisprudence of the highest courts, when employees act in good faith, they carefully check whether the information they are supplying is correct and reliable, and the report does not constitute a disproportionate reaction, then an attempt must always be made to clarify the matter internally.

It is noted that the aforementioned protections are limited to reports of actual or alleged violations of law and do not extend to complaints or reports of other irregularities or misconduct in the workplace

not rising to a potential breach of laws.

In its judgement in the case of *Heinisch v. Germany*, the European Court of Human Rights substantiated employees' right to draw attention to wrongdoing in the workplace (judgment of 1 July 2011, Application no. 28274/08). The labour courts will in future have to take this judgment into account in their rulings. A review is currently being conducted to see whether the protection afforded to whistleblowers also complies with other applicable international requirements.

During the country visit, the authorities clarified that each public body could introduce necessary procedures and channels individually as long as they were in line with the above legislation and the Corruption Prevention Directive (examples of the Ombudsman in the Federal Ministry of Interior and state of Brandenburg were provided). It was also explained that the rationale for reporting acts of corruption to internal audit or contact persons for corruption prevention was that these bodies or functions were deemed more qualified to deal with such issues. The latter function was in part established as a way to encourage reporting. An example was provided that potential whistleblowers in the Federal Ministry of Interior were hesitant to report acts of corruption to their supervisors unless anonymity was provided since the Ministry had police authorities such as the Federal Police in its remit.

Germany provided a further update on the issue following the country visit. Germany is transposing the EU Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Directive EU 2016 /943) and will also transpose the EU Directive of the on the protection of persons reporting on breaches of Union law once adopted.

In light of the above, it is recommended that Germany consider strengthening measures and systems to facilitate the reporting of corruption to appropriate authorities by providing 1) a comprehensive definition of protected disclosures in the legislation, 2) clear reporting channels and systems to make protected disclosures, 3) effective protections against discrimination for persons making protected disclosures, and 4) adequate awareness-raising among public officials. In this context, consideration should also be given to providing protections for reports of irregularities or misconduct not rising to the level of actual or alleged violations of the law, and establishing evidentiary presumption of good faith for persons making protected disclosures.

Paragraph 5 of article 8

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

I. Secondary employment/employment relationships

I. Civil servants

Secondary employment

One of the duties of public officials is to be fully personally committed to their profession as a civil servant. This rule is laid down in section 61 of the Federal Act on Civil Servants and in section 34 of the Federal Civil Servant Status Act. (That is why, in addition to their primary position, civil servants may only take on secondary employment to a limited extent. Whether and to what extent secondary employment is permissible depends on the nature of the activity in question.

Sections 97 to 101 of the Federal Act on Civil Servants regulate which types of secondary employment are permissible (see p. 71 et seq. of the Rules on Integrity brochure

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

Prior permission always needs to be sought before taking up secondary employment (section 99 (1) of the Federal Act on Civil Servants, section 40 of the Federal Civil Servant Status Act). Such permission is given by an employee's supervisor and the HR manager.

Permission should be refused where there are concerns that the secondary employment might interfere with service-related interests (section 99 (2) of the Federal Act on Civil Servants). This can, for instance, be the case where the secondary employment could influence the civil servant's neutrality or impartiality, or if it is not compatible with the profession (e.g. a Federal Police officer working as a bouncer in a nightclub). Nor may the time spent in the secondary employment amount to more than one fifth of the civil servant's regular weekly working hours. These statutory grounds for refusing permission for secondary employment enable employers to include corruption prevention aspects in their decision-making.

Secondary employment which is not expected to conflict with any service-related interests constitutes an exception to the above rule. It includes literary, scientific, artistic and lecturing activities, university and college teaching staff rendering expert opinions, civil servants working in self-help organizations and any voluntary work. Although these activities do not require approval (section 100 (1), nos 2, 3 and 4 of the Federal Act on Civil Servants), wherever civil servants receive compensation or payment in kind they must notify their employer in writing before taking up the activity, stating the type and extent of the activity and the probable amount of the compensation or payment in kind (section 100 (2) of the Federal Act on Civil Servants). An employer can also refuse to issue approval for secondary employment which does not generally require prior approval if, in the performance of the relevant activity, the civil servant violates service-related duties (section 100 (4) of the Federal Act on Civil Servants). Similar provisions apply to soldiers (section 20 of the Act on the Legal Status of Military Personnel). Leisure-time activities do not require approval, nor do they need to be notified.

Civil servants are required to cooperate both in regard to the application for approval and the reporting of secondary employment. They must submit the documents which are necessary for their employer to take a decision. In addition to having the burden of proof, civil servants must also immediately report any changes, especially to the compensation paid or payments in kind made.

With a view to the preventive aspect of combating corruption, the 1997 Second Act on Limiting

Secondary Employment explicitly extended civil servants' burden of proof in regard to the type and extent of the secondary employment to include the compensation and payments in kind derived from the activity. The legislature was of the opinion that the amount of the compensation can be relevant in a variety of cases which are not necessarily apparent merely from declaring the type and extent of the secondary employment. Depending on the circumstances of the individual case, it is possible to draw conclusions from the amount of the consideration about the extent to which there might also be hidden advantages, for instance, in relation to the applicant's office or the extent to which there are concerns as to the applicant's impartiality, neutrality or lack of vested interests in the exercise of his or her official duties (see Bundestag Printed Paper 13/6424, 12; Federal Constitutional Court, order of 27 March 1981, file no. 2 BvR 1472/80; Münster Higher Administrative Court, OVGE 33, 243, 248).

Further, the abovementioned Act included a rule which stipulates that approval must as a general rule be time-limited. Under section 99 (4), first sentence, of the Federal Act on Civil Servants, approval for secondary employment may now only be issued for a limited amount of time, up to a maximum of five years, after which it lapses. If the civil servant wishes to continue the secondary employment, he or she must re-apply for approval. The Federal Ministry of the Interior has issued recommendations in regard to when approval for secondary employment should be limited to less than five years (e.g. if the nature of the activity changes frequently; if it is foreseeable that it will be necessary to review, at an early stage, whether the secondary employment is compatible with the provisions of civil service law, in particular specific service-related concerns; or if there are plans for the civil servant to engage in official activities in the foreseeable future in an area in which he or she is engaged in secondary employment).

Activities after the end of the (active) civil service relationship

Once a civil servant reaches the age of retirement or leaves the public service for another reason, approval for his or her engaging in paid or other employment may be refused for five years, or three years after reaching the age of retirement, where there are concerns that such employment will interfere with service-related interests (section 105 of the Federal Act on Civil Servants, section 20a of the Act on the Legal Status of Military Personnel).

Under section 40 of the Federal Civil Servant Status Act (or section 41 in regard to retired civil servants), after the end of this period former civil servants are only required to disclose any secondary employment, not to seek approval therefor.

The above provisions give the *Länder* the leeway to introduce rules on any necessary exceptions to the duty of disclosure. The *Länder* have made use of this possibility. The Federal Ordinance on Secondary Employment also contains detailed rules on secondary employment which are applicable to the federal administration.

The information about civil servants' paid secondary or follow-up employment is not published.

Civil servants are furthermore required to "carry out their tasks impartially and fairly" (Section 60 (1) of the Act on Federal Civil Servants). Pursuant to Section 65 (1) of the Act on Federal Civil Servants, "civil servants shall be exempted from official acts that would be directed against themselves or family members on whose behalf they have the right to refuse to give evidence in criminal proceedings". In addition, Section 20 of the Administrative Procedure Act specifies in detail in which cases someone may be excluded from administrative tasks due to partiality. For example, someone is not allowed to act on behalf of an authority if their activity or decision would directly benefit them. The civil servant

is obliged to inform his/her superiors about such (financial or non-financial) conflicts of interests so that they can appropriately relieve the civil servant from performing the official duty.

2. Employees

Unlike civil servants, public service employees do not need to obtain approval for paid secondary activities. However, under section 3 (3) of the TVöD, they are required to give their employer advance written notification in good time before taking up paid secondary employment. Their employer may prohibit them from engaging in the secondary employment or may impose conditions if the secondary employment is likely to interfere with their fulfilling their duties under the contract of employment or the employer's legitimate interests. Generally speaking, the secondary activities may not exceed 20% of the employee's regular weekly working hours. The obligation to surrender earnings can be imposed as a condition for permission to engage in secondary employment with the same employer or elsewhere in the public service; the provisions applicable to federal civil servants apply accordingly to federal employees.

The duty of disclosure does not apply to unpaid secondary activities.

3. Members of the Bundestag

Unlike public officials, Members of the Bundestag are as a matter of principle permitted to engage in secondary employment. They are subject to the provisions governing disclosure in the Code of Conduct for Members of the German Bundestag issued on the basis of sections 44a and 44b of the Members of the Bundestag Act. Even where there is a concrete conflict of interests, secondary employment is permissible as long as it is disclosed (Rule 6 of the Code of Conduct). According to paragraph 3 of Rule 1 of the Code of Conduct, the amount of income derived must be declared if it exceeds EUR 1,000 within one month or EUR 10,000 within one year. Calculations must be based on the gross amounts due for an activity, including expenses, compensation and benefits in kind.

For transparency requirements applicable to Members of the Bundestag, see Art. 8(2 and 3) above.

4. Special rules applicable to members of the Federal Government

Current and former members of the Federal Government are also subject to limitations in regard to employment which they wish to engage in after leaving the Federal Government. Under the Act governing the Legal Status of Members of the Federal Government, they must disclose their intention to engage in any employment outside the public service within 18 months of leaving the Federal Government (section 6a (1) of the above Act). Current and former members of the Federal Government must notify the Head of the Federal Chancellery of their intention to take up employment (section 6a (1), second sentence). Where there are concerns that the activity will interfere with public interests, it may be prohibited (section 6b (1), first sentence). Such refusal generally lapses after one year, but it may be extended to up to 18 months in cases where there is serious interference with public interests (section 6b (2)). The Federal Government is responsible for issuing such refusal. The decision is taken on the recommendation of a committee of three (section 6b (3)). The members of this committee are appointed by the Federal President on the proposal of the German Bundestag; they act in an honorary capacity (section 6c (1), second sentence). Members of the Federal Government are entitled to payment of a transitional allowance during this waiting period (section 6d of the Act governing the Legal Status of Members of the Federal Government). For additional detail on the cooling-off period, see art. 52(5).

The aforementioned rules also apply accordingly to parliamentary state secretaries (section 7 of the Act on the Legal Relationships of Parliamentary State Secretaries). The parliamentary state secretaries help the minister carry out his duties. In particular, they work to maintain good relations with the Bundestag and Bundesrat and their committees, with the parliamentary groups and their task forces, and with the political parties. The federal minister decides which tasks to delegate to each parliamentary state secretary. The parliamentary state secretaries represent the federal minister in these areas and in individual cases as the minister decides. Parliamentary state secretaries are required to make the disclosure as set out in section 6a of the Act governing the Legal Status of Members of the Federal Government to that member of the Federal Government to whom they are or were assigned (section 7, second sentence, of Act on the Legal Relationships of Parliamentary State Secretaries).

Some of the *Länder* plan to introduce comparable rules at *Länder* level. Berlin, for example, plans to introduce a rule on the waiting period applicable to senators (in Berlin the *Land* ministers are called senators) in line with the rule applicable to state secretaries.

The decisions of the Federal Government to forbid or allow certain activities after someone leaves the Federal Government (Section 6b of the Federal Ministers Act) are published in the Federal Gazette (cf. for example BAnz AT 6 August 2018 B2, BAnz AT 6 August 2018 B1, BAnz AT 28 June 2018 B1).

II. Investments and assets disclosure requirements

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

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

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

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

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

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

flexibly and robustly.

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

For further detail on financial disclosures, see Art. 52(5) below.

III. Substantial gifts or benefits for civil servants

Section 71 of the Federal Act on Civil Servants and section 42 of the Federal Civil Servant Status Act contain a general ban on civil servants demanding, allowing themselves to be promised or accepting rewards, gifts or other benefits in connection with their position. They may accept these only in exceptional cases after their employer has issued approval therefor (for details see our responses to Article 8, paragraphs 2 and 3).

The *Länder* have introduced generally binding codes of conduct and guidance regarding the possible consequences of non-compliance which supplement the Federal Civil Servant Status Act. The above acts have also been given more concrete expression at federal level, for example in the Circular on the ban on accepting rewards or gifts in the Federal Administration (see <https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2014/rules-on-integrity.pdf>).

Some of these codes of conduct contain model letters which civil servants can use when returning/declining gifts. The aim is to give staff peace of mind and to make it easier for them to deal with these situations. The regulations introduced at federal and *Länder* level are based on the original Model Administrative Provisions of the Federal Government/*Länder* Working Group on Matters of Civil Service Law (see Annex 2 to the Strategy for Preventing and Combating Corruption of 18/19 May 1995). That is why these regulations are all very similar in terms of content, which ensures uniformity at this level, too.

For further information on rewards or gifts in the federal administration, see Art. 8(2 and 3) above.

Members of the Bundestag

Under section 44a (2) of the Members of the Bundestag Act, Members of the Bundestag may not accept any allowance or other pecuniary benefit in the exercise of their mandate other than that which is regulated by law. Thus, they may not accept money or other cash benefits which are only paid or granted because they are expected, in return, to represent and advance the donor's interests in the Bundestag.

Under section 44a (2), third sentence, of the aforementioned Act, accepting money or other cash benefits is also prohibited if they are granted without an appropriate service in return on the part of the

Member of the Bundestag.

Paragraph 5 of Rule 8 of the Code of Conduct for Members of the German Bundestag contains further details, in particular on establishing whether the service in return is appropriate (see https://www.bundestag.de/blob/195006/a1232d4a394f7cdee1b9bccc2f374880/code_of_conduct-data.pdf).

Under section 44a (3) of the aforementioned Act, unlawful donations or pecuniary benefits, or their monetary equivalent, must be paid to the federal budget. The President of the Bundestag asserts the entitlement by means of an administrative act, unless three years have elapsed since the donation was paid or the pecuniary benefit was granted. Paragraph 5 of Rule 8 of the Code of Conduct for Members of the German Bundestag contains further details in this regard.

At Länder level

Hesse, for instance, has enacted Administrative Regulations for State Employees in Hesse on Accepting Rewards and Gifts of 18 June 2012 (Official Gazette, 25 June 2012, p. 676).

The relevant provisions of the North Rhine-Westphalian Anti-Corruption Act concerning the obligation to disclose and report secondary employment are listed below by way of example.

Section 16 of the Anti-Corruption Act - Disclosure obligation

The Members of the Land Government shall give written notification to the Minister-President, the members of local authority and associations of local authority bodies and committees, the members of district authorities, mayors and informed citizens pursuant to section 58 (3) of the local authority code, section 41 (5) of the county council authority code or section 13 (3) of the regional council code to the administrative officers, administrative officers and heads of other public-law corporations, bodies and foundations under public law subject to the supervision of the Land to the head of the supervisory body, and members pursuant to section 1 (1) no. 4 to the heads of the facility concerning

- 1. any employment engaged in and consultancy contracts signed,*
- 2. membership of supervisory boards and other supervisory bodies within the meaning of section 125 (1), fifth sentence, of the Stock Corporation Act,*
- 3. membership of bodies of independent public- or private-law areas of the authorities and facilities referred to in section 1 (1) and (2) of the Act on the Organization of the Land Administration,*
- 4. membership of bodies in other private-law enterprises,*
- 5. functions in associations or comparable committees.*

In derogation from the first sentence, members of the advisory council of a public-law facility under sections 114a of the local authority code and a joint municipal enterprise under sections 27 and 28 of the Act on Joint Local Authority Activities shall be required to notify the head of the supervisory body. The information is to be supplied in a suitable form once a year.

Section 17 of the Anti-Corruption Act - Duty to notify secondary employment

- (1) Administrative officers shall notify the council or the county council of activities pursuant to*

section 49 (1) of the Act on Civil Servants Employed by the Land of North Rhine-Westphalia prior to engaging in them. The first sentence shall apply accordingly for a period of five years to these civil servants upon their retirement.

(2) The list referred to in section 53 of the Act on Civil Servants Employed by the Land of North Rhine-Westphalia shall be submitted to the local or district council by 31 March of the calendar year which follows the relevant financial year.

Berlin is planning to introduce disclosure requirements for Members of the House of Representatives similar to the rules applicable to Members of the Bundestag, but taking into consideration the specific features on account of its being a parliament of part-time members. It also plans to introduce a register of lobbyists for the House of Representatives.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Judgment of the Federal Labour Court of 18 September 2008 (file no. 2 AZR 827/06):

An employee's secondary employment may not conflict with his or her official duties. This will, in particular, be the case where an employee engages in secondary employment in matters in which the authority of which he or she is an employee is or may become active. Depending on the circumstances of the individual case, a serious breach by a public service employee against the secondary obligation incumbent upon him or her in connection with exercising the secondary activity may justify terminating the contract of employment on important grounds, even without a prior warning. The employee's breach of duty is especially serious if the circumstances in conjunction with the exercise of the secondary employment have significantly undermined the general public's confidence and that of his or her employer in the employee fulfilling the tasks incumbent upon him or her without any undue influence from the secondary employment.

(b) Observations on the implementation of the article

Civil servants may engage in paid or unpaid secondary employment which may not conflict with their official duties, subject to specified requirements. Sections 97 to 101 of the Federal Act on Civil Servants regulate which types of secondary employment are permissible to civil servants.

Regarding disclosures, civil servants are required to cooperate both in regard to the application for approval and the reporting of secondary employment. They must submit the documents which are necessary for their employer to take a decision. In addition to having the burden of proof, civil servants must also immediately report any changes, especially to the compensation paid or payments in kind made.

The reporting requirement for civil servants covers information relating to secondary employment and activities after the end of the active civil service relationship. In addition it is stated under Article 52(5) that, if a civil servant recognizes, given a specific official task, that his/her obligations and private interests or the interests of third parties to whom he/ she feels obliged might come into conflict, the public official is under a duty to inform his/her supervisor so that he/she may respond appropriately (e. g. by releasing the public official from activities in a specific instance); such obligations and interests can include properties, investments, liabilities, incomes, gifts and travels. As mentioned under

Article 52(5), information required to be disclosed by civil servants to their supervisors is not publicly accessible.

Unlike civil servants, public service employees do not need to obtain approval for paid secondary activities. However, under section 3 (3) of the TVöD, they are required to give their employer advance written notification in good time before taking up paid secondary employment. Their employer may prohibit them from engaging in the secondary employment or may impose conditions if the secondary employment is likely to interfere with their fulfilling their duties under the contract of employment or the employer's legitimate interests. The duty of disclosure does not apply to unpaid secondary activities.

Current and former members of the Federal Government are also subject to limitations in regard to employment which they wish to engage in after leaving the Federal Government. Under the Act governing the Legal Status of Members of the Federal Government, they must disclose their intention to engage in any employment outside the public service within 18 months of leaving the Federal Government (section 6a (1) of the above Act). The aforementioned rules also apply accordingly to parliamentary state secretaries (section 7 of the Act on the Legal Relationships of Parliamentary State Secretaries).

Members of the Bundestag may engage in secondary employment subject to the provisions governing disclosure in the Code of Conduct for Members of the German Bundestag issued on the basis of sections 44a and 44b of the Members of the Bundestag Act. Even where there is a concrete conflict of interests, secondary employment is permissible as long as it is disclosed (Rule 6 of the Code of Conduct). The disclosure rules in respect of Members of the Bundestag are contained in Rules 3, 4 (3) and 6 of the Code of Conduct. As noted under Article 52(5) below, the focus of disclosure is primarily on business activities and potential conflicts of interests regarding positions held. Received gifts (above 200 EUR), donations (above 5000 EUR) and outside activities, including sponsored travels (above 5000 EUR), are to be declared, too. However, Members of the Bundestag are not required to declare liabilities or significant assets, except for interests in a private company "which result in considerable economic influence" over the company.³ According to No. 7 para 2 of the Implementing Provisions this is the case when a Member of the Bundestag owns more than 25% of the voting rights. Furthermore, there is no obligation to disclose conflicts between the members' specific private interests and matters under consideration in parliamentary proceedings independent of their business activities or income.⁴

³ In respect of members of the Bundestag, GRECO in its fourth evaluation round recommended: *(i) that the existing regime of declarations of interests be reviewed in order to extend the categories of information to be disclosed to include, for example information on significant assets – including shareholdings in enterprises below the current thresholds – and significant liabilities; and (ii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).* GRECO concluded in the first compliance report that part (i) of this recommendation has not been implemented, while part (ii) has been partly implemented (insofar as the matter was discussed and documented by the relevant parliamentary bodies).

⁴ GRECO further recommended: *(i) that a requirement of ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings – in the Bundestag plenary or its committees – independently of whether such a conflict might also be revealed by members' declarations of activities and income; and (ii) that members of parliament be provided written guidance on this requirement – including definitions and/or types of conflicts of interest – as well as advice on possible conflicts of interests and related ethical questions by a dedicated source of confidential counselling.* In the first compliance report (20-24 March 2017), GRECO concluded that this recommendation has not been implemented. In its response to GRECO German authorities referred to existing disclosure requirements under Rules 3 and 6 of the Code of

The reviewers also note that there are currently no specific measures available to ensure transparency in dealings of parliamentarians with lobbyists and other third parties.⁵

In order to address these concerns, it is recommended that Germany endeavor to enhance transparency of outside interests and activities of Members of the Bundestag by adopting 1) additional disclosure requirements for Members of the Bundestag covering conflicts between their private interests and parliamentary functions, and 2) effective and comprehensive regulations to ensure transparency of interaction of Members of the Bundestag with lobbyists and other third parties.

Paragraph 6 of article 8

Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Measures against public service employees

Where civil servants breach their statutory duties of conduct, this constitutes a disciplinary offence. Disciplinary offences may lead to disciplinary measures up to dismissal from the civil service. Breaches of those duties which also apply to retired civil servants (such as the ban on accepting gifts) may also be subject to disciplinary measures which can go as far as the civil servant being deprived of his or her pension. In the case of public service employees, measures under labour law such as a warning and termination with or without notice are possible penalties. A civil servant's status ends as soon as a judgment handed down by a German court in ordinary criminal proceedings becomes final and the civil servant has either been sentenced to imprisonment for at least one year for an intentional act or to imprisonment for at least six months for an intentional act under the provisions concerning betrayal of peace, sedition, endangering the democratic rule of law or treason and endangering external security or, if the offence relates to an official act in higher office, bribery (section 41 of the Federal Act on Civil Servants, section 24 of the Federal Civil Servant Status Act).

Concerning staff employed under collective or individual agreements, a breach of secondary labour

Conduct for Members of the German Bundestag, which in their view meet any expectations of ad hoc disclosure.

⁵ GRECO recommended that the transparency of the parliamentary process be further improved, e.g. by introducing rules for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process. In the first compliance report (20-24 March 2017), GRECO concluded that this recommendation has been partly implemented.

In respect of judges, GRECO recommended: that appropriate measures be taken with a view to enhancing the transparency and monitoring of secondary activities of judges. In the first compliance report (20-24 March 2017), GRECO concluded that this recommendation has not been implemented and that the topic of secondary activities of federal judges had been raised several times.

law obligations can lead to consequences under labour law, initially a warning regarding the specific non-compliance. Nevertheless, termination of the contract of employment on account of the employee's conduct may also be justified, both with and without due notice.

Measures against parliamentarians

Under section 44a (4) of the Members of the Bundestag Act, if disclosable activities or income are not reported, the Presidium may impose an administrative fine of up to half of the Member's annual remuneration. Rule 8 of the Code of Conduct for Members of the German Bundestag (see https://www.bundestag.de/blob/195006/a1232d4a394f7cdee1b9bcc2f374880/code_of_conduct-data.pdf) regulates the relevant procedure and less severe sanctions. Where there are indications that a Member of the Bundestag has failed to meet his or his obligations under the Code of Conduct, the President must, pursuant to Rule 8 paragraph 1, first sentence, first obtain a statement from the Member concerned and then institute a factual and legal investigation. Under the second sentence of paragraph 1, the President can demand further information from the Member concerned to explain and clarify the situation and may ask the chairperson of the relevant parliamentary group to state his or her position.

Under Rule 8 paragraph 2, first sentence, of the Code of Conduct, if the President is convinced that the case is less serious or involves only minor negligence (e.g. failure to meet the deadline for declaring information), the Member concerned will be issued an admonishment. Otherwise, the President will inform the Presidium and the chairpersons of the parliamentary groups of the outcome of the investigation (Rule 8 paragraph 2, second sentence, of the Code of Conduct).

The Presidium takes its decision as to whether the Code of Conduct has been breached after hearing the Member concerned (Rule 8 paragraph 2, third sentence). If the Presidium finds that a Member of the Bundestag has failed to meet duties under the Code of Conduct, the decision - without prejudice to the administrative fine under section 44a (4), second sentence, of the Members of the Bundestag Act in conjunction with Rule 8 paragraph 4 of the Code of Conduct - must be published as a Bundestag Printed Paper in accordance with Rule 8 paragraph 2, fourth sentence, of the Code of Conduct.

At *Länder* level, the conduct of members of the Berlin House of Representatives, for instance, is regulated by section 5a of the Act on the Legal Relationships of Members of the Berlin House of Representatives of 21 July 2017, which entered into force on 1 May 2017 (Gazette of Laws and Ordinances 2017, p. 294).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

A public service employee who accepts favours will be deemed to have breached secondary obligations under the contract of employment, which generally justifies terminating his or her contract of employment without due notice (Federal Labour Court, judgment of 17 March 2005, file no. 2 AZR 245/04). In special cases, a serious breach of secondary obligations by a public service employee in connection with the exercise of a secondary activity may justify terminating the contract of employment on important grounds even without a prior warning (Federal Labour Court, judgment of 18 September 2008, file no. 2 AZR 827/06, juris, margin no 28).

Admonishments issued against Members of the Bundestag in accordance with Rule 8 paragraph 2, first sentence, of the Code of Conduct for Members of the German Bundestag are not published. The last time a breach of duty was published as a Bundestag Printed Paper was on 11 April 2017 (Bundestag

Printed Paper 18/11920).

Regarding statistics of disciplinary proceedings, the annual report on corruption prevention in the Federal Administration (see Art. 10) also reports on the number of suspected cases of corruption. There were 26 new suspected cases in 2015, 29 in 2016 and 23 in 2017 (sometimes with one suspect, sometimes with multiple suspects). Accordingly, the rate of new suspected cases concerning all employees in the federal administration was 0.005% in 2015, 0,006% in 2016 and 0,005% in 2017.

In 2015, 26 suspected cases were finally closed (35 in 2016 and 19 in 2017). In 2015, in 40% of these cases there was sufficient evidence to impose a penalty or disciplinary measure which led to a corresponding sanction. In 2016, the percentage was 43% and in 2017 37%.

(b) Observations on the implementation of the article

German legislation provides for disciplinary measures when civil servants breach their duties under relevant laws and codes of conduct mentioned under paragraphs 1-3 of article 8 above. Where civil servants breach their statutory duties of conduct, this constitutes a disciplinary offence. Disciplinary offences may lead to disciplinary measures up to dismissal from the civil service.

Under section 44a (4) of the Members of the Bundestag Act, if disclosable activities or income are not reported, the President of the Bundestag may impose an administrative fine of up to half of the Member's annual remuneration.

Under Rule 8 paragraph 2, first sentence, of the Code of Conduct, if the President is convinced that the case is less serious or involves only minor negligence (e.g. failure to meet the deadline for declaring information), the Member concerned will receive a reprimand. Otherwise, the President will inform the Presidium and the chairpersons of the parliamentary groups of the outcome of the investigation

Admonishments issued against Members of the Bundestag in accordance with Rule 8 paragraph 2, first sentence, of the Code of Conduct for Members of the German Bundestag are not published. The last time a breach of duty was published as a Bundestag Printed Paper was on 11 April 2017 (Bundestag Printed Paper 18/11920).

Germany is in compliance with its obligations under this provision of the Convention.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

- (b) *The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*
- (c) *The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*
- (d) *An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*
- (e) *Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.*

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

For public contracts above the EU thresholds, public contracts and concessions are awarded on the basis of competition and transparent procedures; the participants in an award procedure must be treated equally (see section 97 of the Act against Restraints of Competition). The provisions concerning the award of public contracts below the EU thresholds follow the same principles.

Very detailed regulations governing public procurement procedures are in place, providing a level playing field for all bidders. The provisions on public procurement applicable in Germany require the non-discriminatory and competitive award of public contracts (see for construction works: section 2 (1) no. 1 and subsection (2) of the Regulations on Contract Awards for Public Works - Part A, section 1 [VOB/A] and for supplies and services: section 2 (1) of the Code of Procedure for Procuring Supplies and Services below EU-threshold [UVgO]). Specifications must be worded in such a way that all bidders understand them to mean the same thing (see section 7 (1) no. 1 of the VOB/A, section 23 (1) UVgO).

Contracts above the EU thresholds: The above principles apply in accordance with the provisions of German cartel procurement law (the Act against Restraints of Competition [GWB], the Ordinance on the Award of Public Contracts [VgV], the Ordinance on Award of Public Contracts Defence and Security [VSVgV], the Ordinance on the Award for Concessions [KonzVgV] and the Regulations on Contract Awards for Public Works [VOB/A]).

Contracts below the EU thresholds: The above principles apply in accordance with the provisions of German budget law (see section 55 of the Federal Budget and the relevant budget provisions on *Land* and municipal level) setting into force the Code of Procedure for Procuring Supplies and Service below the EU thresholds. Below the EU thresholds, the *Länder* are empowered to issue complementary regulations. Most have availed themselves of this possibility by enacting *Land* procurement laws and decrees. Hesse, for instance, enacted the Hessian Act on Public Procurement and Compliance with Collective Agreements of 19 December 2014 (Gazette of Laws and Ordinances I p. 354). To achieve greater transparency in regard to procurement procedures, an expression-of-interests procedure has to

be conducted in the Hessian Database of Tenders above a specific threshold (works contracts above EUR 100,000 and other contracts above EUR 50,000). If no expression-of-interests procedure is conducted, special procedural rules apply, such as changing the bidders to be invited to bid, inviting non-local enterprises to bid.

(a) Public distribution of information relating to procurement procedures and contracts

Contract notices as well as award notices must be published, including all relevant information about the award procedure, the public contract and its technical specifications. Contract notices and award notices above the EU thresholds must be published on the TED (Tenders Electronic Daily) platform (www.ted.europa.eu) (see e.g. section 40 VgV). TED is a single electronic point of access managed by the Publications Office of the European Union.

Contract notices and award notices below the EU thresholds must be published on the Internet.

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication

The contracting authority must define the selection criteria applied when assessing the bidder's eligibility, the selection criteria and the details of the procurement procedure in detail and in advance (see sections 122 and 127 GWB). This information must be published together with the contract notices on the TED platform (see section 40 VgV).

The principle of transparency (section 97 (1), first sentence, GWB) requires that all stages of the public award procedure must be comprehensible and verifiable for all those involved. The public contracting entity is not permitted to make any essential changes to the award criteria and technical specifications after publication. Bidders are significantly restricted when it comes to correcting errors in their bid after the opening date in order to prevent competitors being eliminated on account of price adjustments.

(c) The use of objective and predetermined criteria for public procurement decisions

The award criteria must relate to the subject matter of the contract. They must be specified and defined in such a manner as to ensure effective competition, that the contract cannot be awarded arbitrarily and that it is possible to conduct an effective review as to whether and to what extent the tenders meet the award criteria. The award criteria and their weighting must be specified in the contract notice or the procurement documents and must be published (see section 127 GWB).

The contract is awarded to the economically most advantageous tender as laid down in section 127 para. (1) GWB. In order to determine the most economically advantageous tender, the best price-quality ratio must be considered. So far there is no reliable national data on the frequency of lowest price tender. However, in this context it is important to understand that lowest price tenders are perfectly acceptable as long as the subject matter of the contract has been thoroughly laid down in the technical specification and comprises qualitative (and/or other) criteria.

One precondition for the award of a contract is the suitability of the bidder as defined in section 122 GWB. Under that provision, public contracts are awarded to competent and efficient businesses, that are those which meet the aforementioned selection criteria. Where a mandatory ground for exclusion under section 123 GWB (final and binding conviction, e.g. for the taking and giving of bribes to elected

officials, for granting an advantage and bribery) or a facultative ground for exclusion under section 124 GWB (incl. where the enterprise is guilty of serious misconduct in the context of its professional activity, calling the enterprise's integrity into question) applies, the concerned company must or can be eliminated from the procurement procedure.

As far as concluded public contracts are concerned, the wording of the contracts is usually not accessible in any register or database due to the protection of trade secrets and further confidential information. In contrast, tender decisions such as the contract award itself must be published and are accessible, e.g. on the TED-homepage and on the homepage <http://www.bund.de>.

In general, the procuring entity or any outside entity provides guidance by publishing tender documents. Due to transparency requirements, the public contracting authority shall announce, in the form of a contract notice, its intention to award a public sector contract or conclude a framework agreement, in accordance with section 37 VgV. In the contract notice the contracting authority shall specify an electronic address from which there is free, unlimited, full and direct access to the procurement documents, including the technical specifications, the suitability criteria, the award criteria and details on the procedure. No later than 30 days after awarding a public contract or concluding a framework agreement, the contracting authority shall transmit an award notice with the results of the procurement procedure to the Publications Office of the European Union (section 39 VgV). The award notice will then be published on the TED-homepage.

(d) An effective system of domestic review, including an effective system of appeal

German legal provisions concerning public procurement also provide for an effective domestic review procedure, including legal remedies. As already mentioned in the above, when it comes to the award of public contracts above the EU thresholds, bidders have the option of requesting a review by an independent body (based at federal level in the Federal Cartel Offices, at *Länder* level in *Länder* agencies) before the award is actually made. When it comes to public contracts below the EU thresholds, bidders may, depending on the individual case, have the option of requesting damages in civil proceedings, once the contract has been awarded.

Above the EU threshold, an application for the conduct of a review procedure can also be made in regard to what is known as a "de facto award". This refers to cases where the public contracting entity concludes a contract directly with an enterprise without involving other bidders in the award procedure and without conducting a formal award procedure before concluding the contract. It constitutes the direct award of a contract, which is illegal and breaches the principle of competition under section GWB. A determination of the invalidity of the contract may be made in a review procedure within a period of 30 days after having learnt of the breach and at the latest within six months of the contract being concluded (section 135 GWB).

Where the contracting entity has published the contract award in the Official Gazette of the European Union, this period ends 30 calendar days after publication of the award notice in the Official Gazette of the European Union.

Any award of public contracts or concessions shall be subject to review by the public procurement review bodies in the case of a complaint by a bidder, in accordance with section 155 GWB. In this case, the federal public procurement review bodies shall review the award of public contracts and concessions for public contracts and concessions attributable to the Federation, while the Land public procurement review bodies shall review public contracts and concessions attributable to the *Länder*. The public procurement tribunals exercise their functions independently and under their own

responsibility within the limits of the law. Immediate appeals shall be admissible against decisions of a public procurement review bodies. The appeal shall be decided by the responsible Higher Regional Court (“Oberlandesgericht”).

National contract law and general contract clauses used by contracting authorities allow the cancellation of contracts in cases of inordinate delay or non-performance. In addition, national procurement law provides the possibility of a termination of public contracts in certain cases such as a serious infringement of the obligations under the Treaty on the Functioning of the European Union or if there exists a mandatory exclusion ground, in accordance with section 133 GWB.

Once an award has been made, it cannot be revoked (section 168 II GWB). But during the duration of the review procedure before the public procurement review body, the procurement procedure is suspended and the contracting authority must not award the contract before the decision of the review body (section 169 GWB). In cases where the contracting authority illegally concludes a public contract directly with an enterprise without publishing the tender beforehand, the public procurement review body can determine the invalidity of the contract in a review procedure (section 135 GWB).

The BMWi collects reports received on the number of review procedures conducted annually (from the Federal Cartel Office – Bundeskartellamt – responsible for the federation – and the public procurement review bodies of the Länder). This database is publicly accessible on the homepage of the BMWi.

Apart from the current remedy system consisting of public procurement review bodies and higher regional courts, procurements are subject to the supervision and review of the competent Federal Audit Office (“Bundesrechnungshof”) and of the Audit Offices of the Länder.

(e) Codes of conduct for personnel responsible for procurement

Germany has strict and detailed provisions for preventing conflicts of interests (see our response to Article 7, paragraph 4 above). Under section 6 VgV, a person who has a personal interest in the award of a public contract (e.g. on account of being related to the bidder) is not permitted to take part in the contracting authority’s award decision-making.

In general, German law provides for mandatory and facultative grounds for exclusion. The mandatory grounds for exclusion refer to a final judgement or a final administrative fine because of a criminal offence or the noncompliance with the obligation to pay taxes or social security contributions, in accordance with section 123 GWB. On the other hand, the facultative grounds for exclusion of an undertaking from participation in the procurement procedure include in accordance with section 124 GWB, inter alia:

- the breach of environmental, social or labour obligations,
- insolvency,
- grave professional misconduct,
- agreements with other undertakings which have as their effect the restriction of competition,
- persistent deficiencies in the performance of a prior public contract,
- provision of misleading information to the contracting authority and
- conflict of interests .

If a facultative exclusion ground exists with regard to a bidder, the contracting authority has the discretionary power to exclude the bidder.

There is no obligation to publish a list of entities before the public administration body with which there is a conflict of interest to conclude public procurement contracts. Instead a case-by-case examination is carried out in the procurement procedure. If there exists a conflict of interest for a member of the executive body or an employee of the contracting authority (or of a procurement service provider acting in the name of the contracting authority), this person may not participate in a procurement procedure, in accordance with section 6 Procurement Ordinance (VgV). This provision defines that a conflict of interest exists for persons who participate in performing the procurement procedure or who are able to influence the outcome of a procurement procedure and who have a direct or indirect financial, economic or personal interest that could compromise their impartiality and independence in the context of the procurement procedure. The provision also lists marital, parental and other relationships where a conflict of interest is presumed. Furthermore, a conflict of interest with regard to a certain bidder can constitute a facultative ground for exclusion of the bidder, in accordance with section 124 para.1 Nr. 5 GWB.

There is no reliable statistical data on the average number of bidders participating in public procurements at different levels of government. To date, the Federal Government, the Länder and local authorities have not had any valid database. However, the authorities are currently developing a nationwide statistics database of numbers and orders concerning procurement procedures. The new Ordinance on Procurement Statistics (“Vergabestatistikverordnung”), adopted in April 2016, provides for the first time the legal basis for statistics on public procurement in Germany on a nationwide basis. The statistics database is in the process of setup. The obligation to transmit data does not lie with the tendering entity, but with the contracting authority and queries will be automated as far as possible.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistical reporting of procurement review procedures

Under section 184 GWB, the public procurement review bodies and higher regional courts are required to notify the Federal Ministry for Economic Affairs and Energy (BMWi) each year of the number of review procedures conducted in the previous year and of the results of those reviews.

In 2016 the public procurement review bodies received a total of 880 applications to conduct a review procedure. In 232 of these cases the decision given was in the contracting authority’s favour, in 140 of the cases in the contractor’s favour. In the remaining cases the complaint was either withdrawn in the course of the procedure (309 cases) or it was dealt with in another manner (197 cases).

Under section 171 GWB, an immediate complaint can be filed with the higher regional court against a decision given by a public procurement review body. In 2016 the higher regional courts received 180 such complaints. Of these, 39 were successful/largely successful and 48 were rejected/largely rejected. The remaining complaints were withdrawn or were dealt with in another manner.

Competition Register

Germany is in the process of establishing a kind of debarment list in order to make the provisions on excluding bidders in cases of corruption more effective in practice and to assist in corruption

prevention. The Act on the Establishment and Operation of a Competition Register (Federal Law Gazette I p. 2739) entered into force in July 2017. The aim of this national register is to provide contracting authorities with the necessary information to be able to decide whether a bidder needs to be excluded from a tender, for example because the bidder's management has been convicted for a white-collar crime such as corruption. It guarantees awareness of any offences committed. By providing reliable information on excusion grounds, this ensures that contracts may only be awarded to businesses with a clean record. The national register is to be the central source of information concerning white-collar crimes. It will be established at the Federal Cartel Office.

The Act concerns the establishment of a register containing information on, for instance, sentences in relation to crimes such as money laundering, fraud, corruption and tax evasion which can be attributed to a business. The public prosecution office and other authorities are obliged to notify the register of any convictions which can be attributed to a specific enterprise. Contracting authorities are then required to consult the register to find out whether there are any entries on a bidder before awarding a public contract. That way the register ensures that contracting authorities have all the relevant information they need at their disposal to assess whether a bidder should or must be excluded from a tender. The register is not intended to be a blacklist which excludes companies from the procurement process with binding effect. The Federal Cartel Office will be issuing guidelines on accessing self-cleaning measures. The Competition Register will be operational by the end of 2020 if possible.

Digitalizing the procurement process: e-procurement at federal level

Germany has been digitalizing the procurement process at the federal level since 2003, a process which is now largely completed. The level of digitalization is, nevertheless, to be stepped up in the context of the Federal Government's "Digital Administration 2020" programme. One major goal is to make all the information concerning public procurement available on a single web portal. All existing procurement applications will gradually be incorporated into the central *E-Beschaffung* (E-Procurement) portal. The following applications are already available:

- *e-Vergabe*

e-Vergabe is the central e-tendering platform at federal level which brings together the public award authorities and bidders. Over 720 public award authorities handle their procurement processes online, with more than 21,000 registered bidders and a volume of billions of euros. *e-Vergabe* guarantees a modern and reliable tendering process which is in compliance with EU public procurement law and free of charge.

- *Kaufhaus des Bundes*

Federal framework contracts are awarded through the *Kaufhaus des Bundes* - the federal public authorities' digital shopping platform. Tenders which have been awarded are published in electronic catalogues on the shopping platform. Users can easily call up framework agreements without the need to organize their own procurement procedure.

- *XVergabe*

The level of adoption of electronic tendering within the European Union is still very low - approx.

13% compared to the target of 50% set for 2010. A research paper published by Deutsche Bank (based on a study launched in 2011) concludes that between EUR 50bn and EUR 70bn could be saved within the EU each year by making the full transition to e-procurement. However, full transition to e-tendering without enabling interoperability across national boundaries would not suffice as there are already more than 330 platforms across Europe. While this does not pose a problem for contracting authorities, as they each only use one platform, in a worst-case scenario an economic operator has to use all the 330 available platforms to participate in all calls for tenders. *XVergabe* is the key to solving this problem. It creates a sustainable basis for electronic interoperability between economic operators and contracting authorities and makes it possible for economic operators to access all compatible e-tendering platforms with only one bidding client. Instead of 330 platforms, the economic operator then only has to use one. Levels of satisfaction among economic operators is expected to rise by ensuring that potential bidders gain access to more public tenders.

At Länder level

Berlin, for example, introduced the option of e-procurement in 2005. Berlin's publication and procurement platform can be accessed at: <http://www.vergabepattform.berlin.de>

(b) Observations on the implementation of the article

Public procurement in Germany is decentralized and each public entity contracts works, goods, and services individually under the framework set by various laws such as the Act against Restraints of Competition (GWB), the Code of Procedure for Procuring Supplies and Services below EU threshold (UVgO), the Ordinance on Award of Public Contracts (VgV), the Ordinance on the Award for Concessions and the Regulations on Contract Awards for Public Works, and the Federal Budget Act.

The principle of transparency (section 97 (1), GWB) requires that all stages of the public award procedure must be comprehensible and verifiable for all those involved. Contract notices, award notices, as well selection criteria applied when assessing the bidder's suitability, the award criteria and the details of the procurement procedure must be published in detail and in advance, on the TED (Tenders Electronic Daily) platform (www.ted.europa.eu).

The selection and award criteria must relate to the subject matter of the contract. They must be specified and defined in such a manner as to ensure effective competition, that the contract cannot be awarded arbitrarily and that it is possible to conduct an effective review as to whether and to what extent the tenders meet the award criteria.

GWB provides for mandatory (section 123) and discretionary (section 124) grounds to disqualify bidders. UVgO extends these rules to procurements below the EU thresholds (section 31). A national competition register that will list companies that may or must be disqualified under GWB is expected to go online in late 2020.

Procurement officials who have personal interests in the outcome of procurements are excluded (section 6(1), VgV).

Regarding review and appeal mechanisms, bidders have the option of requesting a review of procurement decisions by an independent body (procurement review bodies established under GWB). During the country visit, the authorities clarified that procurement review bodies' decisions are public, and many bidders choose these review bodies to review procurement decisions due to their

effectiveness.

When it comes to public procurements below the EU thresholds, bidders may, depending on the individual case, have the option of requesting damages in civil proceedings in courts. The BRH or local audit authorities may conduct audits of procurement processes.

The reviewers welcome the efforts by Germany aimed at digitalizing the procurement processes, improving statistical data collection and reporting measures, and establishing centralized registers to improve the capacity of procurement authorities to detect and prevent corruption.

In light of the above, it is recommended that Germany ensure that an effective system of appeal is introduced for public procurements below the EU thresholds.

Paragraph 2 of article 9

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:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (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.*

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Regulations on adopting the budgetary plan, on budget management, accounting and bookkeeping are set out in the Basic Law, the Federal Budget Code, the Budget Principles Act, the annual budget laws and various administrative provisions. The *Länder* have comparable provisions in their *Land* constitutions and *Land* financial regulations.

The budget procedure at federal level is as follows:

(a) Procedures for the adoption of the national budget

The Federal Ministry of Finance (BMF) draws up the draft federal budget and the accompanying Cabinet bill (section 28 of the Federal Budget Code). The Cabinet generally adopts the Federal Government's bill on the draft federal budget in late June/early July of each year. The draft budget is submitted to the Bundesrat at the same time as it is tabled in the German Bundestag (Article 110 para.

3 of the Basic Law, section 30 of the Federal Budget Code), generally by the first week in which Parliament is sitting in September at the latest. The draft budget is accompanied by a federal financial plan (setting out the projected volume and composition of revenues and expenditures for a five-year period), a financial report (detailing the current situation and projected trends in the financial sector) and, every other year, a subsidy report (containing a statistical overview of federal grants and tax breaks).

The draft budgetary plan is adopted in the Budget Act. Once consultations in the Bundestag and Bundesrat are completed, the Budget Act is countersigned by the Federal Minister of Finance and the Federal Chancellor and signed into law by the Federal President. It is usually published in the Federal Law Gazette in late December and thus in good time before the start of the new financial year.

Regarding the publicity of the budget proceedings, after the decision on the draft budgetary plan (and the financial plan) is taken by cabinet, the results are presented in a government press conference which is publicly broadcasted and displayed on the homepage of the MoF, accompanied by the media version of the cabinet decision and key data. The draft budgetary plan is submitted alongside the draft budget law and its appendices as well as description of the draft financial plan as a Bundestag printed matter to the Bundesrat and the Deutsche Bundestag in August (see paragraph 30 of the Federal Budget Code). In compliance with paragraph 31 of the Federal Budget Code the Federal Government presents a financial report and officially sends it to parliament.

The draft budgetary plan (and the verbal description of the financial plan) is publicly displayed on the document server of the Deutsche Bundestag in full detail. The document server also contains the recommended resolutions (which are the results of the negotiations of the departmental budgets) and the results of the final debate of the budget committee (additions to the recommended resolutions). The first plenary session in the Bundestag takes place in the first week of September. Like the second and third plenary sessions in November/December, it is publicly broadcast on radio and TV. Differences between the draft budgetary plan and the finally adopted budget are openly visible. The MoF summarises and publishes the most important aspects of the overall budget. Line ministries summarise and publish relevant aspect of their respective departmental budgets. The media follow the whole process closely and report on the results of every stage of the process. Additionally, the adopted budget is graphically enhanced and publicly displayed on a dedicated website. The whole drafting process of the budget is increasingly accompanied by the use of Social Media platforms.

(b) Timely reporting on revenues and expenditures

Under Article 114 para. 1 of the Basic Law, the Federal Ministry of Finance is required to submit to the Bundestag and the Bundesrat an account of all revenues and expenditures as well as of assets and debts for the preceding fiscal year for the purpose of approving the Federal Government's activities. The accounts are drawn up on the basis of sections 80 to 86 of the Federal Budget Code.

The budget account statements are publicly accessible; they are generally published in June of the following budget year. The budget account statements are sent to the *Bundesrechnungshof* (German Supreme Audit Institution) for audit. Submission of the budget account statements to the Bundestag and the Bundesrat marks the start of the procedure for discharging the Federal Government.

Further, the Federal Ministry of Finance regularly reports throughout the course of the year on developments regarding federal revenues and expenditures, for example in its monthly reports.

(c) A system of accounting and auditing standards and related oversight

The principles of accounting and auditing are laid down in the Basic Law, the Federal Budget Code and the Budgetary Principles Act (see (b) above). Under Article 114 para. 2 of the Basic Law, the *Bundesrechnungshof* (German Supreme Audit Institution) is responsible for auditing the Federation's accounts and asset accounts and for reporting on whether Germany's public finances have been properly and efficiently administered. The *Bundesrechnungshof* is independent of both the Federal Government and of the Bundestag. Each year it summarizes those results of its audit process which may have a bearing on the approval of the Federal Government's activities. These comments are sent to the Bundestag, the Bundesrat and to the Federal Government. They serve to inform the legislature in a timely manner and are made publicly accessible in the form of a Bundestag Printed Paper.

The staff of the *Bundesrechnungshof* include its members (President, Vice- President, heads of divisions and heads of audit units), auditors of the higher and upper grades of service and other staff. It has a total of around 1,200 staff. The members are civil servants, although they are personally and functionally independent. They are subject to the rules on independence and disciplinary measures which are applicable to judges at the highest federal courts of justice.

(d) Effective and efficient systems of risk management and internal control

Effective and efficient systems of risk management are primarily achieved within the federal administration by implementing the requirements set out in the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 30 July 2004 (Corruption Prevention Directive). The first step to implementing the preventive measures detailed in the Corruption Prevention Directive is to identify those areas of work which are especially vulnerable to corruption. Data on areas especially vulnerable to corruption, including how long staff remain in post, are regularly gathered and risk analyses are carried out (see our responses to Question 3 re Article 5, paragraph 2 on "regularly identifying areas of activity especially vulnerable to corruption", no. 2 of the Corruption Prevention Directive).

Internal audits

Internal control is also guaranteed by means of internal audits, a management control instrument. Internal audit units scrutinize administrative activities and deliver information, analyses and assessments. However, their task is also to make recommendations and provide advice. Internal audits are, therefore, not a repressive measure but aim to support the work of the administration. They deliver the insights of a unit which is not involved in the process being examined. In addition, they have a preventive function and help to improve the culture, quality, effectiveness and efficiency of administrative activities in the long term.

Policy decisions are not examined during an internal audit.

Based on an authority-related threat and risk assessment and taking account of the cost-benefit relationship, the internal audit unit makes a list of issues to be audited and draws up an audit plan on its basis. The audit plan must be submitted to the head of the authority for approval. It addresses objective, personnel and temporal aspects of the audits. It must comprise a longer-term plan.

The following types of audit can be conducted:

- Regular audits,
- Inventory audits,
- System audits,
- Occasional audits,
- Follow-up audits (to check on implementation of previous advice given and recommendations made).

Depending on the focus of the audit, the following criteria are applied: Lawfulness, Correctness, Safety, Efficiency, Safeguarding the future, Appropriateness/effectiveness, Impact orientation.

Audits are generally announced to the entity concerned ahead of time. During the audit the internal audit unit ascertains and evaluates the facts and documents its audit activities, findings and assessments.

The insights gained and proposals made on the basis of those insights are already discussed with the audited entities at this stage of the auditing process. At the end of the audit, the internal audit unit then promptly sends the audited entity a draft of its audit report. The draft report contains both its findings and assessments and, where necessary, suggestions for remedying shortcomings or making improvements. The audited entity is given the opportunity to comment in the course of discussions during a final meeting. The outcome of this final meeting is documented. Once the audit is completed, the final audit report is promptly submitted to the head of the authority. Details regarding the audit planning and audit procedure are set out in audit regulations, which are made known within the authority.

Through task-specific training and continuing training, internal audit units also guarantee transparent audit processes, standardized audit procedures, a standardized report layout, exchanges of experience, work shadowing in other internal audit units, and the quality of their work. The Federal Ministry of the Interior regularly organizes meetings with internal audit units in other federal ministries to ensure that government departments are able to share their experiences.

The recommendations for setting up internal audit units in the federal administration are available online (in German only):

<https://www.bmi.bund.de/SharedDocs/downloads/DE/themen/moderne-verwaltung/interne-revision-empfehlungen.pdf>

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph

The Bundesrechnungshof audits receipts, expenditures and commitment authorisations, federal assets and federal debts. In addition, the audit mandate covers all government programmes that have financial implications even if expenditures have not yet been incurred (such as the contract awarding procedure for a management consultant as part of a privatisation project).

The Bundesrechnungshof carries out both financial audits and performance audits. In its audit of

regularity and compliance the Bundesrechnungshof examines whether the laws, the budget and pertinent regulations, provisions and rules have been observed. Performance audits under the criteria of economy, efficiency and effectiveness are carried out to ensure that good value for money is obtained.

The *Bundesrechnungshof* (German Supreme Audit Institution) has no executive powers and so has to convince others by means of its argumentation. The federal administration often follows the *Bundesrechnungshof's* recommendations, though. Further, the German Bundestag, in particular the Budget Committee and its Audit Committee, play a key role when it comes to ensuring that the necessary consequences are drawn. In recent years these committees have, following detailed consultation, embraced virtually all of the *Bundesrechnungshof's* observations. During these consultations in the German Bundestag, the heads of the ministries, accompanied by representatives from the relevant departments, are required to report to the committees and answer their questions.

To increase the effectiveness of its recommendations the *Bundesrechnungshof* regularly conducts a follow-up once an audit is completed. It asks the audited entity to what extent the recommendations have been implemented as promised and, where necessary, requests proof. The findings made during the follow-up may necessitate a report being submitted to the German Bundestag or a verification audit being conducted.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Transparency in regard to the administration of public finances is achieved by posting up-to-date information on the Internet, among other measures.

- The Federal Ministry of Finance provides relevant information, in particular its monthly reports, on its website:
<http://www.bundesfinanzministerium.de/Web/DE/Service/Publikationen/Monatsbericht/monatsbericht.html>
- The Bundestag publishes documents online:
<http://www.bundestag.de/parlamentsdokumentation>;
<http://www.bundesrat.de/DE/dokumente/dokumente-node.html>
- Documents published by the *Bundesrechnungshof* (German Supreme Audit Institution) on the Federal Budget and Balance Sheet are available at:
https://www.bundesrechnungshof.de/en/veroeffentlichungen/bemerkungen-jahresberichte-en?set_language=en
- All federal budget expenditures and revenues broken down by departmental budgets, groups and functions (target and actual) are visualized in graphs:
<http://www.bundeshaushalt-info.de>.
- The current Budget Act 2017 is available online at:
https://www.gesetze-im-internet.de/hg_2017/BJNR301600016.html

(b) Observations on the implementation of the article

Regulations on adopting the budget, budget management, accounting and bookkeeping are set out in the Basic Law, the Federal Budget Code, the Budget Principles Act, the annual budget laws and various administrative provisions. The Länder have comparable provisions in their Land constitutions and financial regulations.

The draft budgetary plan is adopted in the Budget Act. Once consultations in the Bundestag and Bundesrat are completed, the Budget Act is countersigned by the Federal Minister of Finance and the Federal Chancellor and signed into law by the Federal President. It is usually published in the Federal Law Gazette in late December and thus in good time before the start of the new financial year. The budget account statements are publicly accessible; they are generally published in June of the following budget year. The budget account statements are sent to the Bundesrechnungshof (German Supreme Audit Institution) for audit.

The principles of accounting and auditing are laid down in the Basic Law, the Federal Budget Code and the Budgetary Principles Act.

Effective and efficient systems of risk management within the federal administration are primarily achieved by implementing the requirements set out in the Corruption Prevention Directive.

Budget account statements are audited internally by internal audit units, where available, and externally by the BRH. Financial and performance audits are conducted by the BRH. Details regarding the audit planning and audit procedure are set out in audit regulations and the recommendations for setting up internal audit units in the federal administration are available online. The internal audits in the Federal Administration generally work according to the standards of the Institute of Internal Auditors (IIA).

Further, task-specific as well as continuing training of internal audit units are provided to guarantee transparent and standardized audit procedures, exchanges of experience, and the quality of work. The Federal Ministry of the Interior regularly organizes meetings with internal audit units in other federal ministries to ensure that government departments are able to share their experiences.

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 3 of article 9

Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As regards implementation of Article 9, paragraph 3 of the Convention, reference is here in particular

made to the duties of care set out in legislation applicable to civil servants (see above) and various criminal law provisions (e.g. sections 263 (Fraud), 266 (Embezzlement and abuse of trust), 267 (Forgery) and 283b (Violation of book-keeping duties) of the German Criminal Code).

Section 283b. Violation of book-keeping duties

(1) Whosoever

1. fails to keep books of account which he is statutorily obliged to keep, or keeps or modifies them in such a manner that a survey of his net assets is made more difficult;
 2. disposes of, hides, destroys or damages books of account or other documentation, which a merchant is obliged by commercial law to keep, before expiry of the archiving periods which exist for those obliged to keep books, and thereby makes a survey of his net assets more difficult;
 3. contrary to commercial law
 - (a) draws up balance sheets in such a manner that a survey of his net assets is made more difficult; or
 - (b) fails to draw up a balance sheet of his assets or the inventory in the prescribed time
- shall be liable to imprisonment not exceeding two years or a fine.

(2) Whosoever acts negligently in cases under subsection (1) Nos 1 or 3 above shall be liable to imprisonment not exceeding one year or a fine.

(3) Section 283(6) shall apply mutatis mutandis.

The keeping of accounts is regulated in sections 70 - 79 of the Federal Budget Code (BHO). Additional rules are contained in the Administrative Regulation for Payments, Keeping of Accounts and Rendering of Accounts (sections 70-72 - VV-ZBR BHO), sections 74-80 BHO and additional guidelines of the Federal Ministry of Finance.

Section 70 BHO stipulates that the authority that is ordering the payment and the one releasing payment have to be separated. Payments may be effected only by cash offices and payment offices. No 5.1. VV-ZBR BHO gives the Ministry of Finance the possibility to task other authorities with making payments, but in any case, the “ordering” authority and the “paying” authority have to be separated. In addition, section 77 BHO (Security of payments) stipulates that anyone issuing or involved in issuing orders may not be involved in payments or making entries into accounts.

Pursuant to section 71 BHO chronological accounts shall be kept of payments in accordance with the procedure provided in the budget or otherwise provided. Accounts shall also be kept on commitments and monetary claims. The evidence of the entry of the payment or the commitment entered into in the accounts takes place in the centralised computerised system for the Federation's budgeting, cash management and accounting (HKR-procedure) and for monetary claims in the payment monitoring procedure (Zahlungsüberwachungsverfahren des Bundes - ZÜV), a sub-procedure of the HKR-procedure.

Section section 72 BHO regulates in which fiscal year payments, commitments entered into and monetary claims shall be entered. Paras 3 - 6 contain exemption from the basic rule that all payments shall be entered in the accounts of the fiscal year in which they have been entered into or effected.

Sections 73 and 74 BHO regulate the asset accounting and the accounts of federal enterprises, in which not only cameralistic accounting but also commercial double-entry accounting can be used.

Section 75 BHO stipulates that all entries into accounts shall be supported by document. VV No 1.3 ZBR BHO additionally stipulates that for accepting or releasing payments and for the entry into the account supporting documents are required, that unequivocally show purpose and reason for the payment request. Additional rules are contained in VV 4.3 ZBR BHO (supporting documents). This applies to entries into the HKR-procedure (payment order) as well as for the payment order as such.

Section 78 ff BHO provides basic rules for the administrative procedure and regulates the closure of books. All provisions concerning the establishment of books and concerning supporting documents can only be established by the Ministry of Finance in agreement with the Federal Court of Auditors (Bundesrechnungshof).

VV No. 1 ZBR BHO requires that all financial documentation be certified by an accountant. In addition, Annex 2 of VV ZBR BHO applies for manual processes. This means that orders that lead to an (incoming or outgoing) payment have to be handled by at least 2 persons (4-eyes-principle). VV No. 1.2 ZBR BHO provides the respective responsibility of those persons involved in preparing a payment order. Examples are possible in the automated process (random sample) and in particular cases such as general payment orders (i.a. certain payments up to 300 Euro).

Retention periods for financial records vary (1 to 10 year) depending on the rules laid down in VV No 4.7 ZBR BHO. Books have to be kept 10 years, orders and supporting documents 5 years after the budget year in which the payment was released, has expired (minimum retention period). Other provisions foreseeing longer retention periods remain unaffected by the VV. The VV also regulates who stores the documents and where. More provision on additional requirements for electronic documents can be found in the Principles for adequate and orderly accounting when using the automated federal HKR-procedure - Annex 1 of VV-ZBR BHO (Grundsätze ordnungsgemäßer Buchführung bei Einsatz automatisierter Verfahren im HKR des Bundes - GoBIT-HKR).

Violations of the above rules may lead to disciplinary as well as criminal sanctions depending on the gravity of the breach.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No relevant studies or examples are available.

(b) Observations on the implementation of the article

The rules on preserving the integrity of financial documentation related to public finances are found in the Federal Budget Code. Additional rules are contained in the Administrative Regulation for Payments, Keeping of Accounts and Rendering of Accounts and additional guidelines of the Federal Ministry of Finance.

The retention period of financial records varies from 1 to 10 years and their falsification may lead to criminal sanctions under the German Criminal Code (e.g. sections 263 (Fraud), 266 (Embezzlement and abuse of trust), 267 (Forgery) and 283b (Violation of book-keeping duties)).

Germany is in compliance with this provision of the Convention.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level:

Freedom of Information Act

The Freedom of Information Act in particular, which entered into force on 1 January 2006, has created greater transparency in the public sector. It provides everybody with an unconditional, though not exclusive right of access to official information held by federal agencies. To ensure access to information, the authority may furnish information, grant access to files or provide information in any other manner. The Act obliges all federal authorities, insofar as they fulfil public administration tasks, to grant access to the information at their disposal. Private individuals and private companies are only covered by the Act if an authority uses them to perform administrative tasks.

Exceptions pursuant to Sections 3 to 6 of the Freedom of Information Act may preclude the right of access to information. These exceptions must be specified by the authority concerned. They have been designed to protect public and private interests and can be subdivided into the protection of specific public interests (such as public security or international relations), of the decision-making process by the authority, the protection of personal data, of intellectual property and of business or trade secrets. The protection of the core area of executive responsibility is one of the unwritten reasons preventing access to information not governed by the Freedom of Information Act. The Federal Constitutional Court has ruled that the protection of the core area of executive responsibility derives from the principle of the separation of powers and serves as the Federal Government's protection vis-à-vis Parliament.

In line with this ruling, the Federal Government has the right to initiative, consultation and action which is beyond the reach of inquiry. It protects in particular the Federal Government's decision-making (consultations in the Cabinet, preparation of Cabinet and ministerial decisions).

Pursuant to Section 9 (4) of the Freedom of Information Act admissible legal remedies include an appeal followed by an action to compel performance of the requested administrative act. Furthermore, anyone considering their right to access to information to have been violated may appeal to the Federal Commissioner for Freedom of Information. The Federal Commissioner (BfDI) has the right to object to the authority (Section 12 (3) of the Freedom of Information Act in conjunction with Section 25 (1), first sentence, nos. 1 and 4, second sentence, and paragraphs (2) and (3) of the Federal Data Protection Act).

The information, if released, will only be made available to the applicant in an individual administrative procedure and will not be published by the authorities. However, in 2010, a civil society initiative, the Open Knowledge Foundation Germany, set up an Internet portal - www.Frag-den-Staat.de - which facilitates the submission of IFG applications and publishes information obtained from applicants in a publicly accessible database, provided the applicants forward to them the information they have obtained.

Open data law

Moreover, a new Open Data Act came into effect on 13 July 2017. This was provided for in Section 12a of the Act on E-Government (for more detailed information see Art. 10 lit. b). It requires the federal administration to proactively publish all data as open data ("open by default"). While the law does not include an individual right to access to raw government data, it creates a legal requirement for the public administration pertaining to all government data: When administrative processes or daily practice result in the generation or gathering of data, publication under open data principles is the standard, while exceptions may still apply (similar to those in the Freedom of Information Act, see above).

Open Government Partnership

In December 2016 Germany announced its participation in the Open Government Partnership (OGP). This entails an intersectoral dialogue between government and civil society and is a strong signal for openness, transparency and participation. A first national action plan (NAP) was published on 16 August 2017.

The first NAP creates the framework conditions for further promoting open government and provides for the implementation of appropriate reform projects in various policy areas. The two-year action plan includes 15 commitments by several federal ministries such as fulfilling international transparency standards in the fields of development cooperation and extractive industries, promoting the provision of open data by authorities, and carrying out the federal competition "Living Together Hand in Hand - Shaping Local Communities", an initiative of the Federal Ministry of the Interior to support local integration projects.

The OGP action plans are developed in consultation with civil-society organizations and therefore also represent a joint learning experience: NGOs get an insight into the challenges of government, while public administration receives valuable input for its ongoing reform process. This is a clear signal of openness and a vivid democracy, in particular given the growing complexity of public tasks. Transparency, cooperation, participation and civic engagement are not only basic principles of the OGP process but also cornerstones of our civil society.

The Federal Government's Joint Rules of Procedure

Another means that enhances transparency is the participation of associations in the preparation of bills of the Federal Government. This is a standard procedure laid down in Section 47 (3) of the Federal Government's Joint Rules of Procedure (GGO). The federal ministries have to consider statements by affected industry or trade associations during the legislative process so that the interests of affected parties can be taken into account and comments on possible errors of the bill or incorrect assumptions can be revised at an early stage. It also applies to other expert groups or interest groups working on federal level. For example, relevant foundations or NGOs are often being asked for feedback on draft bills. To this end, bills are sent to selected stakeholders that are active at a federal level.

Furthermore, each ministry responsible for a new bill can decide to offer other forms of participation like a public request for comments on the internet or specialized workshops etc. Although this is not explicitly contained within the Joint Rules of Procedure, this is a common way to gather more public feedback on drafts for a new bill.

In order to increase the transparency of this form of stakeholder participation, the Federal Government decided to publish all drafts and statements of the 18th legislative period (22 October 2013 until 24 October 2017) and has continued this practice in the 19th legislative period.

At federal state level:

Eleven federal states also have their own freedom of information acts for their administrations. They largely correspond to the federal provisions described above.

The federal states have differing rules governing public reporting on questions of organization, working practices and decision-making processes.

In Berlin, for example, the range of information is different in every state and district administration. One of the main difficulties is to translate information into simple language. Work on this issue is ongoing. The Senate Department for the Interior and Sport, which has also been responsible for digital technology in the administration since 2016, offers relevant information to citizens on its website at <http://www.berlin.de/sen/inneres/moderne-verwaltung/>. Furthermore, the Berlin Service Portal at <https://service.berlin.de/senatsverwaltungen/> provides access to a vast range of information offers. The Freedom of Information Act of Berlin will be turned into a transparency act. The aim is to ensure that data not requiring protection are generally provided on the Berlin data portal.

The federal state of Hesse, on the other hand, does not have a freedom of information act. The websites of the individual authorities of Hesse, however, provide comprehensive information on their organization and responsibilities.

In Rhineland-Palatinate the State Transparency Act (Landestransparenzgesetz, LTranspG) entered into force on 1 January 2016. This act took over the provisions of the State Freedom of Information Act and the State Environmental Information Act. The State Transparency Act also created an online transparency platform.

This platform is used by authorities subject to the transparency act to provide information.

Please provide examples of the implementation of those measures, including related court or

other cases, available statistics etc.

The single government service telephone number 115

115 is the public administration's customer service based on a comprehensive knowledge management system. By dialling 115 citizens, businesses and public administration have a direct connection to authorities in Germany - regardless of the government level concerned. Twelve federal states, 88 federal authorities and numerous state authorities already participate in the service. The participating municipalities, state and federal authorities provide information on the services with the greatest demand - such as the opening hours of various authorities, responsibilities for specific issues, requirements for the issuance of documents, such as ID cards and passports, and information on legal costs or on marriage, childcare facilities, naturalization, etc. The aim is to introduce this service throughout Germany.

Websites of all federal ministries

All federal ministries have their own websites. These websites provide specialized information, press releases and organization charts, describe areas of responsibility (and give contact information), provide publications and reports to download and provide information on how to apply for access to information pursuant to the Freedom of Information Act.

Below you can find the websites of the most important federal ministries:

- Federal Foreign Office: <https://www.auswaertiges-amt.de/en>
- Federal Ministry of Finance:
<http://www.bundesfinanzministerium.de/Web/EN/Home/home.html%20>
- Federal Ministry of the Interior, Building and Community:
https://www.bmi.bund.de/EN/home/home_node.html
- Federal Ministry of Justice and Consumer Protection:
http://www.bmjv.de/EN/Home/home_node.html;jsessionid=13EE7E64E9C8787353E9E394AD599EBE.2_cid297
- Federal Ministry of Defence: <https://www.bmvg.de/en>
- Federal Ministry for Labour and Social Affairs:
<http://www.bmas.de/EN/Home/home.html%20>
- Federal Ministry of Education and Research:
<https://www.bmbf.de/en/index.html%20>
- Federal Ministry of Food and Agriculture:
https://www.bmel.de/EN/Homepage/homepage_node.html
- Federal Ministry for Family Affairs, Senior Citizens, Women and Youth:
<https://www.bmfsfj.de/bmfsfj/meta/en/en%20>
- Federal Ministry of Health:
<https://www.bundesgesundheitsministerium.de/en/?L=1%20>

- Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety:
<https://www.bmub.bund.de/en>
- Federal Ministry of Transport and Digital Infrastructure:
<http://www.bmvi.de/EN/Home/home.html>
- Federal Ministry for Economic Affairs and Energy:
<http://www.bmwi.de/Navigation/EN/Home/home.html>
- Federal Ministry for Economic Cooperation and Development:
<http://www.bmz.de/en/index.html>

At federal state level

The federal states provide similar information about their ministries. Given the large number of authorities in the 16 federal states, the relevant links are not included.

For statistics on access to information (data on denial of access to information):

Link to IFG statistics: <https://www.bmi.bund.de/SiteGlobals/Forms/suche/expertensuche-formular.html?resourceId=9389478&input=9389000&pageLocale=de&templateQueryString=Statistik+der+IFG-Antr%C3%A4ge&submit.x=0&submit.y=0>

(b) Observations on the implementation of the article

The Freedom of Information Act of 2006 (IFG) provides any person with the right of access to official information held by federal agencies, subject to specific restrictions. The manner in which information is provided under the Act varies and may include the authority furnishing information, granting access to files or providing information in any other manner. Many but not all federal states have their own legislation that largely correspond to the IFG.

Administrative fees up to a maximum of 500 EUR may be charged for requests. No fees are charged if the division informs the person filing the request that no documents are available, that the request is to be refused on account of there being grounds for exclusion or where handling the request takes less than half an hour. Generally, fees are charged in relation to only 7% of requests and do not exceed 100 EUR.

The Federal Ministry of the Interior publishes annual statistics, broken down by ministry, on the number of IFG requests received and dealt with by the federal administration (i.e. the federal ministries and all the authorities within their remits).

During the country visit, the authorities clarified that IFG did not establish specific procedures and functions to implement its provisions and each federal authority was allowed to make its own arrangements in order to operationalize it. An example of such an arrangement in the Federal Ministry of Interior was provided: a request to the Ministry is initially forwarded to the Legal Counsel who reviews the request in order to decide which unit or officer is best placed to deal with it. The Legal Counsel may further develop guides and forms to assist potential requestors.

Furthermore, the Commissioner for Freedom of Information (BfDI) may approve the processing of the

IFG application or object to it as unlawful and request another treatment or reply from the authority. The BfDI publishes an activity report every two years, which is also dealt with by the Interior Committee of the Bundestag.

Also, it was explained that measures to introduce open contracting initiatives in public procurement were under consideration, but they were met with resistance from the private sector. It was partly based on concerns of potential disclosure of trade and commercial secrets.

Much efforts to raise the standards of transparency are achieved in the field of access to information with the adoption of the Open Data Act. The Act requires all agencies of the federal administration to proactively publish all data as open data which are available free of charge, in unprocessed, machine-readable form without access restrictions and are free to be used and circulated by anyone, as long as this does not conflict with the rights of third parties. In that way access to data is enabled to all relevant and interested stakeholders that can have both access to information in reasonably short timeframe and to have possibility to process and analyse great quantity of data for the purpose of research or other type of analysis and reports.

Based on the totality of information provided, the reviewers note that IFG does not mandate federal authorities to take specific and uniform measures to operationalize the Act. The provisions concerning the procedure to access information seem very general as well. For example, it is not clear how and to whom IFG applications shall be made, what minimum information should accompany such applications and whether detailed reasons, including what level of detail, should be provided by the authorities if the application is denied in full or in part.

The lack of uniformity and clarity in the procedural and administrative arrangements, including measures to inform members of the public of such arrangements, across all public bodies falling under IFG may limit opportunities for persons wishing to exercise their rights established under the Act. Furthermore, while the Act provides that the Federal Commissioner for Data Protection acts as the Federal Commissioner for Freedom of Information, the Commissioner's powers under IFG are defined only by reference to the powers of the Commissioner for Data Protection under the Data Protection Act. Finally, the appeal procedure prescribed under IFG leaves the power to compel authorities to release information when it was denied in full or in part by the requested authority only to administrative courts. The Federal Commissioner for Data Protection can only lodge a complaint with the requested authority on behalf of the requestor and request a reasoned "statement".

Based on the above, it is recommended that Germany adopt further measures to strengthen oversight of the operation of IFG.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The organization of the federal administration excludes any negative conflicts of jurisdiction (several authorities declare themselves not competent for an issue) and ensures appropriate access to the responsible decision-making bodies for the public. The Freedom of Information Act plays an important role also in this context. The same applies to the federal states. The Joint Rules of Procedure of the State Chancellery, the ministries and the Representation of the federal state of Hesse to the Federation (Joint Rules of Procedure, Official Gazette of 27 June 2016, p. 639) specify, for example, that inquiries and complaints that cannot be dealt with within one month following their receipt must be replied to with an interim notification (Section 8 (3) of the Joint Rules of Procedure). Therefore, applicants generally receive a reply to their inquiry.

Administrative services are provided not only in an analogue way, but increasingly also electronically. The Act on E-Government, which entered into force in August 2013, is intended to facilitate electronic communication with the government (the English translation of an extract of the Act on E-Government is accessible at <https://www.bmi.bund.de/SharedDocs/downloads/EN/news/egovernment.pdf>).

It helps the Federation, the federal states and municipalities to offer simpler, more user-friendly and more efficient electronic government services. The Act on E-Government also requires administrations to provide electronic access. The federal administration even has to provide access for secure De-Mail communication. The provision of electronic documents and electronic payment in administrative procedures are also made easier.

Furthermore, the Act contains principles on electronic file-keeping and, alternatively, electronic scanning. Other central elements include the following:

- meeting publishing requirements by means of official journals in electronic form;
- requiring the documentation and analysis of processes;
- rules on the provision by public administrations of machine-readable data collections (open data).

On the basis of the Act on E-Government, the Federal Government drew up the government programme “Digital Public Administration 2020” in September 2014. It supports authorities to implement specific digitalization projects by providing modern digital services, ensuring state-of-the-art data protection and data security and transparent databases. The projects focus on central technical infrastructures ensuring easier contact between administrations, citizens and businesses. They also deal with internal applications of authorities, such as the introduction of electronic file processing. The government programme is thereby meeting the request for binding standards for digital administrations throughout Germany.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Modern e-government in Germany / the portal network

To provide citizens and businesses with convenient, swift and secure access to all administrative services available online, various laws have been adopted and measures taken over the past few years. As part of the new rules governing the financial equalization system of the Federation and the federal states as from 2020, the federal and state governments agreed in December 2016 that their administrative portals should be linked in a joint portal network taking federal structures into account. To this end, the **Act to Improve Online Access to Administrative Services, 2017 (Online Access Act)** was adopted. Moreover, the Act obliges the Federal Government and the federal states (including local authorities) to offer all administrative services that are legally and actually suitable also online within five years of the law's entry into force and to link them through a portal network, comprising the portals on Federal, Länder and municipal level.

Once they have registered, users should be able to log into their accounts to benefit anywhere from all the services offered by the portal network. These interoperable citizens and business accounts are intended to ensure the secure authentication of citizens and businesses for online administrative services. The citizens and business accounts store the users' core data. They can be released individually for the use of online services. Electronic forms can thus be filled in automatically. Manual data entry for individual services still remains possible if a user does not wish to set up an account. The accounts' mailbox function supports the communication between authorities, citizens and businesses. It can also be used to show the processing

Digital federal procurement processes

The first stage of the electronic procurement portal has already been developed. It will be fully operational by the end of 2022 and include all components and functionalities of digital procurement processes provided to the federal administration. Pooling the demand of the entire administration will result in cost savings and higher quality in the areas of corruption prevention and secure procurement.

Since April 2016 documents for above-threshold calls for tender must generally be announced and provided electronically. For EU-wide calls for tender, the federal ministries use an electronic procurement platform throughout Germany provided by the Federal Ministry of the Interior's Procurement Office.

As from 18 April 2018 the entire communication and information exchange in procurement procedures must be conducted in electronic form. This saves processing costs and ensures greater legal certainty and better competition. (In this context, cf. also the comments regarding Article 5 (3), question 3.)

At federal state level:

The federal states have adopted equivalent provisions.

In Berlin, for example, the Act to Promote E-Government entered into force on 10 June 2016. It provides a legal basis for modern services and citizen participation while increasing productivity of public administration. E-government should help to reduce bureaucracy and modernize the public administration. This increases the attractiveness of Berlin for businesses and enables access to the Berlin administration on a 24 hours/7 days basis. The Berlin Senate Department for the Interior and Sport is responsible for the strategic orientation, management and development of e-government in Berlin. Additional information in German can be obtained at:

<http://www.berlin.de/sen/inneres/moderne-verwaltung/e-government/artikel.95921.php>.

(b) Observations on the implementation of the article

The Federal Act on E-Government serves as the basis for the Government's programme "Digital Public Administration 2020" which contains projects focusing on, inter alia, building central technical infrastructures to ensure easier contact between administrations, citizens and businesses.

The Act to Improve Online Access to Administrative Services, 2017 obliges the Federal Government and the federal states and local authorities to offer all administrative services that are legally and actually suitable also online within five years of the law's entry into force and to link them through a portal network.

A fully operational procurement portal is planned to be launched by the end of 2022 and will digitalize all procurement processes of the federal administration.

Germany is in compliance with its obligations under this provision of the Convention.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At federal level:

Annual reports on preventing corruption in the federal administration

Since 2005, the Federal Government has submitted annual written reports on the development and the results of corruption prevention in the federal administration to the German Bundestag. In these reports the ministries explain how they implemented the requirements of the Directive concerning the Prevention of Corruption in the Federal Administration in the reporting year (for more details on these requirements cf. Article 5(2)).

The annual report on preventing corruption is based on a web-based interministerial survey with more than fifty specific questions. The questionnaire covers authorities of all levels (922 authorities/bodies)

and over 570,000 public officials in the federal administration. In the questionnaire the authorities/bodies first need to identify themselves (name, government level, remit) and provide information on the number of public officials they employ. Then they have to answer questions on the implementation of the directive's requirements in the year under review, e.g.

- in which year did the relevant authority/body last identify areas of activity especially vulnerable to corruption and for how many posts did it conduct risk assessments;
- how many public officials worked in positions especially vulnerable to corruption;
- how many public officials had been working in similar areas vulnerable to corruption for more than five years (without rotation);
- what were the reasons for disregarding the principle of rotation in the above- mentioned cases (e.g. indispensable expert, staff member shortly before retirement from active service or transfer to another organizational unit, staff member without a position of similar pay level to be transferred to);
- whether preventive measures, such as a second staff member checking work results, plausibility checks and/or IT-based workflows, were used;
- does the authority/body have a contact person for corruption prevention;
- how many (full-time) posts were assigned to tasks of the contact person for corruption prevention;
- how many times during the reporting year the contact person was in touch with the authority's senior management;
- for how many public officials did the authority/body conduct awareness-raising measures or provide anti-corruption training in the year under review and how many of them worked in areas particularly vulnerable to corruption;
- for how many senior staff members did the authority/body conduct awareness- raising measures or provide training;
- what other anti-corruption measures were planned by the authorities/bodies in question and which measures were taken in the year under review.

The data collected by this survey every year provide a very detailed statistical overview of the status of implementation of the Directive concerning the Prevention of Corruption. The annex to the annual report on preventing corruption contains a table of these data. The report presents conclusions for future practical approaches drawn from the answers provided by the authorities/bodies and statistical data evaluation.

A positive side effect of this survey is the fact that it contributes to self-monitoring in the authorities concerned and facilitates operational supervision of subordinate authorities by higher level authorities in the field of corruption prevention.

The annual reports on preventing corruption also include all new cases of suspected corruption which became known in the year under review and cases and the results of proceedings which were concluded in that year (e.g. termination of investigations or conviction of the suspect). Furthermore, they also provide information on the disciplinary proceedings initiated against civil servants.

Thus, the report provides a comprehensive overview of the status of corruption prevention in the federal administration. The annual reports on preventing corruption are published in German and

English on the website of the Federal Ministry of the Interior and are accessible for everyone (cf. the 2015 report as an example available at:

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2016/corruption-prevention-report-2015.html>)

The Parliamentary Public Accounts Committee and the Committee on Internal Affairs of the German Bundestag separately discuss the report. A representative of the executive level of the Federal Ministry of the Interior answers any questions that they may have. The Bundesrechnungshof, Germany's supreme audit institution, also examines the report and makes recommendations. The procedure ends with a decision by the Bundestag on the report, which may also include requirements for the next report (e.g. the request to provide additional information on the issue of rotation).

Moreover, public officials in the federal administration regularly receive information on corruption prevention. This includes, for example, information letters published by the Federal Ministry of the Interior that are available also for interested parties outside the federal administration, or agency-specific awareness-raising activities on accepting gifts and rewards at Christmas or tickets for major sporting events such as the Football World Cup.

National Situation Report on Corruption

The National Situation Report on Corruption contains concise and updated information on the situation and development of corruption. It is based on information supplied by the Federal Criminal Police Office and its counterparts in the federal states, the Federal Police and the Customs Criminological Office using a nationally standardized questionnaire. The report is produced every January at the Federal Criminal Police Office for the previous year and published upon approval by the Federal Ministry of the Interior.

In addition to a detailed description of corruption-related crime during the reporting period with references to the applicable legal provisions, the report also contains areas targeted by corruption, the amount of damage, a detailed analysis of givers and takers of bribes and of where proceedings originated as well as an overall assessment of corruption-related crimes reported to the police. The National Situation Report on Corruption is available at:

<https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Korruption/korruptionnode.html>.

At federal state level:

Report by the Standing Conference of Interior Ministers

On 3 May 1996 the Standing Conference of the Interior Ministers and Senators of the Länder (IMK) approved the strategy for preventing and fighting corruption of 18 and 19 May 1995 drawn up by several working groups and has since repeatedly requested the working groups to report on the (further) implementation of the strategy. In its meeting of 16 and 17 November 2006 the Standing Conference of Interior Ministers tasked working group VI with continuing information sharing at this level and reporting on this issue at regular intervals.

This requirement is met by implementation reports submitted by the working group.

In the course of time, the reporting intervals have become longer. The fifth implementation report covered the period from 2006 to 2009, while the current sixth report covers the period from 2010 to

2014.

The last reports were based on the previous reports and followed up on them. The sixth implementation report is a completely new and comprehensive report presenting the state of play, i.e. the current state of implementation of the individual measures to prevent and fight corruption, taking any new rules and regulations of the reporting period (2010-2014) into account. The structure of this report is in line with the structure of the strategy to prevent and fight corruption of the Standing Conference of Interior Ministers. It includes a report on the status of legislation, prevention measures and law enforcement as well as conclusions.

Individual reports by the federal states

Irrespective of the report by the Standing Conference of Interior Ministers covering all federal states, the federal states also publish their own reports on corruption risks. The findings of the internal audit unit within the remit of the interior ministry of North Rhine-Westphalia, for example, are compiled every two years in a joint report and presented to the interior minister. Furthermore, the state Criminal Police Office draws up an annual situation report on corruption for North Rhine- Westphalia (see information under Article 5 (1)).

Similarly, Brandenburg's state Criminal Police Office publishes an annual situation report on corruption-related crime. This report is addressed to the executive and decision-making levels of policy makers and the police. It contains the latest information on the situation and trends in this field of crime. It helps assess the potential risk and damage of corruption and its importance for the situation of crime and identify necessary action. Thereby, the situation report contributes to decisions on priorities, action and resources tailored to the given situation. The data are transmitted to the Federal Criminal Police Office and are incorporated in the National Situation Report on Corruption. Furthermore, authorities report annually on the trends and results of corruption prevention. These reports are included, for example, in the reports submitted to the Standing Conference of Interior Ministers.

According to the Anti-corruption Guidelines of the Free State of Bavaria, the Bavarian State Office for Criminal Investigation is also obliged to present a corruption situation report for the Free State of Bavaria with the aim of reproducing the actual state of corruption as accurately as possible, identifying measures to combat corruption, recommending approaches to control and providing a prognostic outlook on future developments in this offense area. Lower Saxony will serve as an example for the implementation at federal state level. In this state, the monthly online publication of sponsoring services received creates greater transparency. Pursuant to Lower Saxony's Directive on Preventing and Fighting Corruption in the State Administration, the supreme state authorities must disclose sponsoring services of more than €1,000 received within their remit.

These services received by the ministries and the state chancellery are published on the websites of the relevant institutions (for example, on the website of Lower Saxony's Ministry of the Interior and Sport:

<https://www.mi.niedersachsen.de/startseite/aktuelles/sponsoringliste/sponsoringleistungen-123761.html>)

For reasons of transparency, the anti-corruption office of Berlin publishes an activity report every year, which also includes information about cases of corruption. The report is published at

<https://www.berlin.de/generalstaatsanwaltschaft/ueber-uns/zustaendigkeit/zentralstellen/zentralstelle-korruptionsbekaempfung/>.

In Rhineland-Palatinate the crime statistics contain all known criminal offences committed in Rhineland-Palatinate including attempts subject to punishment and information on identified suspects and victims. They also include economic crime. The crime statistics of Rhineland-Palatinate - most recently the 2016 annual report - can be obtained here:

<https://www.polizei.rlp.de/de/service/statistiken/kriminalstatistik/>

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Link to the 2015 Annual Report on Preventing Corruption:

<https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2016/corruption-prevention-report-2015.html>

Link to the National Situation Report on Corruption:

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/Korruption/korruption_node.html

For the reports of the federal states, please refer to article 10(b).

(b) Observations on the implementation of the article

The Federal Government annually publishes reports on the development and results of corruption prevention in the federal administration. These reports explain how the requirements of the Corruption Prevention Directive are implemented in the reporting year. The National Situation Report on Corruption contains concise and updated information on the state of corruption. It is based on information supplied by the federal and state forces and the Customs Criminological Office.

Federal states also publish reports on risks of corruption either through the Standing Conference of the Interior Ministers and Senators of the Länder (IMK) or individually.

For additional information on corruption reporting, see article 5(2) above.

Germany is in compliance with its obligations under this provision of the Convention.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent

opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Germany, the principle of judicial independence is constitutionally guaranteed under Article 97 para. 1 of the Basic Law. Accordingly, judges are independent and subject only to the law. Further, judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws (Article 97 para. 2, first sentence, of the Basic Law).

That being said, the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (Corruption Prevention Directive, see our responses to Article 7, paragraph 1 and Article 8, paragraphs 1 to 3) still applies to federal courts. The same goes for the Code of Conduct against Corruption, which supplements the Directive. The federal courts also report annually on the level of implementation of these provisions in their administrations (see the comments regarding the Corruption Prevention Report in regard to Article 10, letter (c)). Administrative provisions concerning the prevention of corruption in the public administration also apply to judges at *Länder* level.

Section 9 of the German Judiciary Act sets out preconditions for judicial appointments:

Judicial tenure may only be given in the case of a person who

1. is a German in terms of Article 116 of the Basic Law,
2. makes it clear that he will at all times uphold the free democratic basic order within the meaning of the Basic Law,
3. is qualified to hold judicial office (sections 5 to 7), and
4. has the requisite social skills.

Further, a wide range of training courses are available to judges at federal and *Länder* level. Corruption prevention is an integral part of courses run by the German Judicial Academy, for instance. Various multi-day conferences are organized each year on issues around corruption. These training events are open to all judges and public prosecutors working in Germany. No special provisions for public prosecutors are necessary.

As part of its fourth round of evaluation, GRECO's report on Germany (Corruption Prevention concerning Members of Parliament, Judges and Public Prosecutors) of 10 October 2014 recommended that "a **compilation of existing ethical / professional conduct regulations** - accompanied by explanatory notes and / or practical examples, including guidance on conflicts of interest and related issues - be developed, effectively shared with all judges and easily [made] accessible to the public".

The *Länder* have contributed to this process by providing regulations at *Länder* level. The compilation therefore includes regulations both at the level of the constitution and federal law and at the level of the 16 federal states and covers in particular issues of conduct in office, conflicts of interest, ancillary activities, the prohibition of accepting rewards, gifts or other benefits and preventing corruption.

Therefore, the compilation has become very extensive (over 500 pages).

However, it is still easy to handle due to its clear structure. For example, the reader can look up the regulations concerning him or her, depending on the federal state in which he works. The compilation is available on the website of the Federal Ministry of Justice and for Consumer Protection (only in German) at

http://www.bmjv.de/SharedDocs/Downloads/DE/Fachinformationen/KompodiumvonRegelungen_in_Bund_und_Laendern_%C3%BCber%20dasberufsethischeVerhaltenvonRichternundStaatsanwaeltenWeb.pdf.

In its compliance report dated 20 March 2017 GRECO assessed the recommendation as implemented. This applies equally to the corresponding recommendation on corruption prevention among prosecutors.

A Code of Conduct for the Justices of the Federal Constitutional Court entered into force in November 2017. In that Code of Conduct the constitutional judges declare that their conduct during and after their term of office will be guided by the principles set out in the Code. Among other rules, the Code of Conduct specifies that the constitutional judges of the Federal Constitutional Court must conduct themselves in a manner which does not compromise the confidence in their independence, impartiality, neutrality and integrity. Therefore, the members of the Court should exercise their duties independently and impartially, without bias as to personal, social or political interests or relations. In their entire conduct, they must be mindful of ensuring that no doubts arise concerning their neutrality in the exercise of their office with regard to social, political religious or ideological groups. Furthermore, the constitutional judges must respect confidentiality in relation to the work at the Federal Constitutional Court, and gifts or donations of any kind can only be accepted in social contexts and to the extent that their personal integrity and independence will not be called into question. The Code of Conduct requires that the Court's members disclose any income resulting from non-judicial activities. It also determines rules for the conduct of the constitutional judges of the Federal Constitutional Court after they cease to hold office: The constitutional judges of the Federal Constitutional Court are not allowed to become involved in legal matters which were the subject of proceedings before the Federal Constitutional Court during their term of office or which are closely related to such proceedings. Besides, in the first year after ceasing to hold office, the constitutional judges of the Federal Constitutional Court are asked to refrain from undertaking advisory activities which relate to the subject areas of their cabinet, from submitting expert opinions and from appearing in court. Thereafter, they still have to refrain from representing anyone before the Federal Constitutional Court.

The Code is available online (in English):

http://www.bundesverfassungsgericht.de/EN/Richter/Verhaltensleitlinie/Verhaltensleitlinien_node.html;jsessionid=34CE9FA189EA480996C23E16B129A891.2_cid392

To promote transparency in the judiciary, the *Länder* are pushing ahead with modernizing IT systems in their courts and public prosecution offices, the aim being to swiftly introduce electronic legal transactions and electronic court files. Berlin, for example, is setting up an online judicial portal. It will provide important information and documents free of charge as well as the means of making online bank transfers. Important information such as legislation, distribution-of-business plans, how to

contact the courts and judgments of general interest will be available free of charge via the new portal. Judges are also made aware of integrity issues and corruption risks. In Rhineland-Palatinate, for example, judges' attention is to be drawn to their duty of integrity and to the risks of corruption when they take their oath of office. The fact that such instruction has been given must be documented. Integrity and vulnerability to corruption are dealt with as part of education and training.

Disciplinary Procedures

Judges: If a judge culpably violates his or her duties, the superior authority can, by means of a disciplinary order, issue a reprimand and thus condemn this specific behaviour. If instituting administrative disciplinary proceedings aimed at issuing a reprimand is not sufficient, formal disciplinary proceedings can be initiated and the Judicial Service Court will decide in these proceedings with due regard for judicial independence.

The decisions following disciplinary proceedings are, in principle, not published. Decisions of general interest are regularly published in an anonymous form in the respective court's case law publication and/or academic journals.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please refer to the responses to Question 2.

(b) Observations on the implementation of the article

In Germany, the principle of judicial independence is constitutionally guaranteed under Article 97 para. 1 of the Basic Law. Accordingly, judges are independent and subject only to the law.

Nevertheless, the Corruption Prevention Directive still applies to federal courts insofar as it does not undermine their independence. Also, the federal courts report annually on the level of implementation of the Directive's provisions in their administrations.

There are no codes of conduct for federal courts except for the Federal Constitutional Court. During the country visit, the authorities explained that relevant legislative provisions to ensure integrity among judges of the federal courts displaced the need for separate codes of conduct. However, these provisions do not apply to judges of the Federal Constitutional Court and therefore constitutional judges have adopted a Code of Conduct which requires them to conduct themselves in a manner which does not compromise the confidence in their independence, impartiality, neutrality and integrity. It also provides limitations on their non-judicial activities.

It was also explained that all judges were subject to ongoing training on skills and ethics. These trainings are organized by the German Judicial Academy and are open to all judges, prosecutors and other staff of the judiciary. Curricula of the trainings are developed internally with input from external experts and members of academia.

Regarding the recruitment procedure in the judiciary, it was explained that a board consisting of 16 ministers of justice of the federal states and 16 members of Bundestag, and presided by the Federal Minister of Justice, recommends decisions on the selection of candidates. Every member of the board may propose a candidate and the proposals are voted on by the board. Candidates approved by the board are then presented for a non-binding vote before the court where they are proposed to sit and successful candidates are appointed by the Federal President.

Conflicts of interests must be declared as soon as they arise to presidents of the courts. Judges must also declare all secondary activities, including the income gained, and seek prior permission to engage in some of the secondary activities. Information on secondary activities is kept in the personnel files of judges and once a year general statistical figures are released publicly, subject to the protections of the Data Protection Act. The next report to the Bundestag on the state of implementation of the Corruption Prevention Directive will also contain information on secondary activities of federal judges.

Germany is in compliance with this provision of the Convention.

Paragraph 2 of article 11

Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under German law, public prosecutors are bound by instructions and do not have the same independence in their decision-making and actions as judges. They are subject to general civil-service regulations.

When it comes to training courses and raising awareness of corruption prevention, details provided in the response to Article 11, paragraph 1 above also apply to public prosecutors.

Disciplinary measures against public prosecutors are imposed either by the superior authority (reprimand or regulatory fine) or by the supreme authority served (reduction of earnings) by means of a disciplinary order. For the civil servant to be sanctioned with demotion, discharge from public service including removal of civil servant status or cancellation of his pension, however, disciplinary charges must be brought against him on which disciplinary court decides with judicial independence (section 34 BDG).

Please provide examples of the implementation of those measures, including related court or

other cases, available statistics etc.

No such statistics are available.

(b) Observations on the implementation of the article

Germany is in compliance with its obligations under this provision of the Convention.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. *Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*
2. *Measures to achieve these ends may include, inter alia:*
 - (a) *Promoting cooperation between law enforcement agencies and relevant private entities;*
 - (b) *Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*
 - (c) *Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*
 - (d) *Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*
 - (e) *Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*
 - (f) *Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

Paragraph 1

Accounting and auditing as well as bookkeeping are regulated by German law in section 238 to 342e of the German Commercial Code (HGB). Special laws specific to different legal forms (e.g. the Stock Corporation Act) and tax law contain supplementary regulations in this regard.

All these regulations serve to fulfil three key functions: They ensure that a company's assets and capital are formally documented (documentary function); they provide an overview of whether a company made an overall profit or loss in a particular financial year (income determination function); and they provide those who are interested, for instance partners, creditors or the public sector, with information about a company's economic situation and make it easier for the merchant/company to manage the business (information function).

Breaches of the relevant provisions are subject to sanctions under both administrative and criminal law (including terms of imprisonment). The most important administrative law sanction is a coercive fine which can be imposed under section 335 of the Commercial Code when, in breach of duty, a company's annual financial statement and other accounting documents are not submitted in good time. The Federal Office of Justice is responsible for imposing such a fine.

The most important criminal sanctions are section 283 of the German Criminal Code (StGB) (bankruptcy), section 283b StGB (violation of the accounting obligation) and section 331 HGB (incorrect presentation). Under section 283b StGB for example, a term of imprisonment of up to two years or a fine can be imposed in the case of a breach of bookkeeping duties.

In addition to complying with the above-mentioned provisions, various types of companies in Germany also need to meet accounting standards, like those of the German Accounting Standards Committee (DRSC) and the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board. Listed companies in the European Union are, for instance, obliged to apply the IFRS to their consolidated financial statements. This requirement is set out in Regulation (EC) No 1606/2002 on the application of international accounting standards of 19 July 2002, which is directly applicable in Germany (see

<http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=uriserv:OJ.L.2002.243.01.0001.01.ENG>).

Paragraph 2

As part of the audit procedure for the annual and consolidated financial statements of companies which, as issuers of eligible securities within the meaning of section 2 (1) of the German Securities Trading Act (WpHG), have the Federal Republic of Germany as their country of origin, the German Financial Reporting Enforcement Panel (FREP) was established in accordance with sections 342b et seq. of the Commercial Code.

In a first enforcement step, the Panel examines a company's annual financial statement for breaches of accounting provisions, thereby boosting compliance with accounting principles in the private sector. The Panel reports facts giving rise to the suspicion of a criminal offence in relation to a company's accounting to the competent prosecuting authority (section 342b (8) of the Commercial Code). Such

facts include false entries which serve to conceal the payment of bribes.

Under sections 37n et seq. of the Securities Trading Act, the Federal Financial Supervisory Authority (BaFin) is responsible for the second enforcement step. Under section 37r of that Act, BaFin must report facts giving rise to the suspicion of a criminal offence in relation to a company's accounting to the competent prosecuting authority.

Please refer to the response to Article 13, paragraph 2 concerning incentives to report acts of corruption and anonymous reporting lines.

Information brochure for companies

The Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Economic Affairs and Energy have issued an information brochure for export-oriented companies. The brochure (available in German at <http://www.bmjv.de/SharedDocs/Publikationen/DE/Korruption>) aims to give companies a quick overview of the legal anti-bribery framework and possible prevention measures. The brochure is currently being revised.

OECD Guidelines for Multinational Enterprises

Fighting bribery and undue advantages is also part of Chapter VII of the OECD Guidelines for Multinational Enterprises. The National Contact Point for the OECD Guidelines, which is attached to the Federal Ministry for Economic Affairs and Energy, informs companies and the general public as part of its PR activities.

Among other things, the National Contact Point has information about the OECD Guidelines available on its website.

German Corporate Governance Code

In addition, there is the German Corporate Governance Code (available in English at http://www.dcgk.de/files/dcgk/usercontent/en/download/code/170214_Code.pdf)

It is a non-statutory set of rules drawn up and developed further by a government commission consisting of representatives of capital market-oriented companies, institutional investors and private investors, scientists, auditors and representatives of a trade union federation. It describes essential legal regulations for the management and supervision of German capital market-oriented companies and contains internationally and nationally recognized standards of good and responsible corporate governance. Number 4.1.3 of the Code stipulates that the management board of a company must ensure that all provisions of law and the company's internal policies are complied with.

Compliance also includes observing statutory anti-corruption provisions. The supervisory board of a company is responsible for monitoring whether the board is fulfilling its compliance tasks (section 111 (1) of the Stock Corporation Act). Under section 161 of the Stock Corporation Act, the management board and supervisory board of such companies must declare once a year that the company was and is in compliance with the Code and which recommendations were or are possibly not being applied ("comply or explain"). Nevertheless, the Code contains no recommendations or suggestions whatsoever concerning how the board should or must fulfil its compliance tasks. Rather, companies are given the necessary leeway to forge their own path and to put in place those systems which they feel are appropriate to ensure their own company fulfils statutory provisions. Where the board members' duty to diligently manage the company also has a statutory basis (section 76 (1) in conjunction with section 93 (1) of the Stock Corporation Act), non-application is not an option. The same applies to the managing directors of a limited liability company (section 35 (1) in conjunction

with section 43 (1) German Limited Liability Companies Act (GmbHG)).

Public Corporate Governance Code of the Federation

Good governance principles have also been put in place in regard to companies established under private law in which the Federation has a stake (known as “holdings of the Federation”). These are set out in the Principles of Good Corporate Governance for Indirect or Direct Holdings of the Federation (available online at

http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Bundesvermoegen/Privateisierungs_und_Beteiligungspolitik/Beteiligungspolitik/grundsaeetze-guter-unternehmensfuehrung-anlage-en.pdf

http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Bundesvermoegen/Privateisierungs_und_Beteiligungspolitik/Beteiligungspolitik/grundsaeetze-guter-unternehmensfuehrung-anlage-en.pdf).

The Federal Government adopted the latest version of the Principles on 1 July 2009. The Public Corporate Governance Code of the Federation (PCGK) forms the centrepiece of this set of rules.

The PCGK sets out the essential provisions of applicable law governing the management and oversight of companies in which the Federal Republic of Germany is a shareholder, while outlining the internationally and nationally acknowledged principles of good and responsible corporate governance. This includes provisions concerning the financial accounting/auditing of annual financial statements, rules on conflicts of interests and transparency obligations. The objective is to make the management of companies and oversight over them more transparent and easier to understand, and to define more precisely the role of the Federation in its capacity as shareholder of such companies. Another aim is to increase awareness of good corporate governance.

Private Sector/Federal Administration Anti-Corruption Initiative

The Federal Ministry of the Interior has established the Private Sector/Federal Administration Anti-Corruption Initiative, which brings together representatives of large and medium-sized companies, industry associations and federal ministries. The aim of the Initiative is for the public and private sectors to develop a common corruption prevention strategy and thus to improve their mutual efforts. The need for anti-corruption education and training is regularly discussed and illustrated by best practices. Further, the Initiative has published practical guidance and answers to FAQs, such as on accepting gifts, hospitality or other benefits, as well as on anti-corruption measures. The second joint recommendation made by the Initiative gives practical guidance on anti-corruption measures for management and leading personnel.

Supported anti-corruption measures

A number of German business associations actively promote anti-corruption measures. The following initiatives are listed here by way of example:

- The Federation of German Industry has initiated a working group on compliance which brings together representatives from business associations, companies, agencies and politics. The working group meets regularly and enables the different stakeholders to exchange views on current issues and to develop positions.

- The German Chemical Industry Association provides companies with guidance on compliance as well as additional material.
- The International Chambers of Commerce (ICC) Germany informs companies about anti-corruption measures on its website. Various guidelines and rules are available which aim to help companies when it comes to preventing corruption.
- Both the German Engineering Federation (VDMA) and the Association of the German Construction Industry (HDB) have issued guidelines on the prevention of corruption (VDMA Corruption Prevention Guidelines and the HDB Guidelines on Combating Anticompetitive Agreements and Corrupt Behaviour).
- The Association for Supply Chain Management, Procurement and Logistics (BME), the leading professional association for supply chain managers, buyers and logisticians in Germany and Central Europe, has established a BME Compliance Initiative which issued a Code of Conduct applicable to signatory companies.
- In addition, some 350 German companies are part of the German Global Compact Network which comprises stakeholders from politics, society and science. Among other initiatives, the German Global Compact Network offers anti-corruption training and corruption prevention guidelines (available in German at <https://www.globalcompact.de/de/themen/Korruptionspraevention.php>).

Wherever appropriate, the Federal Government supports initiatives like those referred to in the above. For example, the Federal Ministry of Education and Research funded a comprehensive study on the prevention of corruption in companies and public administration which provides guidance on corruption prevention. Study partners included the Federal Criminal Police Office and the German Association of Small and Medium-sized Businesses.

Alliance for Integrity

The Alliance for Integrity, initiated by the Federal Ministry for Economic Cooperation and Development and the Federation of German Industry, is a business-driven, multi-stakeholder initiative which seeks to promote transparency and integrity among companies, their business partners and other relevant actors in the economic systems. The Alliance for Integrity is a global initiative, currently active in Brazil, Germany, Ghana, India, Indonesia and their respective regions. It fosters collective action from all relevant actors in the private sector, the public sector and civil society and offers practical solutions to strengthen the compliance capacities of companies and their supply chains. The Alliance organizes activities across a range of different levels with diverse target groups and implementation partners, including peer-to-peer learning and international dialogue, public-private dialogue, awareness-raising and information-sharing across a wider professional audience, as well as training and train-the-trainer programmes.

The Alliance for Integrity was featured as a good practice by institutions like the OECD, the Basel Institute on Governance and the B20.

The Government of Colombia uses TheIntegrityApp to strengthen business integrity across industry sectors that have signed an integrity pact. For this purpose, the TheIntegrityApp delivers anonymized information to the Government of Colombia on progress and areas where businesses lack capacities. The Government of Brazil uses a pilot version of the app to measure compliance in public institutions.

The Alliance for Integrity's compliance training programme "From Business to Business" was recognized as a good practice as part of the Brazilian government's National Strategy on Corruption and Money Laundering (ENCLAA).

The Alliance for Integrity's capacity-building programme From Companies to Companies, which in Latin America is called "De Empresas para Empresas" (DEPE) is mentioned in a B20 Policy Paper 2017 (page 19, https://www.b20germany.org/fileadmin/user_upload/documents/B20/b20-ctg-rbac-policy-paper.pdf).

Public registers

Germany's Commercial Register, Corporate Register and Shares Register guarantee a high level of transparency and reliability of data relating to those who are involved in the establishment and management of companies and those who are authorized to represent a company. Among other things, the Commercial Register lists a company's authorized representatives and the owner's name. The Corporate Register provides central access to, among other things, information in the Commercial Register, Register of Commercial Partnerships and Register of Cooperatives as well as to announcements regarding insolvencies and entries in the Commercial Register. The Shares Register lists the date of birth and address of shareholders in a stock corporation, for instance. For further information on the newly established Transparency registers, please cf. Article 14 para. 1 a).

Further, when authenticating incorporation procedures and requesting an entry in the Commercial Register notaries check the identity of all founding members and authorized representatives. Once the application has been submitted by a notary, the registry court then examines, ex officio, the application and the accompanying documents based upon the requirements set out in the applicable laws.

In order to enforce the duties of the party to the proceedings to lodge accurate information the registry court can impose penalty payments for instance.

The application of changes being necessary to be registered must be submitted immediately in one's own interest, otherwise the false information can be held against the legal entity under certain circumstances. The application must be submitted electronically by a notary in officially certified form.

As far as promoting transparency regarding related entities and individuals acting on their behalf goes, the relationships between companies are recorded as part of the accounting process in the group financial statements (section 271 (2), sections 290 et seq. of the Commercial Code). Paragraph 2, letter (d) suggests preventing the abuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities.

Preventing conflicts of interest

Under section 105 of the Federal Act on Civil Servants and section 41 of the Federal Civil Servant Status Act, retired or former civil servants receiving a pension must - for a period of five years, or for a period of three years in the case of those who reach the age of retirement - notify any commercial activities or other employment they engage in after leaving the civil service which bear any relation to their official activity in the last five years prior to leaving the civil service and which could adversely affect service-related interests. Where there are concerns that service-related interests could be adversely affected, the former employer must refuse consent for the planned activity.

This duty of notification does not apply to civil servants who have asked to be released from public service and who are not entitled to a pension. They are, however, still subject to the duty of

confidentiality even after their official activity ends concerning all matters which become known to them in their official capacity (e.g. under section 67 (1) of the Federal Act on Civil Servants, section 37 (1) of the Federal Civil Servant Status Act).

Any breach of this duty is punishable under section 353b of the Criminal Code (breach of official secrets and special duty of confidentiality). Civil servants are also banned from accepting rewards or gifts in relation to their office even after they leave the civil service (section 71 of the Federal Act on Civil Servants, section 42 of the Federal Civil Servant Status Act). This ban also covers those cases in which former civil servants are offered employment as a reward for their previous official activities.

Current and former members of the Federal Government are also subject to restrictions when they leave office and wish to take up certain follow-up employment. The Federal Act on the Legal Status of Federal Ministers and the Federal Act on the Legal Status of Parliamentary State Secretaries contain explicit rules in this regard (see also our responses above regarding special rules applicable to members of the Federal Government).

Accounting and auditing requirements

The accounting and auditing requirements for the private sector in Europe are governed by European law, in particular the Accounting Directive (Directive 2013/34 / EU), the Statutory Auditors Directive (Directive 2014/56 / EU) and the Auditors Regulation (Regulation (EU) No. 537/2014). The regulation applies directly; the directives have been transposed into German law.

Under section 91 (2) of the Stock Corporation Act, the management board of a stock corporation is obliged to set up a monitoring system for developments that may endanger the continued existence of the company. Incidentally, in view of the diversity of companies it is in principle - save for specific statutory regulations - left to the discretion of the corporate management whether and how they want to establish a comprehensive compliance unit.

However, since its last amendment in 2017 the German Corporate Governance Code recommends in number 4.1.3. sentence 2 the introduction of a compliance management system. German capital market-oriented companies that do not comply with this recommendation must declare this deviation in their annual declaration of compliance pursuant to section 161 of the Stock Corporation Act. It is also explicitly stated in the third sentence of section 4.1.3 that employees and third parties should be given the opportunity to report, in a protected manner, suspected breaches of the law within the company, including, in particular, violations of criminal provisions on corruption.

Please see the response to Article 12, paragraph 1 above as regards companies' accounting and auditing obligations.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Paragraph 1

The Federal Office of Justice (BfJ) has published on its website extensive explanations on the accounting and disclosure requirements, including certain court decisions: https://www.bundesjustizamt.de/DE/Home/homepage_node.html

For the rest, see replies to paragraphs 2 and 3.

Paragraph 2

Example of a court case

Under section 93 (2) of the Stock Corporation Act and section 43 (2) of the Limited Liability Companies Act, members of a company's management board who breach their duties of proper corporate management are jointly and severally liable for any resulting damage. Depending on the level of vulnerability, the board's duty of proper corporate management under sections 76 (1) and 93 (1) of the Stock Corporation Act and sections 35 (1) and 43 (1) of the Limited Liability Companies Act may be concretized to the extent that a compliance unit has to be established to prevent (corruption) damage and monitor risks and vulnerabilities. In a judgment dated 10 December 2013, case file 5 HK 0 1387/10 (which is not yet final), Munich I Regional Court sentenced the board of one particular stock corporation to pay damages in the millions of euros as it had not structured and supervised the company in such a way as to prevent acts of corruption.

Cooperation between the prosecution authorities and relevant private agencies

The Financial Reporting Enforcement Panel publishes an annual report in which it details its auditing activities. Please see the English version of the 2016 Annual Report for example available at

http://www.frep.info/docs/pressemitteilungen/2017/20170118_pm_en.pdf.

The Federal Financial Supervisory Authority publishes detailed explanations concerning the auditing procedure and a list of audited companies on its website (see https://www.bafin.de/EN/Aufsicht/BoersenMaerkte/Bilanzkontrolle/bilanzkontrollenode_en.html).

Codes of conduct

Under the German Corporate Governance Code's "comply or explain" mechanism, companies are required to submit an annual declaration of compliance. Declarations by DAX- and MDAX-listed companies are published online. An overview of individual declarations of compliance are at <http://www.dcgk.de/de/entsprechenserklaerungen.html>.

Two examples of such declarations of conformity are available in German at

- https://www.allianz.com/en/about_us/management/corporate-governance/declaration-of-conformity/
- https://www.siemens.com/investor/en/corporate_governance/gcg-code.htm

A German example of a corporate governance report by a "holding of the Federation" (*DFS Deutsche Flugsicherung GmbH*'s 2016 Corporate Governance Report) is available at:

https://www.dfs.de/dfs_homepage/de/Unternehmen/Zahlen%20und%20Daten/Finanzen/2016-03-14%20PCGK-Bericht%20DFS%202016%20unterzeichnet.pdf

Members of the company management who violate their duties of proper corporate governance are jointly and severally obliged to pay compensation in accordance with section 93 (2) AktG and section 43 (2) GmbHG. Depending on the risk situation, the duty of the Management Board to duly manage the company (sections 76 (1), 93 (1) AktG and sections 35 (1), 43 (1) GmbHG) may be substantiated

in such a way that a compliance organization has to be set up that focusses on prevention of (corruption) damages and on risk control. Thus, in its (not yet final) judgment of 10 December 2013, Az: 5 HK 0 1387/10, the Munich Regional Court 1 condemned the management board of a public limited company to pay damages amounting to millions, as it had not organized and supervised the company in such a way that acts of corruption would not be committed.

Extractive Industries Transparency Initiative in Germany (D-EITI)

The Federal Government is promoting transparency in the German extractive sector by implementing the international Extractive Industries Transparency Initiative (EITI). The aim is to strengthen dialogue and transparency in regard to extractives policy and thus to increase acceptance of the domestic extractives industry. At the same time the D-EITI is preparing German industry for compliance with the relevant international transparency requirements.

After joining EITI, countries must make information on payments made by businesses in the extractive industry and the relevant government revenues transparent and publicly accessible. The EITI Standard provides for both the publication of payments as well as increased transparency regarding other aspects of resource extraction, including licensing and legal frameworks.

Germany submitted its first EITI Report to the International EITI Secretariat on 23 August 2017. Annual reports contain what is known as the payment reconciliation and explanatory information about the domestic extractive industry, known as the contextual information. Companies which participated in the voluntary reporting go to make up more than 88 per cent of total production in the oil, gas, lignite and potash sectors. In total, payments of more than EUR 408 million were reported. Of these, more than EUR 302 million were subject to reconciliation against payments to the relevant government agencies, which was carried out for the first time in Germany. An audit by an independent administrator revealed no discrepancies.

After being successfully validated in 2018 in an independent review process, Germany became the first EU country to reach full conformity with the EITI standard in May 2019. In late 2019 the D-EITI published its second EITI report (<https://d-eiti.de/en/mediathek-dokumente/>). Besides making transparent financial transactions between private sector and government entities in the extractive sector, the report again includes extensive contextual information. In addition to explaining the legal framework, licencing and revenues generated by the extractive sector, the report addresses ways to deal with human interventions in the nature, state subsidies and tax concessions, employment and social affairs, renewable energies and recycling.

To ensure that both information and data are generally accessible, the report is published on an interactive web portal (www.rohstofftransparenz.de), including in the form of open data. In addition, the EITI was included in Germany's first national action plan as part of the Open Government Partnership (OGP), which Germany joined in December 2016. The OGP is an initiative comprising 74 countries which are committed to promoting open governmental and administrative action (see also our response to Question 2 concerning Article 7, paragraph 4).

Hospitality and Criminal Law Guidelines

The Hospitality and Criminal Law Guidelines (available in German at <http://vsa-ev.de/wp-content/uploads/2018/02/Hospitality-und-Strafrecht-ein-Leitfaden.pdf>) are another example of a measure taken. They were drawn up by The Sponsors' Voice e. V., an association of sponsors, and by

the Vereinigung Sportsponsoring- Anbieter e.V., an association of providers of sports sponsoring. Members of The Sponsors' Voice include well-known companies established in Germany which actively engage in sports sponsoring. The Vereinigung Sportsponsoring-Anbieter e.V. represents the interests of sports rightholders in Germany

http://www.vsa-ev.de/media/downloads/Hospitality_171017_final.pdf

Hospitality is an integral part of many marketing and sponsoring strategies. Nevertheless, legal uncertainty around the issue has increased in both companies and the world of sport, leading to companies becoming less able to put the hospitality packages they have acquired to prudent use. The two above- mentioned associations developed the Hospitality and Criminal Law Guidelines to ensure that hospitality can still be used to promote sports going forward and to boost legal certainty in regard to the issuing of invitations. The Guidelines provide guidance on compliant behaviour, and were developed in cooperation with staff in the Federal Ministry of Justice and Consumer Protection responsible for criminal law on corruption and staff in the Federal Ministry of the Interior responsible for sports, civil service law and corruption prevention.

The Guidelines aim to help raise awareness among staff in the two associations for where the legal boundaries are around sports sponsoring and to support them in tapping into those sponsoring opportunities which are legal and morally defensible. A second amended and updated version of the Guidelines was published in September 2017.

Berlin Compliance Model

The Berlin Compliance Model also contains rules of conduct in regard to sponsoring (available in German at

https://www.rheingau-musik-festival.de/fileadmin/Sponsorenmappen/Berliner_Compliance_Modell.pdf).

The Model was developed by the Cultural Committee of German Business in the Federal Association of German Industry and the Rheingau Music Festival in cooperation with representatives from politics and administration. The Berlin Compliance Model provides guidance on corporate cultural sponsoring. It sets out the conditions under which invitations to events can be issued and accepted without raising any legal or other concerns.

The Alliance for Integrity's corruption prevention training programme

The Alliance for Integrity has developed and runs a practical corruption prevention training programme in its project countries and regions (*De Empresas para Empresas*, DEPE). Training is divided into three phases:

In the first phase (train the trainer) big multinational and local companies are shown how to train small and medium-sized enterprises (SMEs) as regards compliance. In the second phase (corruption prevention training) the trainers who were trained in the first phase then pass on their knowledge to enterprises with little or no experience of corruption prevention. The training focuses on internal,

external and collective corruption prevention measures. In the last phase, all participating enterprises are given access to information available in the online Support Desk as well as any assistance they may need when implementing difficulties and questions arise.

So far more than 150 trainers across the world have trained more than 1,300 participants. In Germany, the Alliance for Integrity runs compliance training courses in chambers of trade and industry in cooperation with the German Global Compact Network with a view to the 10th principle. As part of the Corruption Prevention in the Delivery Chain group of experts, the Alliance for Integrity has developed guidelines together with the relevant civil-society and private-sector actors in a peer-to-peer exchange. The guidelines explain cross-sectoral solutions to problems which arise when implementing corruption prevention measures in global delivery chains.

Cross-Thematic Group on Responsible Business Conduct and Anti- Corruption

The Alliance for Integrity promotes transparency across private entities by facilitating information-sharing among enterprises and other relevant actors (e.g. the public sector and civil society). As part of Germany's 2017 G20 Presidency the Alliance for Integrity supported the Business20 dialogue by acting as a Concept Partner in the Cross-Thematic Group on Responsible Business Conduct and Anti-Corruption. This working group comprising leading business figures served to promote responsible good governance and integrity. The recommendations it subsequently made drew attention, among other things, to the need for transparency in regard to beneficial ownership and legal entities.

Concrete policy measures were drafted in this regard.

(b) Observations on the implementation of the article

In Germany, prevention of corruption involving the private sector is addressed through various measures. They include relevant legal provisions and regulatory frameworks such as the German Commercial Code, the Stock Corporations Act, the Securities Trading Act, and the German Corporate Governance Code.

The Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Economic Affairs and Energy have issued an information brochure for export-oriented companies which gives companies a quick overview of the legal anti-bribery framework and possible prevention measures.

The German Corporate Governance Code contains a non-statutory set of rules drawn up and developed further by a government commission that includes observing statutory anti-corruption measures. The Principles of Good Corporate Governance for Indirect or Direct Holdings of the Federation contain good governance principles for companies in which the Federation has a stake. Also, a number of German business associations actively promote anti-corruption measures. Furthermore, the Federal Ministry of the Interior has established the Private Sector/Federal Administration Anti-Corruption Initiative to develop common anti-corruption strategies.

The Alliance for Integrity, initiated by the Federal Ministry for Economic Cooperation and Development and the Federation of German Industry, is a business-driven, multi-stakeholder initiative which seeks to promote transparency and integrity among companies, their business partners and other relevant actors in the economic systems. The Alliance members meet twice a year and its governing board consists of representatives of a broad spectrum from private and public sectors, trade unions, etc,

Germany's Commercial Register, Corporate Register and Shares Register contain data relating to those who are involved in the establishment and management of companies and those who are authorized to represent a company. These registers are available online. The Transparency Register has been set up to implement the requirements on beneficial ownership transparency of the Fourth EU Directive on money laundering.

Revolving door matters are in place as described under articles 8(5) and 52(5). These regulate cooling-off periods for members of the Federal Government, as well as for Parliamentary State Secretaries. Their employment or other occupation outside the public service within a period of 18 months after the termination of office may be prohibited if public interests would be negatively affected. Such refusal generally lapses after one year, but it may be extended to up to 18 months in cases where there is serious interference with public interests (as per the provisions of the Federal Act on the Legal Status of Federal Ministers and the Federal Act on the Legal Status of Parliamentary State Secretaries).

Regarding risk management, members of the company management who violate their duties of proper corporate governance are jointly and severally obliged to pay compensation (section 93 (2) AktG and section 43 (2) GmbHG)). Depending on the risk situation, the duty of the management board to duly manage the company (sections 76 (1), 93 (1) AktG and sections 35 (1), 43 (1) GmbHG) may require the establishment of a compliance unit that focuses on the prevention of corruption and on risk control. *See* judgment of the Munich Regional Court of 10 December 2013, Az: 5 HK 0 1387/10 holding the management board of a public limited company liable for failure to prevent acts of corruption.

Furthermore, the German Corporate Governance Code recommends that management boards of listed companies institute appropriate measures reflecting the company's risk situation (Compliance Management System) and ensure that measures to facilitate reporting of suspected breaches of the law by employees and third parties are available. Pursuant to the Code it is recommended in particular for listed companies to appoint an audit committee of the supervisory board, in accordance with section 107(3) AktG, tasked with monitoring the accounting process, the effectiveness of the internal control system, the risk management system, and the internal accounting control system as well as the auditing of financial statements, and in this regard particularly the selection and the independence of the auditor of the annual accounts and the services additionally provided by the auditor of the annual accounts. The authorities clarified during the country visit that section 161 of the Stock Corporations Act obliges listed companies to disclose whether they comply with these recommendations and if not, explain the reasons on the companies' websites. German courts are increasingly reviewing the compliance measures adopted by companies in due diligence cases. More frequent enforcement cases by prosecutors have also led to greater efforts by the private sector to introduce appropriate compliance mechanisms.

Generally, German companies must apply German Accounting Standards; the International Financial Reporting Standards are mandatory for capital-market-oriented companies in their consolidated financial statements. Financial statements of share capital companies that are not small share capital companies are to be audited by a statutory auditor. If the financial statements of share capital companies are not published within certain time limits, the Federal Office of Justice may impose severe fines. The Financial Reporting Enforcement Panel and Federal Financial Supervisory Authority (BaFin) are authorized to examine the financial statements of capital-market-oriented companies.

Apart from the recommendation of the German Corporate Governance Code to facilitate whistleblowing in listed companies, no specific legal framework on whistleblowing in the private sector addressing the issue exists in Germany.

Accordingly, it is recommended that Germany strengthen measures to facilitate reporting of corruption in the private sector.

Paragraph 3 of article 12

In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Letter (a) prohibits the creation of accounts which do not appear in the books. This is enshrined in section 238 et seq. of the Commercial Code. Accordingly, each merchant is obliged to keep books and to show clearly in them his commercial transactions and his financial position pursuant to generally accepted accounting principles. Entries in the books must be complete, correct, timely and orderly (section 239 (2) of the Commercial Code). The correctness of entries encompasses a ban on fictitious entries and accounts. Breaches are punishable under section 283b (1) number 1 of the Criminal Code (see above).

Letter (b) requires the prohibition of transactions regarding which no or only inadequate entries are made in the books. Such a ban is enshrined in section 239 (2) of the Commercial Code. The principle of completeness which that provision serves to enforce requires that all business transactions be entered in the books. The obligation to keep orderly books in conjunction with the requirement of verifiability (section 238 (1), second sentence, of the Commercial Code) prohibits the making of inadequate entries in the books. Any breaches of the duty to keep books is punishable (section 283b (1) number 1 of the Criminal Code, see above).

Letter (c) prohibits the recording of non-existent expenditure. For the bookkeeping this corresponds to the requirements of correctness under section 239 (2) of the Commercial Code. Further, expenditure must be recorded in the profit and loss account which each merchant must draw up as part of the annual financial statement based on generally accepted accounting principles. As well as the faithful presentation of the accounts, these include the principle of completeness as set out in section 246 (1) of the Commercial Code, according to which the profit and loss account must record all the enterprise's expenses and earnings in the relevant financial year. Inverting this argument, non-existent expenditure may not be recorded. Breaches are punishable under section 283b (1) numbers 1 and 3 letter a) of the Criminal Code (see above).

Letter (d) concerns the prohibition of entering liabilities with incorrect identification as to their objects. Sections 239 (2) and 264 (2) of the Commercial Code contain just such a prohibition. Breaches are punishable under section 283b (1) numbers 1 and 3 letter a) of the Criminal Code (see above).

The use of false documents is prohibited under section 239 (2) of the Commercial Code and punishable in accordance with section 283b (1) number 1 of the Criminal Code (see above).

The intentional destruction of bookkeeping documents before the end of the statutory retention period is prohibited under section 283 letter b (1) number 2 of the Criminal Code (see our detailed response to Article 12, paragraph 1).

The statutory retention period for merchants and companies in German accounting law is laid down in section 257 (4) of the Commercial Code: Commercial books, inventory records, opening balance sheet, annual financial statements, individual financial statements pursuant to section 325 (2a), management reports, consolidated financial statements, group management reports and working instructions and other organizational documents necessary to understand the afore-mentioned as well as vouchers for entries in the books to be maintained pursuant to section 238 (1) (bookkeeping vouchers) must be retained for a period of ten years and business correspondence received as well as copies of business correspondence sent must be retained for six years.

The statutory retention period begins with the end of the calendar year in which the last entry was made in the commercial books, the inventory records were prepared, the opening balance sheet or annual financial statements were adopted, individual financial statements pursuant to section 325 (2a), management report or consolidated financial statements were prepared, the business correspondence was received or sent, or the bookkeeping vouchers originated.

It may well happen that taxpayers declare the bribe under a false designation to receive a tax deduction. However, such cases are regularly checked during tax audits. If they occur, the authority must examine whether the taxpayer has committed tax evasion by providing a false designation. However, legal measures cannot prevent such behaviour; the existing laws are sufficient.

Please provide examples of the implementation of those measures, including related court or

other cases, available statistics etc.

Examples of court cases

Breach of duty to keep books abroad

A German national who is normally resident in Germany who breaches his duty to keep books abroad can also be punished under section 283b (1) number 1 of the Criminal Code (Karlsruhe Higher Regional Court, judgment of 21 February 1985, case file 4 Ss 1/85).

Deviating accounts alongside properly kept books

The conditions under section 283b (1) number 3a of the Criminal Code are, in contrast, not met where the perpetrator keeps proper books and correct accounts as well as deviating accounts serving to deceive individual business partners (Federal Court of Justice, order of 15 July 1981, case file 3 StR 230/81 (Mannheim Regional Court)).

(b) Observations on the implementation of the article

Germany is in compliance with its obligations under this provision of the Convention.

Paragraph 4 of article 12

Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under section 4 (5), first sentence, number 10, first sentence, of the Income Tax Act, bribes or other money linked to corruption may not be deducted as business expenses.

The law provides for a general prohibition to deduct bribes if the benefit constitutes active, unlawful granting of a benefit or bribe; prohibition of tax deductibility no longer depends on punishment in respect of such crimes.

The courts, public prosecution offices and administrative authorities must notify the revenue authorities of facts which become known to them in their official capacity and give rise to the suspicion that an offence within the meaning of the above provisions has been committed in order that tax proceedings may be initiated and tax offences and regulatory tax offences prosecuted. The revenue

authority must notify the facts giving rise to the suspicion of a criminal or regulatory offence within the meaning section 4 (5), first sentence, number 10, first sentence, of the Income Tax Act to the public prosecution office or the administrative authority. These, in turn, notify the revenue authority of the outcome of the proceedings and the facts on which they are based.

During tax audits, the authorities regularly check whether taxpayers are not declaring bribes under a false designation to receive a tax deduction. If detected, the authority must examine whether the taxpayer has committed tax evasion by providing a false designation.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No relevant studies or examples are available.

(b) Observations on the implementation of the article

Germany is in compliance with its obligations under this provision of the Convention.

Article 13. Participation of society

Paragraph 1 of article 13

Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*
- (b) Ensuring that the public has effective access to information*
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - (i) For respect of the rights or reputations of others;*
 - (ii) For the protection of national security or ordre public or of public health or morals.**

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Paragraph 1, letters (a) and (b)

It is primarily freedom of information legislation and press freedom in Germany but also the reports published by the Federal Government and its authorities, by *Land* governments and their authorities which guarantee public access to information and enhance the general public's active participation.

Freedom of Information Act and press legislation

Federal and *Land* freedom of information laws entitle everyone to access to official information without preconditions, though not without exceptions (see our response to Article 10, letter (a) for more details as regards freedom of information legislation).

The press's right to receive information from the administration derives directly from Article 5 para. 1, second sentence, of the Basic Law:

"Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed."

The *Länder* have each enacted their own press laws to elaborate regulations applicable to the press in more detail (e.g. the press's right of information, duty of due diligence and authorities' right to reply).

There is no separate press law applicable to the federal administration. Journalists may request information directly under Article 5 para. 1, second sentence, of the Basic Law. The federal administration is therefore obliged to respond to all press inquiries. A margin of discretion does, however, exist in regard to the form of the response, which is why account may be taken of any considerations which may run counter to the press's interest in specific information. Account may also be taken of all those aspects listed in the *Land* press laws and the Federal Freedom of Information Act which pose an obstacle to the duty to provide information. The administrative authorities are, for instance, not obliged to launch their own investigations before responding, nor to provide information about personnel matters or to engage in substantial administrative effort. Journalists can, at most, apply to the courts for the determination of the authority's obligation to respond to a request. They cannot, however, force responses to be given to supplement answers which they deem unsatisfactory.

Online Access Act

Under the Online Access Act, the Federal Government and the *Länder* are required to provide electronic access to administrative services on separate online portals by the end of 2022 at the latest. The 17 administrative portals (one for the Federation plus one for each of the 16 *Länder*) will be connected via intelligent links to form a portal network. It will then be possible to search and locate authorities and administrative services via the portal network and not just via one's own *Land* portal or the Federation's portal. That means that citizens and enterprises will be able to locate administrative services anywhere in Germany, regardless of which portal they use as their point of entry (see our response to Article 10, letter (b) for more details regarding the Online Access Act and the portal network).

Live plenary of the German Bundestag

Article 42 of the Basic Law provides that “sittings of the Bundestag shall be public”. Therefore, anyone who is interested can watch a plenary sitting of the German Bundestag live from the public gallery of the plenary chamber. Visitors have to register in advance either in writing or online on the following website: <https://visite.bundestag.de/BAPWeb/pages/createBookingRequest.jsf?lang=en>.

Nevertheless, only a few people can actually be present in the plenary chamber when Members meet in Berlin. That is why the German Bundestag decided to create an additional information medium, Parliament TV. This step was taken in 1999 when Parliament moved from Bonn, the former federal capital, to Berlin. The channel broadcasts every plenary debate as well as the full proceedings of a large number of public committee meetings and hearings live without any commentary.

As an additional service, all live broadcasts and videos since the beginning of the 17th electoral term in October 2009 have been made available in the Bundestag’s Media Centre in German. Plenary sittings and committee meetings, special events, interviews and reports can be viewed or downloaded at any time at www.bundestag.de/mediathek.

A user-friendly way for Internet-enabled TVs to access the Media Centre is via a Smart-TV app. The Deutscher Bundestag TV app is available to download in numerous app stores.

Viewers who follow the channel live online receive additional information such as the current agenda or the order of speakers directly via the homepage. This information can also be accessed via a smartphone at m.bundestag.de, as well as via the Deutscher Bundestag mobile app. The app’s audio stream allows users to listen to debates in real time.

Participation of associations in the preparation of bills of the Federal Government

Another means of enhancing the transparency of and promoting the contribution of the public to decision-making processes is the involvement of associations in the preparation of Federal Government bills. This is a standard procedure which is laid down in the Joint Rules of Procedure of the Federal Government, which are described in more detail in our response to Article 10, letter (a).

Based on a decision from November 2018 by the Federal Cabinet (adopted after the country visit) to continue and specify the practice of the 18th legislative period, statements by stakeholders (including lobby groups) who were invited to comment on legislative proposals are systematically being made publicly available on the Ministries’ websites along with the bills in question. They can be accessed in German via <https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben>.

Government data portal

An online data portal called GovData (<https://www.govdata.de/>) providing a new, additional means of accessing open administrative data went live in February 2013. GovData Portal provides central access to re-usable administrative data (open government data) provided by the Federation, most *Länder* and growing number of municipalities, including geodata, statistical data and environmental data. This multilevel approach is key to driving forward open data in a federal state like Germany.

The GovData portal is jointly financed by the Federal Government and Baden- Württemberg, Berlin, Brandenburg, Bremen, Hamburg, North Rhine-Westphalia, Rhineland-Palatinate and Saxony.

This cooperation is based on an administrative agreement and decisions taken by the IT Planning Council (a Federal Government-*Länder* steering committee responsible for coordinating cooperation in regard to IT).

G20 Presidency

During its 2017 G20 Presidency Germany actively sought to engage in dialogue with business and civil society. In the course of the year B20 and C20 representatives were invited to attend three meetings of the G20 Anti-Corruption Working Group (ACWG) in order to update the ACWG on their respective anti- corruption work streams and to present their recommendations to the G20. In addition, the German G20 Presidency cooperated with the OECD to organize the 6th Annual High-Level Anti-Corruption Conference for G20 governments, business and - for the first time in 2017 - for civil society too. Topics addressed at this conference included the challenges of implementing integrity measures in day-to-day business, the emerging challenges of collective action initiatives such as anti-trust concerns with a special emphasis on small- and medium-sized enterprises (SMEs), addressing corruption in the healthcare sector as well as the issue of strengthening integrity in sports. In September 2017, the German G20 Presidency, in cooperation with the United Nations Office on Drugs and Crime (UNODC), hosted a special event on corruption and wildlife crime to which speakers from several wildlife NGOs were invited.

During side events organized during the Seventh Session of the States Party to the United Nations Convention Against Corruption in 2017 Germany set out the principles of accountability on the part of legal persons in regard to corruption, for instance, as well as the principles concerning corruption in connection with the illegal trade in both wild animals and plants and products derived from them.

Germany also reported on the G20 High Level Principles On Organizing Against Corruption and practice in Germany in regard to corruption prevention.

Paragraph 1, letter (c)

The Federal Government's PR work

The Federal Government's press and PR work has long contributed to raising awareness among the general public for the issue of corruption.

The website of the Federal Ministry of the Interior provides information, including handouts and answers to FAQs, about corruption prevention

<https://www.bmi.bund.de/EN/topics/administrative-reform/corruption-prevention/integrity-node.html>

and about the Freedom of Information Act

<https://www.bmi.bund.de/DE/themen/moderne-verwaltung/open-government/informationsfreiheitsgesetz/informationsfreiheitsgesetz-node.html>),

though in German only. The Federal Ministry of the Interior's Rules on Integrity brochure contains key statutory provisions, general information and sample texts on the subject (for more details, see our

responses to Article 8, paragraphs 2 and 3). The brochure also contains information in summary form. The names of contact persons for corruption prevention are also listed on the individual federal ministries' websites and/or in their organizational charts (see, e.g., the Contact Point of the Federal Ministry of Transport and Digital Infrastructure at

<https://www.bmvi.de/SharedDocs/DE/Artikel/Z/korruptionspraevention-im-bmvi.html>

or of the Federal Ministry of Labour and Social Affairs at

<http://www.bmas.de/DE/Ministerium/Willkommen-im-BMAS/korruptionspraevention.html>,

in German only).

The website of the Federal Ministry for Economics and Energy provides information on corruption aimed specifically at the German business sector (www.bmwi.bund.de). It has also published a short brochure entitled "Avoiding Corruption" in cooperation with the Federal Ministry of Justice and Consumer Protection which focuses on combating the bribery of foreign public officials. The brochure is aimed specifically at businesses operating abroad (see our response to Article 12, paragraph 2, letter (b)).

Public education programmes, including schools and university curricula

Schools and universities in Germany have introduced various education programmes and initiatives to raise awareness of the risks of corruption. Germany provided a comprehensive description of awareness-raising measures and education at the 8th meeting of the Open-ended Intergovernmental Working Group on the Prevention of Corruption in Vienna (21 to 23 August 2017), which was published on the UNODC website (see

http://www.unodc.org/documents/corruption/WG-Prevention/Art_13_Awareness-raising_measures_and_Education/Germany.pdf).

Instruction on basic public-service principles

University law and business economics curricula include modules on basic public-service principles. Similar courses are taught to those studying general administration at the Federal University of the Applied Administrative Sciences and to trainees as part of their vocational training.

Instruction on the basic principles and relevant codes of conduct applicable to public-service employees is also generally included as part of new employees' induction process. Corruption prevention has become an integral part of such introductory events in many ministries and authorities.

Under Article 7 of the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (see our responses to Article 7, paragraph 1 and Article 8, paragraphs 1 to 3), employees are also instructed about the risks of corruption and the consequences of corrupt behaviour when they swear their official oath or take a pledge under the Act on Formal Commitments. Awareness should regularly be raised among those who work in areas especially vulnerable to corruption or who switch to a post in such areas, and staff are also to be given in-depth job-related instructions. Specially

designed additional in-house training courses are increasingly available for this group of people, too.

Corruption prevention has been an integral part of various training events run by the Federal Academy of Public Administration (BAkÖV) since 2000 (see our response to Article 7, paragraph 1d). They help to further raise awareness of the issue of corruption among public administration staff. Additional in-house training events are also held in the ministries and the authorities within their remits.

Paragraph 1, letter (d)

Freedom of expression and of information are protected under the German Constitution (Article 5 para. 1 of the Basic Law). However, under Article 5 para. 2 of the Basic Law that freedom finds its limits in the provisions of general laws, general provisions on the protection of minors and the right to personal honour. In addition, the limits of the freedom of expression and of information can also result from conflicting constitutional law. Please see our responses to paragraph 1, letters (a) and (b) above as regards press freedom.

Länder level

Examples from Berlin described in the following supplement the aforementioned *Länder* measures.

Berlin plans to further develop the Berlin Freedom of Information Act into a Transparency Act, with the proviso that data not worth protecting will generally be made available on the Berlin Data Portal.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Processing of freedom of information requests in the Federal Ministry of the Interior

When processing requests under the Freedom of Information Act, the division responsible for handling freedom of information requests first asks the relevant organizational units whether any documents on the topic to which the requests relate are actually available within the Federal Ministry of the Interior. The competent division then checks back with the person filing the request to clarify further details regarding the request and provides them with information about fees charged. Administrative fees of between EUR 30 and a maximum of EUR 500 are charged for requests which need more than half an hour to process. No fees are charged if the division informs the person filing the request that no documents are available, that the request is to be refused on account of there being grounds for exclusion or where handling the request takes less than half an hour. Fees are charged in relation to only 7% of requests and generally of no more than EUR 100.

The unit competent for a specific request is responsible for writing a response for inclusion in the freedom of information notification (an administrative act). It also notifies the division responsible of the administrative effort involved if the information is not being treated as “simple information” (less than 30 minutes’ processing time) or the request is to be refused. The division responsible for freedom

of information requests checks the consistency of the response and draws up the notice. Any additions or changes which may be necessary are coordinated with the competent specialist division. Any notifications which are to be (at least partially) granted are sent out as a formal administrative act with instructions about legal remedies, possibly together with the requested documents.

Objections to a notification can be filed within one month. Notification on an objection is generally issued within three months. Anyone who is not happy with this decision can lodge a complaint with the administrative court. An appeal on fact and law can be filed with the higher administrative court against an administrative court's decision; an appeal on law may be filed with the Federal Administrative Court. Due to the lack of need for urgency, expedited proceedings are not possible in proceedings on a freedom of information request.

Statistics

The Federal Ministry of the Interior publishes annual statistics, broken down by ministry, on the number of freedom of information requests received and dealt with by the federal administration (i.e. the federal ministries and all the authorities within their remits). The statistics include the following information:

- Number of initial requests received in the reporting year
- Number of requests dealt with and notifications sent in the reporting year
- Number of times access to information was provided
- Number of times partial access to information was provided
- Number of rejected freedom of information requests
- Number of requests dealt with in another manner
- Number of cases in which a fee was charged
- Amount of the fees charged: number of cases < EUR 50; number of cases EUR 50 to EUR 100; number of cases > EUR 100
- Number of objections received in the reporting year
- Number of objections dealt with and notifications on objections issued in the reporting year
- Number of actions filed in the reporting year
- Number of actions dealt with in the reporting year
- Number of actions upheld, partially upheld and those dismissed
- Number of cases dealt with in another manner

The statistics can be downloaded in machine-readable form (in German) from the following website:

<https://www.bmi.bund.de/DE/themen/moderne-verwaltung/open-government/informationsfreiheitsgesetz/informationsfreiheitsgesetz-node.html>

(b) Observations on the implementation of the article

The reviewers refer to their related observations on access to information under article 10 above.

The Federal Government and its agencies contribute to raising awareness of issues of corruption among the general public through government websites, press and PR work, issuances of booklets, contact information of responsible officials, etc. Additionally, Germany has launched a data portal called GovData (<https://www.govdata.de/>) which provides a means of accessing re-usable administrative data provided by the Federation, Länder and municipalities, including geodata, statistical data and environmental data.

Schools and universities in Germany have introduced various education programmes and initiatives to raise awareness of the risks of corruption. The Federal Government regularly seeks input from associations and industries regarding draft bills pursuant to the Joint Rules of Procedure of the Federal Government. During the country visit, the authorities explained that further measures to expand the scope of stakeholders to be consulted on draft bills were being considered. However, it was also explained that it would require some time as amending the Joint Rules of Procedure was usually a lengthy process involving many stakeholders.

Following the country visit, Germany provided an update that the Federal Cabinet adopted a decision to increase transparency in the legislative process in November 2018. The decision ensures the continuation of the practice tested during the 18th legislative term of making comments by stakeholders from business, civil society and experts public on the internet. A central platform will be set up for that purpose. In the meantime, comments will be published on the websites of the relevant federal ministries.

Germany has implemented the provision under review.

Paragraph 2 of article 13

Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The names of the federal and *Länder* agencies responsible for corruption prevention are known to the general public. They are, for example, included in the Federal Ministry of the Interior's summary information (see our response to paragraph 1, letter (c)) and in the Rules on Integrity brochure, which is available online. In addition, interested citizens can find out about corruption prevention in the German federal administration at public events, for instance the Federal Government's annual Open Day, when all the federal ministries are open to the public for an entire weekend. The relevant members of staff are on hand to talk to visitors and provide information.

The police stations and public prosecution offices responsible for prosecuting corruption offences are decentralized and generally known to the public. Anyone who has learned of a criminal offence or who suspects that one has been committed can turn to the prosecuting authorities, including anonymously.

Further, some authorities have created the post of an ombudsperson to whom staff, even those who are not employed in the administration, can turn to report a suspected case of corruption.

The names of the agencies responsible at *Länder* level can also be found online. In Brandenburg, for instance, the official anti-corruption officers, ombudsperson and the Corruption Prevention in the *Land* Administration Staff Unit each have their own website (www.antikorruption.brandenburg.de).

The interdepartmental Joint Corruption Investigation Group, which is responsible for prosecuting cases of corruption, includes specialist police investigators and public prosecutors. It is based in the offices of the Brandenburg Criminal Police Office and at Neuruppin Public Prosecution Office. The general public are aware of the group's existence. Anyone can turn to the Joint Corruption Investigation Group (even anonymously) if they have learned of a corruption offence or suspect that one has been committed. Information about the tasks and powers of the Corruption Prevention Staff Unit, the role of official anti-corruption officers plus *Land* regulations can be found in the Directive of the Brandenburg *Land* Administration on Corruption Prevention in the Brandenburg *Land* Administration of 7 June 2011.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In addition to its contact person for corruption prevention, the Federal Ministry of the Interior also has an anti-corruption ombudsperson. Anyone can turn to the ombudsperson to pass on information about suspected cases of corruption relating to the Federal Ministry of the Interior and/or one of the authorities within its remit. The ombudsperson (who is a lawyer) is both ex officio and contractually obliged to maintain confidentiality, which is why the report itself is passed on to the Federal Ministry of the Interior but not the identity of the person making the report.

Berlin, for instance, has expanded its strategies for fighting corruption to include a whistle-blowing system. An internet-based, anonymous whistle-blowing system relating to corruption offences was launched in the Berlin Criminal Police Office on 9 February 2015. The web address was widely publicized. The system allows a virtual letterbox to be created in which information can be deposited, and it enables anonymous communication with the Criminal Police Office. In 2016 the anonymous whistle-blowing system received 178 tip-offs, primarily concerning the fraudulent activities of non-residential care services. In 17 of these cases the person giving the tip-off was prepared to continue communicating with the Criminal Police Office. Only a small number of tip-offs were ultimately passed on to the public prosecution office or to the Berlin Office of Public Prosecutors at Local Courts so that preliminary investigations could be launched. Reference to the whistle-blowing system and other information relating to corruption is available on the websites of the relevant Berlin authorities. The system has now become so widely known that the number of tip-offs has increased.

A system for notifying the Criminal Police Office of suspected cases of corruption was launched in Lower Saxony more than 10 years ago (see

https://www.mi.niedersachsen.de/themen/oeffentliches_dienstrecht_korruptionspraevention/korruptionspraeventionbekaempfung/korruptionsbekaempfung/korruptionsbekaempfung-in-niedersachsen-

[61893.html](#)).

Information which does not concern any of the authorities in Lower Saxony or cases of corruption is passed on to the relevant *Land* or federal agencies.

A whistle-blowing system has also been established for citizens in Brandenburg. Brandenburg Police launched its Internet Police Station, a web-based app which is accessible 24/7 from anywhere in the world, on 13 February 2003 (www.polizei.brandenburg.de). This virtual police station is Brandenburg Police's central Internet portal where citizens can both report a criminal offence and obtain information (interactively) and also find out about the work of the police in Brandenburg. A new user interface, the "virtual letterbox", was launched in 2004. It enables citizens to communicate directly with the police. In 2007 the "virtual letterbox" was then realigned to focus on tip-offs about corruption offences. Since then, citizens in Brandenburg have been able to use a procedure similar to email to communicate directly with the police, citing their personal details or pseudonymized personal details, or entirely anonymously. They can also use this method of communication simply to find out more about corruption. There is also the option of passing on information regarding cases of corruption to the prosecuting authorities via the Brandenburg *Land* Administration Corruption Prevention Staff Unit, ombudsperson and official anti-corruption officers.

(b) Observations on the implementation of the article

Competent anti-corruption bodies are known to the public and anyone can report corruption or other criminal acts to them, including anonymously.

Germany is in compliance with its obligations under this provision of the Convention.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provisions of the Convention are implemented in Germany mainly in the Money Laundering Act (Geldwäschegesetz), the Banking Act (Kreditwesengesetz) and the Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz). The Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit entered into force on 26 June 2017. The previous version of the Money Laundering Act has been completely revised and adopted as amended within this framework. The following comments are based on the new version of the law.

Obligated entities as defined in section 2(1) of the Money Laundering Act are obliged to identify their customers including the customers' beneficial owners (section 10 et seq. of the Money Laundering Act), and to retain the information and documents obtained in the process (section 8 of the Money Laundering Act); where there is a suspicion of money laundering or terrorist financing, a report must be sent to the German Financial Intelligence Unit (known in German as the Zentralstelle für Finanztransaktionsuntersuchungen) pursuant to section 43 of the Money Laundering Act.

I. Obligated entities

Pursuant to section 2(1) of the Money Laundering Act, the following persons, inter alia, are considered "obliged entities":

- credit and financial institutions; insurance companies and insurance intermediaries; asset management companies;
- lawyers, legal advisors, patent attorneys and notaries whenever they are involved in planning or carrying out the following transactions for their clients:
 - a) buying and selling real estate or commercial enterprises;
 - b) managing money, securities or other assets;
 - c) opening or managing bank, savings or securities accounts;
 - d) organising funds for the purpose of establishing, operating or managing companies or partnerships;
 - e) establishing, operating or managing trusts, companies, partnerships or similar arrangements; or if they carry out financial or real estate transactions in the name and for the account of their clients;

- auditors, chartered accountants, tax advisors and tax agents;
- service providers for companies, partnerships and trusts or trustees who are not members of the professions referred above whenever they provide any of the following services for third parties:

a) establish a legal person or partnership;

b) act as the director or manager of a legal person or partnership, a partner of a partnership, or act in a similar position;

c) provide a registered office, business address, address for administration or correspondence and other related services for a legal person, a partnership or a legal arrangement;

d) act as a trustee of a legal arrangement;

e) act as a nominee shareholder for another person other than a corporate entity listed on an organised market that is subject to transparency requirements with regard to voting rights consistent with EU laws, or subject to equivalent international standards;

f) arrange for another person to perform the functions described in (ii), (iv) and (v) above.

- real estate agents;
- traders in goods.

II. Due diligence requirements under money-laundering provisions, including identification of the customer and the beneficial owner

The due diligence requirements shall be fulfilled when (section 10(3)):

a) establishing business relations;

b) carrying out a transaction with a value of €15,000 or more outside an existing business relationship;

c) there are factual circumstances to indicate that the assets or property connected with a transaction or business relationship are the product of money laundering or are related to terrorist financing, notwithstanding any exceptions, exemptions or thresholds set forth in the Money Laundering Act;

d) there is doubt as to the veracity of the information collected in relation to the identity of the customer or the beneficial owner.

For certain obliged entities (such as dealers in goods), special rules exist regarding when the due diligence requirements are to be fulfilled.

Pursuant to section 10(1) of the Money Laundering Act, the obliged entities must:

a) identify the customer and, if applicable, a person acting on its behalf, including checking whether the person who is acting on its behalf is authorised to do so;

b) clarify whether the customer is acting on behalf of a beneficial owner and, if so, identify the beneficial owner. If the customer is not a natural person, this includes an obligation to take adequate measures to understand the ownership and control structure of the customer;

c) obtain information on the purpose and intended nature of the business relationship where this is not already clear from the business relationship in the individual case;

d) determine, using an appropriate risk-oriented procedure, whether the contractual partner or the beneficial owner is a politically exposed person, a family member or a person known to be a close associate of this person, and

e) continuously monitor the business relationship, including the transactions carried out in the course of the business relationship.

The beneficial owner is legally defined in section 3 of the Money Laundering Act.

The specific scope of the above-mentioned measures must reflect the respective risk of money laundering or terrorist financing, especially with regard to the contracting party, the business relationship or transaction. To this end, under section 4(1) and (2) and section 5 of the Money Laundering Act, obliged entities must carry out a risk assessment in order to identify the company-specific risks of money laundering and terrorist financing and must base their internal safeguards, as well as the type and scope of customer identification, on this assessment. Furthermore, when evaluating risks in an individual case, they must take into account at least the purpose of the account or the business relationship, the amount of assets paid in by the customer or the scope of the transactions carried out, as well as the regularity or duration of the business relationship. The specifics of the stricter customer due diligence obligations regarding so-called “politically exposed persons” (PEPs) are governed by section 15(3)(1a) in connection with section 15(4) of the Money Laundering Act.

Section 11(6) of the Money Laundering Act sets out that the customer shall provide the obliged entity with the information and documents necessary for fulfilling the due diligence requirements and shall advise it without undue delay of any changes arising during the course of the business relationship. The customer shall disclose to the obliged entity whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner. Such disclosure to the obliged entity shall also include information that verifies the identity of the beneficial owner.

If the obliged entities are unable to fulfil the due diligence requirements, they are not permitted to establish or continue the business relationship or carry out any transactions (section 10(9) of the Money Laundering Act). Where a business relationship already exists, the obliged entities shall terminate or otherwise end the business relationship regardless of any other statutory provisions or contractual terms (section 10(9) of the Money Laundering Act).

The obliged entities must identify the customer, and, if applicable, a person acting on its behalf and the customer's beneficial owner, before establishing a business relationship or carrying out a transaction. The identification process may be completed while the business relationship is being established if this is necessary in order to avoid interrupting the normal course of business and there is a low risk of money laundering or terrorist financing (section 11(1) of the Money Laundering Act). The obliged entity may dispense with the identification if it has already identified the relevant customer and beneficial owners and made a record of the information obtained, unless external circumstances lead to doubts of the veracity of the information obtained during the earlier identification process (section 11 (3) of the Money Laundering Act). The obliged entity is furthermore required to file a suspicious transaction report where factual circumstances indicate that the customer failed to comply with its duty to disclose whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner (section 43(1)(3) of the Money Laundering Act).

In the case of a beneficial owner, institutions and persons covered by the Money Laundering Act shall find out at least the name of the beneficial owner and, where this is appropriate given the risk of money laundering or terrorist financing that exists in an individual case, shall collect further identifying information. Details of the beneficial owner's date and place of birth and address may be collected irrespective of the ascertained risk. The obliged entity must satisfy itself, by taking risk-appropriate measures, that the information gathered to identify the persons in question is accurate; however, the obliged entity may not rely exclusively on the information in the transparency register.

A key component of the new Money Laundering Act is the establishment of a register of beneficial owners (transparency register). The transparency register complements the existing commercial register, business register, register of associations and other registers already in place. The law establishing the transparency register entered into force on 26 June 2017, fulfilling Germany's obligation under the 4th Anti-Money Laundering Directive (EU/2015/849). The scope of the register applies to private legal persons and registered private companies as well as to trusts and

similar legal arrangements

Regarding legal ownership of private legal persons and registered private companies, the register, in substance, provides a link to the already existing registers containing up-to-date and reliable information on legal ownership. Where the beneficial owner is different from the legal owner, entities are obliged to register the beneficial owner in the transparency register. In addition, foundations as legal persons are not yet recorded in any other register. With regard to them, the transparency register contains genuinely new information on the beneficial ownership. Also, trusts and similar legal arrangements are not yet contained in any other register. Trustees which are residents of Germany need to notify the transparency register regarding beneficial ownership of a trust; this also applies to similar legal arrangements as defined in the new Money Laundering Act.

Three groups have access to the register: (1) competent authorities and financial intelligence units, (2) obliged entities when fulfilling the customer due diligence obligations under the Money Laundering Act, and (3) any person or organisation that can demonstrate a legitimate interest. The term “legitimate interest” has been further defined in secondary legislation in line with the 4th Anti-Money Laundering Directive, namely the German Regulation on access to the transparency register (*Transparenzregistereinsichtnahmeverordnung*).

III. Recording and retention obligations

Pursuant to section 8(1) of the Money Laundering Act, obliged entities must record and retain

1. the data and information collected during the course of fulfilling due diligence requirements

a) regarding contracting parties, persons acting on behalf of the contracting parties, if applicable, and beneficial owners,

b) on business relationships and transactions, especially transaction records, to the extent that they could be necessary for investigating transactions,

2. sufficient information about the performance and about the results of the risk assessment pursuant to section 10(2), section 14(1) and section 15(2) of the Money Laundering Act and about the appropriateness of the measures taken on the basis of these results,

3. the results of the investigation pursuant to section 15(5)(1) of the Money Laundering Act and

4. explanations of, and a comprehensible justification for, the results of the evaluation of a situation with respect to the notification obligation pursuant to section 43(1) of the Money Laundering Act.

The records pursuant to section 8(1)(1)(a) include records of the measures taken to identify the beneficial owners with regard to legal persons as defined in section 3(2).

The records must be retained for five years.

IV. Suspicious transaction reporting

Section 43(1) of the Money Laundering Act states as follows:

If facts exist which indicate that

1. property related to a business relationship, brokerage or transaction is derived from a criminal offence which could constitute a predicate offence for money laundering,
2. a business transaction, a transaction or property is related to terrorist financing, or
3. the contracting party has not fulfilled its obligation under section 11(6), third sentence, to disclose to the obliged entity whether it intends to establish, continue or execute the business relationship or transaction on behalf of a beneficial owner, the obliged entity shall report this matter, irrespective of the amount involved, to the Financial Intelligence Unit without delay.

The recommendations made by the Federal Ministry of Finance for interpreting the manner in which the reporting system for suspicious activity is dealt with continue to apply. With regard to the reporting threshold, the recommendation is as follows: “The obliged entity and the employees acting on its behalf by no means need to be certain of a connection between a) a transaction or business relationship and b) an instance of money laundering, a corresponding specific predicate offence or an instance of terrorist financing. In order to meet the requirement for a suspicion that must be reported, it is sufficient if facts are known that indicate the existence of a business relationship or a transaction designed to facilitate terrorist financing, or through which illegal funds would be protected against confiscation by law enforcement agencies, or the origin of illegal assets could be concealed. A criminal background of terrorist financing or a crime as defined in section 261 of the German Criminal Code (Strafgesetzbuch) cannot be excluded in such cases.” This makes it clear that the obliged entity and the employees acting on its behalf have a certain amount of discretion when assessing a situation. Among other things, the outcome of the situation depends on the obliged entity’s subjective assessment of the specific circumstances. As indicated by the recommendations, there must be an understandable justification for an assessment that a specific matter involves a crime. The associated report should not be indiscriminate. Conversely, there is also no need for the presentation of a detailed legal analysis. Instead, the obliged entity “shall

evaluate a matter on the basis of general experience and the professional knowledge possessed by its employees as regards the matter's unusual nature and abnormality in the given business context [...]". Such an evaluation shall take into account: the transaction purpose and type; peculiarities of the customer or beneficial owner; the financial and business background of the customer; and the origin of the asset/property associated with the transaction.

Sanctions for breaches of the duties according to the AML law are regulated in section 56 et seq. of the AML law, which contains a catalogue of 64 administrative offenses with applicable sanctions, in particular:

[Art. 56 para 2]

- maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1,000,000;
- in the case of credit institutions or financial institutions, maximum administrative pecuniary sanctions of at least EUR 5,000,000 or, for legal persons, 10 % of the total annual turnover.

[Art. 57]

- public statement which identifies the natural or legal person and the nature of the breach;

[Art. 51 para 5]

- order requiring the natural or legal person to cease the conduct and to desist from repetition;
- where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;
- temporary ban against any person discharging managerial responsibilities in an obliged entity.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Germany's Federal Financial Supervisory Authority (BaFin), working together with the German Banking Industry Committee, has developed "Interpretative notes and guidance on the prevention of money laundering, terrorist financing or other criminal offences". These provide financial institutions with detailed guidance on how the due diligence requirements under anti-money-laundering rules are to be fulfilled, including the identification of customers and the clarification of beneficial owners, as well as the treatment of PEPs. These interpretative notes and guidance are currently being revised by BaFin in the light of the new version of the Money Laundering Act that came into force on 26 June 2017.

BaFin also regularly informs banks via circulars about countries that have been listed by the Financial Action Task Force as having inadequate systems to combat money laundering and terrorist financing. BaFin also provides information about which countries must be subjected to

stricter due diligence obligations by institutions when conducting transactions with these countries.

The German federal states (Länder), which are responsible for the supervision of the non-financial sector, have also drawn up a series of guidance notes (available online), which are intended to assist persons trading in goods, real estate agents and other obliged entities in the non-financial sector in fulfilling their due diligence obligations.

(b) Observations on the implementation of the article

The provisions of articles 14 and 52 of the Convention are implemented in Germany mainly in the Money Laundering Act (Geldwäschegesetz) and sector-specific laws such as the Banking Act (Kreditwesengesetz) and the Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz). Money or value transfer service providers are covered under section 2(1), nos. 1 - 5 of the Money Laundering Act.

In June 2017, Germany revised and adopted the amended Money Laundering Act within the framework of the Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit, which entered into force on 26 June 2017. The new Act was adopted on 23 June 2017 (Federal Law Gazette 2017 I p. 1822) and entered into force on 26 June 2017.

A key component of the new Money Laundering Act is the establishment of a register of beneficial owners (transparency register). The transparency register complements the existing commercial register, business register, register of associations and other registers already in place. The law establishing the transparency register entered into force on 26 June 2017, fulfilling Germany's obligation under the 4th Anti-Money Laundering Directive (EU/2015/849). The register became available on 27 December 2017 and is available at www.transparenzregister.de (English: <https://www.transparenzregister.de/treg/en/start?1>). The scope of the register covers private legal persons and registered private companies as well as trusts and similar legal arrangements. The register is operated by the Federal Gazette under the legal and technical supervision of the Federal Office of Administration. The obligations under section 20 of the Money Laundering Act include keeping the registered information on beneficial ownership up to date. While there is no verification mechanism to ensure the validity of the entered data, failure to comply with registration requirements will be sanctioned by the Federal Administrative Authority in charge of supervision of the register according to 25 (6) of the Money Laundering Act. Access to the register is limited to three groups: (1) competent authorities and financial intelligence units, (2) obliged entities when fulfilling the customer due diligence obligations under the Money Laundering Act, and (3) any person or organisation that can demonstrate a "legitimate interest", as further defined in subsidiary legislation. Access to the registry will be broadened with the implementation of the 5th EU Anti-Money Laundering Directive (which was passed and will enter into force on 1 January 2020) granting access to every member of the public.

The new Money Laundering Act also created the legal framework for the reorganisation of the German financial intelligence unit, as described under the next articles.

Germany is also undertaking work on a national risk assessment (NRA), with particular focus on control measures for designated non-financial businesses and professions (DNFBPs). The national

risk assessment was published in October 2019.

Germany has a thorough system of preventive measures against money-laundering in place, which was enhanced after the recent legislative overhaul that commenced after the transposition of the 4th EU Anti-Money Laundering Directive (EU/2015/849), as also observed in the most recent reports of the FATF and other institutions, such as the Basel Institute on Governance.

Under the law, obliged entities (as defined in section 2(1) of the Money Laundering Act, including banks, financial services institutions, insurance companies, investment companies, payment institutions, electronic money institutions and agents, including money value transfer services providers, as well as a broad range of non-financial persons and entities) are required to identify their customers including the customers' beneficial owners (section 10 et seq. of the Money Laundering Act), and to retain the information and documents obtained in the process (section 8 of the Money Laundering Act); where there is a suspicion of money laundering or terrorist financing, a report must be sent to the German financial intelligence unit pursuant to section 43 of the Money Laundering Act. The specific scope of the above-mentioned measures must reflect the respective risk of money laundering or terrorist financing, especially with regard to the contracting party, the business relationship or transaction (section 4(1) and (2) and section 5 of the Money Laundering Act).

Germany reported that the newly established FIU has received 57,714 reports of suspicious transactions between becoming operational on 26 June 2017 and 30 April 2018. As of 30 April, all incoming reports had been processed, and 31,235 reports had been forwarded to law enforcement authorities or placed under further monitoring by the FIU. More detailed statistics on STR receipt and analysis, also for prior periods, are included under art. 58 and published in the FIU's annual reports.

Germany's Federal Financial Supervisory Authority (BaFin), working together with the German Banking Industry Committee, has developed "Interpretative notes and guidance on the prevention of money laundering, terrorist financing or other criminal offences". These provide financial institutions with detailed guidance on how the due diligence requirements under anti-money-laundering rules are to be fulfilled, including the identification of customers and the clarification of beneficial owners, as well as the treatment of PEPs. These interpretative notes and guidance were revised by BaFin in the light of the new version of the Money Laundering Act that came into force on 26 June 2017. The updated version was published in December 2019.

BaFin also regularly informs banks via circulars about countries that have been listed by the Financial Action Task Force as having inadequate systems to combat money laundering and terrorist financing. BaFin also provides information about which countries must be subjected to stricter due diligence obligations by institutions when conducting transactions with these countries.

The German federal states (Länder), which are responsible for the supervision of the non-financial sector, have also drawn up a series of guidance notes (available online), which are intended to assist persons trading in goods, real estate agents and other obliged entities in the non-financial sector in fulfilling their due diligence obligations.

In light of the decentralized approach to AML supervision of the non-financial sector, it is recommended that Germany continue efforts towards strengthening AML oversight and supervision, in particular of the non-financial sector. Germany could also study the possibility of establishing a verification mechanism to ensure the validity of data entered in the transparency register and to facilitate access by persons and entities having a legitimate interest to access the register, with a view to enhancing transparency.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The new Money Laundering Act, which came into force on 26 June 2017, also created the legal framework for the reorganisation of the German central body for receiving and evaluating suspicious transaction reports (known as the Financial Intelligence Unit or FIU). The German FIU was already established in 2002. However, it had previously been organised along police lines and was located at the Federal Criminal Police Office (Bundeskriminalamt), within the portfolio of the Federal Ministry of the Interior. The FIU is now located as an authority within the Central Customs Authority (GZD), under the remit of the Federal Ministry of Finance. It is now organised along administrative lines, as is generally the case on the international level.

Pursuant to section 43 of the Money Laundering Act, all suspicious transaction reports from obliged entities must be sent to the FIU. The FIU is then responsible for carrying out targeted and comprehensive analysis to determine whether the reported circumstances are related to money laundering and/or terrorist financing. If this is the case, the FIU forwards all the information that has been collected to the responsible law enforcement authority. The FIU is now being given access to more data than before, in order to support its analytical activities; its powers to request information and data from law enforcement, revenue and administrative authorities are now enshrined in law. This allows the FIU to analyse a suspicious transaction report in a targeted way so that it can perform a “filter” function, meaning that only the genuinely substantial cases are forwarded to the competent law enforcement authorities. If the FIU has indications that a transaction is related to money laundering or terrorist financing, it also possesses the authority to prevent the transaction from being executed.

The FIU guarantees that each individual case is subject to immediate screening upon receipt. This ensures in particular that cases with a fixed deadline, as well as other urgent cases and reports involving potential terrorist financing, are prioritised and processed immediately. The FIU reports that, depending on when the corresponding suspicious transaction report is received, cases subject to a fixed deadline pursuant to section 46 (1), first sentence, number 2 of the AML Law are passed on to the responsible prosecuting authority either on the same day or, at the latest, the following workday. This ensures that any criminal procedural measures (to secure funds) can be ordered on time.

Overall, cooperation with all domestic authorities that are responsible for the investigation, prevention and/or prosecution of money laundering and/or terrorist financing has been enhanced. For example, mutual information rights and obligations have been established: Revenue authorities, pursuant to section 31b of the Fiscal Code, and other authorities which, pursuant to section 44 of the Money Laundering Act, obtain knowledge of facts that indicate that an asset is related to money laundering or terrorist financing, must submit a report to the FIU. Conversely, the FIU will also pass on findings from the evaluation of suspicious transaction reports to other domestic authorities, to the extent that their competences are affected (see section 32 of the Money Laundering Act). At the same time, the exchange of information on the international level has been simplified and intensified (see section 33 et seq. of the Money Laundering Act).

In addition, cf. the information included under Article 46 in Germany's first cycle review report.

Germany comprehensively contributes to various international and multinational bodies aimed at combating money laundering. These include cooperation mechanisms such as Eurojust, Europol, and the European Judicial Network, the the Camden Asset Recovery Inter-Agency Network (CARIN), as well as the FATF and the Egmont Group (see art 14, para 4 below).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The German FIU publishes an annual report on its activities, where further information including detailed statistics can be found.

Annual reports 2002 - 2015 in English:
https://www.bka.de/EN/CurrentInformation/AnnualReports/FinancialIntelligenceUnitGermany/financialintelligenceunitgermany_node.html

Annual reports 2002 - 2016 in German:
https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/-FinancialIntelligenceUnitDeutschland/financialintelligenceunitdeutschland_node.html

Additional statistics are included under art. 58, including on the FIU's cooperation with foreign

counterparts.

Information on the exchange of information and cooperation with foreign countries by BaFin with regard to the monitoring of financial institutions is included under para. 5 of art. 14.

(b) Observations on the implementation of the article

Cooperation and information exchange among domestic authorities and at the international level has been simplified and enhanced through the adoption of the Money Laundering Act.

The legislation establishes mutual information rights and obligations among the competent authorities which must report to the FIU knowledge of any facts indicating that an asset is related to money-laundering or terrorist financing (section 44 of the Money Laundering Act), and with revenue authorities (pursuant to section 31b of the Fiscal Code). Conversely, the FIU is also obliged to pass on data and findings from the evaluation of suspicious transaction reports to other domestic authorities, to the extent that their competences are affected (see section 32 of the Money Laundering Act).

Information requests and the exchange of data in the framework of international cooperation have also been addressed (section 33 et seq. of the Money Laundering Act).

AML supervisory and law enforcement authorities cooperate and exchange information at both the domestic and international levels (for the FIU, see art. 58 below).

(c) Successes and good practices

A good practice is to be found in the annual reports of the German FIU, where the number of occasions of international cooperation is listed per country, at least for the 20 countries most active in the particular field. The publication of the annual bilingual report of the FIU is a good practice, which could probably be continued in the future.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The described review of measures to ensure the adequate monitoring of the transport of cash and cash equivalents has already been extensively implemented in section 1(4), section 5(1)(2) and section 12a in conjunction with section 31a of the Customs Administration Act (Zollverwaltungsgesetz). Under these provisions, movements of cash and cash equivalents within and beyond Germany's external borders are monitored by German Customs. In addition, the monitoring of cash that is transported by natural persons across the external borders of the European Union to or from Germany is carried out in accordance with Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (Official Journal L 309, 25 November 2005, p. 9).

Cash and cash equivalents above a total value of €10,000 that are moved across borders must be declared in terms of their type, number and value, and, upon request by Customs, the origin, the beneficial owner and the purpose of this cash and cash equivalents must be explained. If there are reasons to assume that cash or cash equivalents transported in cross-border movements are being moved specifically for the purposes of money laundering or terrorist financing, customs officials may temporarily seize the cash or cash equivalents and take it into customs custody in order to investigate the origin or intended purpose.

A new cash control regulation is currently being negotiated on the European level, which is intended to replace the existing regulation. Under the new regulation, it is intended to make it possible for quantities of cash below the €10,000 threshold to be seized in future where indications of criminal activity exist. The term "cash" itself will be expanded to also cover commodities as highly liquid stores of value as well as prepaid cards that can be used as a substitute means of payment. In this regard, the Commission will also be authorised to adapt the definition of cash, by means of delegated acts, to react to new trends, including in particular developments in the electronic money market. In addition, a disclosure obligation is to be created with regard to cash that is transported by e.g. post, freight transport or courier. Finally, the exchange of information between the competent authorities and the respective central reporting unit (Financial Intelligence Unit) is also to be intensified with regard to the findings from cash controls, by enshrining continual data exchange in law, thereby expanding its scope.

The aim is to sustainably enhance the fight against money laundering and terrorist financing by having effective rules that apply to all Member States.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

German Customs seized undeclared cash in the value of €8.2 million in 2016. It initiated 2,600 administrative fine proceedings and imposed fines totalling €5 million for violations of disclosure obligations in connection with cross-border movements of cash and cash equivalents.

(b) Observations on the implementation of the article

Movements of cash and cash equivalents across Germany's borders are monitored by German Customs (section 1(4), section 5(1)(2) and section 12a in conjunction with section 31a of the Customs Administration Act). In addition, the monitoring of cash that is transported by natural persons across the external borders of the European Union to or from Germany is carried out in accordance with Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (Official Journal L 309, 25 November 2005, p. 9).

Cash and cash equivalents above a total value of €10,000 that are moved across borders must be declared in terms of their type, number and value, and, upon request by Customs, the origin, the beneficial owner and the purpose of this cash and cash equivalents must be explained. If there are reasons to assume that cash or cash equivalents transported in cross-border movements are being moved specifically for the purposes of money laundering or terrorist financing, customs officials may temporarily seize the cash or cash equivalents and take it into customs custody in order to investigate the origin or intended purpose.

Additional rules are in place concerning the monitoring of cash transactions above a total value of €10,000 (section 4(4) of the AML law) and under section 2(1)/16, which requires natural or legal persons commercially trading in goods to establish an effective risk management for transactions over €10,000. Likewise, transactions of that order trigger due diligence obligations in accordance with section 10(6) of the AML law. The obligation to report suspicious transactions (section 43 AML law) applies without any restrictions.

Germany is in compliance with the provision.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance

with this provision of the Convention.

The requirements of the Convention are implemented uniformly in Germany by the EU Funds Transfer Regulation (Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006).

Pursuant to Article 4 of the Regulation, the payment service provider of the payer has to ensure that transfers of funds are accompanied by the following information on the payer:

- (a) the name of the payer;
- (b) the payer's payment account number; and
- (c) the payer's address, official personal document number, customer identification number or date and place of birth.

In addition, the payment service provider of the payer has to ensure that transfers of funds are accompanied by the following information on the payee:

- (a) the name of the payee; and
- (b) the payee's payment account number.

In the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s). Depending on whether all payment service providers involved in the payment chain are established in the European Union and/or whether the value of the transfer is less than €1,000 (unless the transaction is carried out in several smaller transactions that appear to be linked), the Regulation provides some facilitations.

Before transferring funds, the payment service provider of the payer has to verify the accuracy of the information referred to above on the basis of documents, data or information obtained from a reliable and independent source (Article 4(4)). For verification purposes, the provisions of the Money Laundering Act apply. Article 4(5) of the Regulation states that verification may be deemed to have taken place where:

(a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 (4th Anti-Money Laundering Directive) and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

Finally, pursuant to Article 4(6) of the Regulation, the payment service provider of the payer is not allowed to execute any transfer of funds before ensuring full compliance with the above-mentioned provisions.

Article 10 of the Regulation states that intermediary payment service providers have to ensure that all the information received on the payer and the payee that accompanies a transfer of funds is retained with the transfer.

Under Article 7 of the Regulation, the payment service provider of the payee has to implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

According to Article 8 of the Regulation, the payment service provider of the payee has to implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information regarding the payer or payee referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis. Under Article 9, the payment service provider of the payee has to consider missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

According to the FIU's annual report, financial services institutions (i.e. undertakings which provide financial services to others commercially or on a scale which requires commercially organised business operations, and which are not credit institutions, section 1 (1a) Banking Act) submitted 4,316 suspicious transaction reports in 2016; in the previous year (2015), the total was only 2,253. Hence the number of suspicious transaction reports from financial services institutions almost doubled within a year.

(b) Observations on the implementation of the article

The EU Funds Transfer Regulation (EU 2015/847) is implemented in Germany and requires payment service providers to ensure, inter alia, that funds transfers are accompanied by accurate and complete information on the payer.

Germany is in compliance with the provision.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Germany has implemented the 40 recommendations of the Financial Action Task Force on Money Laundering (FATF) as well as the relevant directives of the European Union to combat money laundering and terrorist financing (see most recently Directive (EU) 2015/849) in its domestic legislation.

Germany comprehensively contributes to various international and multinational bodies aimed at combating money laundering. These include cooperation mechanisms such as Eurojust, Europol, the European Judicial Network and the Camden Asset Recovery Inter-Agency Network (CARIN), as well as the FATF and the Egmont Group.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Act Transposing the Fourth EU Money Laundering Directive, https://www.bgbl.de/xaver/bgbl/start.xav?start=//*/%5b@attr_id='bgbl117s1822.pdf'%5d Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit, entered into force on 26 June 2017.

(b) Observations on the implementation of the article

In addition to the above, Germany has ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism,

which also includes guidelines against money-laundering.

Germany is in compliance with the provision.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

BaFin has signed Memoranda of Understanding (MoU) with many countries around the world which in each case provides a basis for an intensive exchange of information and cooperation with regard to the monitoring of financial institutions. In this respect, please refer to the overview available at: https://www.bafin.de/DE/Internationales/BilateraleZusammenarbeit/MoU/gemeinsamestandpunkt_e_mou_node.html

Germany also contributes to various international and multinational bodies aimed at combating money laundering (see para. 4 of art. 14).

Germany supports the International Anti-Corruption Coordination Centre (IACCC) in grand corruption cases. Germany also participates in the Intergovernmental Working Group on Asset Recovery and the expert meetings on International Cooperation under the UN Convention against Corruption.

The Federal Ministry for Economic Development and Cooperation is funding a Global Programme on Combatting Illicit Financial Flows (IFF). The capacity-building project (volume 5m EUR, implementing period 2015-2018) promotes FATF standards, aims at initiating change processes in detecting and tracing IFFs, helps implementing AML measures as well as promoting related international cooperation in criminal matters. Current project regions are Latin America (Peru),

Western Balkan (Former Yugoslav Republic of Macedonia), East Africa (Kenya).

German Technical Cooperation also contributes expertise as part of a CTF/AML project consortium financed by the European Commission under the Instrument contributing to Stability and Peace (IcSP), with a MENA and South East Asia focus.

The German Development Bank KfW complies in all project financing with the German Banking Act, the Money Laundering Act and the UN-/EU-Sanctions- and Procurement laws, thus keeping all international standards in particular with respect to money laundering, fraud and corruption prevention. This includes contractual clauses which also oblige the contractual partners accordingly.

Please also see the information under Article 46 in Germany's first cycle review report.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

As mentioned above, the Global Programme on Combatting Illicit Financial Flows supports the analysis of money laundering risks in various sectors and assists in updating and implementing the national plan to combat money laundering in Peru. The project also works together with the OECD on the recently launched Tax Crime Academy in Nairobi, Kenya.

(b) Observations on the implementation of the article

Germany is in compliance with the provision.

(c) Successes and good practices

The international support that Germany provides in the fight against money-laundering and combatting illicit financial flows is encouraging and can be characterized as a good practice.

V. Asset recovery

Article 51. General provision

Article 51

1. *The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Domestic legal system

In order to strengthen and streamline the effective confiscation of assets, Germany passed new asset confiscation legislation in 2017 that comprehensively reformed existing provisions. It entered into force on 1 July 2017.

The rigid time limits for the duration of the temporary freezing of assets were abolished and the scope needed to effectively freeze proceeds of crime, particularly in complex cases with an international dimension, was widened.

The decision on confiscation of proceeds of crime can now be separated from the main court proceedings, encouraging the judiciary to confiscate assets without risking excessively long proceedings particularly in cases involving organized crime (sections 422, 423 Code of Criminal Procedure).

Extended confiscation of proceeds of crime (i.e. confiscation of objects if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them) is now possible for all criminal offences rather than limited to a catalogue of more serious offences (section 73a Criminal Code).

Anything invested in the illegal activity is subject to confiscation, guaranteeing comprehensive confiscation of proceeds of crime: Expenses incurred by offenders no longer have to be considered when confiscating assets and no plea invoking a loss of enrichment may be made. If, following the judgement, an offender is found to have previously undiscovered assets, these may be confiscated at a later stage.

Assets of unclear origin may be confiscated without evidence of a specific offence being necessary. This enables the judiciary to confiscate assets related to organized crime by lowering the requirements to the court's conviction that assets have a criminal source based on a major disparity between the value of the assets and the legal income of the accused. If such a disparity is established, burden of proof is shifted to the accused regarding the assets' legitimate origin, making the system comparable to non-conviction based confiscation (section 76a para 4 Criminal Code, section 437 Code of Criminal Procedure).

Victim compensation has been fundamentally reformed, the new model guarantees consistent and fair compensation for all injured parties while at the same time unburdening courts and prosecutors by moving victim compensation to the stage of enforcement proceedings (sections 111i, 111n Code of Criminal Procedure, section 459 h et seq. Code of Criminal Procedure).

International cooperation

The Act on International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen - IRG) governs how and under what preconditions support may be provided to criminal proceedings in another country. It forms the basis for the field of mutual legal assistance, including requests related to asset recovery.

Germany is a signatory to the important multilateral agreements which are designed to facilitate cross-border asset recovery. Relevant in this regard are primarily Conventions of the European Union, of the Council of Europe (e.g. the European Convention on Legal Assistance in Criminal Matters with its additional protocols, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and the Criminal Law Convention on Corruption) and the United Nations (e.g. UNCAC and UNTOC). These are complemented by various bilateral agreements (please cf. SACL for first review cycle).

Pursuant to German legal rules, however, performance of mutual legal assistance is also possible

without an existing international law agreement. In its non-treaty-based assistance with a large number of states, Germany also has good and trusting cooperation in sanctioning and preventing criminal offences. Section 59 of the IRG is a broadly-framed provision which enables investigative acts for tracing and freezing assets; in principle, this is allowed in the same scope as the mutual legal assistance which German courts or authorities could provide to one another. Confiscation of assets based on a foreign decision is regulated in sections 48 et seq. Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system (Section 73 IRG).

In addition to the IRG, the provisions of general German criminal procedure law apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion; this means that there are adequate factual indications that allow the conclusion that an offence has been committed.

The requirements needing to be met for MLA to be granted are, inter alia, laid out in the Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries, 2012⁶, the Guide to asset recovery (Pointers for Practitioners, 2014)⁷, as well as in UNODC's Mutual Legal Assistance Request Writer Tool⁸ and, for terrorism offences, in the [Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries](#)⁹.

With the Federal Office of Justice and the Federal Criminal Police Office, Germany has established two asset recovery offices which can provide information to domestic and foreign authorities and, due to the special skills and experience of those officials, can facilitate and effectively promote cooperation. Coordination takes place through an expert meeting of the heads of the asset recovery offices at the Criminal Police Offices of the Länder, the Federal Police Headquarters, the Central Customs Authority and the BKA.

As designated central authority, the Federal Office of Justice cooperates and communicates with its foreign counterparts. Direct communication and consultations between practitioners are possible if necessary and useful in the specific circumstances of a case. The German FIU also shares information with its foreign counterparts. The sharing of tax information is regulated by a great number of bilateral treaties. Contact points have been designated to StAR, the Interpol Asset Recovery Focal Point Initiative, the Camden Asset Recovery Inter-Agency Network (CARIN), and the network of asset recovery offices. Germany has also designated an Asset Recovery Office within the EU framework. At EUROPOL level, the Anti-Money Laundering Operational Network (AMON) meets annually. For the first time in 2017, there was also a meeting of all participants of the Analysis Project (AP) Sustrans.

Germany provides technical assistance by organizing workshops for practitioners in foreign countries and participating in bilateral and multilateral conferences on asset recovery. Germany

6

<http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf>

⁷ <http://star.worldbank.org/star/document/asset-recovery-under-german-law-english>

⁸ <http://www.unodc.org/mla/index.html>

⁹ https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf

established a guide to asset recovery (Pointers for Practitioners, 2014) and provided for translations into other languages (<http://star.worldbank.org/star/document/asset-recovery-under-german-law-english>), which was under revision at the time of review to account for the reform of asset recovery, as described under article 57(3) below). On the bilateral level, Germany has supported capacity building for national authorities, which are responsible for asset recovering. For example, Germany has long-term bilateral anti-corruption programs in Indonesia and Kenya. The latter program addresses the entire law enforcement chain with the goal to enhance the capabilities of state and non-state actors to effectively fight corruption and other misuse of power. The project has recently been redesigned on the basis of the recommendations of the UNCAC review of the 1st cycle. Furthermore, Germany is supporting the judiciary through technical assistance in a number of developing countries.

In addition, German Development Cooperation is putting increased emphasis on the fight against illicit financial flows. The Global Programme on Combatting Illicit Financial Flows was commissioned in 2015 and is running currently with 5 million Euros for three years. Through regional hubs in Latin America, Africa and the West Balkan, the program is supporting its partners in their efforts to counter tax evasion and avoidance, to fight money laundering and to strengthen law enforcement and mutual legal assistance. In collaboration with the German Ministry for Justice and Consumer Protection, these activities are to be expanded to the MENA region to meet its need for enhanced capacities in the area of asset recovery.

The fight against illicit financial flows also requires policy coherence. Therefore, the German government is actively working on this at national level through an inter-ministerial dialogue on illicit financial flows. Involved German ministries such as the Ministry of Finance, the Foreign Office, the Ministry of Interior, the Ministry of Justice and Consumer Protection, the Ministry for Economic Affairs and Energy and the Ministry for Economic Cooperation and Development meet regularly and exchange views on this subject.

Procedural aspects

Special units have been integrated into the police structures of the Federation and the Länder to cover responsibilities in the field of asset forfeiture. The officers in these units have been provided with several weeks of special training covering both legal and tactical aspects. These special units generally act at the request of the police unit responsible for investigating the specific crime.

The support given by the specialist units for asset investigations/forfeiture functions according to the following procedure:

Once the public prosecutor has launched proceedings, e.g. relating to the giving or receiving of bribes, and the relevant police unit has been entrusted with investigating the case, the special unit for asset investigation/forfeiture in the police organisation is brought on board.

In coordination with the relevant prosecutor's office, investigations into the assets of the relevant suspects are carried out with a view to identifying both incriminated and legal assets. To this end, use is made of the following sources of information:

- identification of bank accounts
- evaluation of monies coming into and leaving the accounts
- identification of real estate, vehicles, shareholdings
- survey of foreign assets via the networks of the ARO (Asset Recovery Office pursuant to EU Decision 2007/845/JHA of 6 December 2007) and CARIN (Camden Asset Recovery Inter-Agency Network)

Once the assets have been identified, calculations are made of the amount of the assets which the offender(s) has or have obtained as a result of the crime, taking into account the findings of the criminal investigations. Under German law, it is also possible to estimate the assets (Section 73d Criminal Code).

In consensus with the prosecutor's office, decisions on seizure (of incriminated assets) or attachment orders (for legal assets) are drafted. The execution of the court decisions on movable assets can be undertaken by the police on behalf of the prosecutors' offices. The attachment of claims (bank accounts, yields from loans, life insurance contracts, etc.) and the production of applications for the entry of mortgage attachments in the land register is undertaken by the prosecutors' offices.

This asset identification procedure is usually followed in all cases in which offenders or third parties have gained assets from the crime.

Asset recovery also takes place within the procedural framework of the Customs Investigation Service and is interdisciplinary. Each Customs Office has set up a special work area for recovery of assets.

Further, please cf. information under Article 46 in Germany's first cycle review report.

CODE OF CRIMINAL PROCEDURE

Section 111i Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall

expire as soon as this becomes part of the estate under administration. The collateral mortgage shall not expire for objects situate in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply mutatis mutandis to the lien on the collateral mortgage lodged pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefor are common knowledge.

Section 422

Separation of confiscation proceedings

Were the process of obtaining a decision on the confiscation pursuant to sections 73 to 73c of the Criminal Code to inappropriately impair or delay the decision on the other legal consequences of the offence, the court may separate the confiscation proceedings from the other proceedings. Regardless of the status reached in the proceedings, the court may order that the confiscation proceedings once again become part of them.

Section 423 Confiscation following the separation

(1) Should the court separate the confiscation proceedings from the other proceedings pursuant to section 422, it shall take the decision on the confiscation once the judgment in the main action has

become final. The court shall be bound by the decision handed down in the main action and by the facts as found by it, on which such decision is based.

(2) The decision as to confiscation shall be taken no later than six months after the judgment in the main action has become final.

(3) The court shall decide by order. The decision may be challenged by an immediate appeal.

(4) In derogation from subsection (3), the court may order that the decision is to be handed down as a judgment based on a hearing for oral argument. The court must issue the order pursuant to the first sentence if the public prosecutor's office or the party against whom the confiscation is directed files a corresponding request. Sections 324 and 427 to 431 shall apply mutatis mutandis; the regulations governing the main hearing shall have supplemental application mutatis mutandis.

Section 459h Compensation of the aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his successor in title. Section 111i shall apply mutatis mutandis.

CRIMINAL CODE

Section 73a

Expanded confiscation of the proceeds of offences from principal and secondary participants

(1) Where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts.

(2) Where the principal or secondary participant was involved in some other unlawful act prior to the confiscation having been ordered pursuant to subsection (1) and where a decision is to be taken once again regarding the confiscation of his objects, the court shall take account, in so doing, of the order already issued.

Section 76a Independent confiscation

[...]

(4) An object originating from an unlawful act, which has been seized in proceedings brought for the suspicion of a crime having been committed that is listed in the third sentence hereof, is to be confiscated independently also in those cases in which it is impossible to prosecute or sentence for the crime the person affected by the confiscation. Where the confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final; section 75 (3) shall apply mutatis mutandis. Crimes within the meaning of the first sentence are the following:

1. Under the present Code:

a) Preparation of a serious violent offence endangering the state pursuant to section 89a and financing of terrorism pursuant to section 89c subsections (1) to (4),

b) Forming criminal organisations pursuant to section 129 (1) and forming terrorist organisations pursuant to section 129a subsections (1), (2), (4), (5), in each case also read in conjunction with section 129b (1),

c) Controlling prostitution pursuant to section 181a (1), also read in conjunction with subsection (3),

d) Distribution, acquisition, and possession of child pornography in the cases governed by section 184b (2),

e) Human trafficking, forced prostitution, and forced labour professionally organised as a commercial undertaking by a crime gang pursuant to sections 232 to 232b as well as human trafficking organised by a crime gang for the purpose of work exploitation and exploitation while taking advantage of an unlawful deprivation of liberty pursuant to sections 233 and 233a,

f) Money laundering; hiding unlawfully obtained financial benefits pursuant to section 261 subsections 1, 2 and 4,

2. Under the Fiscal Code:

a) Tax evasion subject to the pre-requisites set out in section 370 (3) number 5, b) Professional, violent or organised smuggling pursuant to section 373,

c) Receiving, holding or selling goods obtained by tax evasion in the case of section 374 (2), 3. Under the Asylum Act:

a) Incitement to submit fraudulent applications for asylum pursuant to section 84 (3),

b) Commercial and organised incitement to submit fraudulent applications for asylum pursuant to section 84a,

4. Under the Residence Act:

a) Smuggling of foreigners into the federal territory pursuant to section 96 (2),

b) Smuggling of foreigners into the federal territory resulting in death as well as smuggling for gain and as organised gangs pursuant to section 97,

5. Under the Foreign Trade and Payments Act:

Crimes intentionally committed as set out in sections 17 and 18, 6. Under the Narcotics Act:

a) Crimes as defined by a regulation included by reference in section 29 (3), second sentence, number 1, subject to the pre-requisites set out therein,

b) Crimes pursuant to sections 29a, 30 (1) numbers 1, 2 and 4 as well as pursuant to sections 30a and 30b,

7. Under the Act on the Control of Weapons of War:

a) Crimes pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), in each case also read in conjunction with section 21,

b) Crimes pursuant to section 22a subsections (1) to (3), 8. Under the Weapons Act:

a) Crimes pursuant to section 51 subsections (1) to (3),

b) Crimes pursuant to section 52 (1) numbers 1 and 2 letters c and d as well as subsections (5) and (6).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

German authorities provide mutual legal assistance in several thousand criminal proceedings per year that are conducted by foreign criminal prosecution authorities. No statistical records are kept in this regard.

Germany established a guide to asset recovery and provided for translations into other languages (<http://star.worldbank.org/star/document/asset-recovery-under-german-law-english> - please note that the reform of asset recovery is not yet included in the brochure) – see article 57(3) below for further details.

Example for technical assistance:

Combating illicit financial flows, project by the Federal Ministry for Economic Cooperation and Development

The objective of the project is to improve conditions for the inter-sectorial, inter-state and inter-regional fight against illicit financial flows, both within and out of developing and emerging countries, at sector, national and regional levels. For details and results, see <https://www.giz.de/en/worldwide/39748.html>

Example for inclusion of civil society:

Transparency International Germany and the Friedrich Ebert Foundation organize a biennial joint seminar on "Prosecuting corruption", which brings together representatives from judicial practice, legal policy and academia. The seminar last took place in 2016 and focused on the reform of asset recovery, the Act to Combat Corruption (see response to question 8) and the liability of legal

persons for corruption offences. The Federal Ministry of Justice and Consumer Protection was represented and engaged in dialogue regarding the reform of asset recovery.

(b) Observations on the implementation of the article

The Act on International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen - IRG) forms the basis for mutual legal assistance, including requests related to asset recovery, and governs the conditions under which Germany may support criminal proceedings in another country. Provisions of international treaties take precedence before the provisions of the IRG to the extent that they have become directly applicable national law (Section 1 para. 3 IRG).

Section 59 of the IRG is a broadly-framed provision which enables investigative acts for tracing and freezing assets; in principle, this is allowed in the same scope as the mutual legal assistance which German courts or authorities could provide to one another.

Confiscation of assets based on a foreign decision is regulated in sections 48 et seq. Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system (Section 73 IRG).

In addition to the IRG, the provisions of general German criminal procedure law apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion, i.e. an adequate factual basis to allow the conclusion that an offence has been committed.

In order to strengthen and streamline the effective confiscation of assets, Germany passed new asset confiscation legislation in 2017 that comprehensively reformed existing provisions. It entered into force on 1 July 2017.

The requirements to be met for MLA to be granted are, inter alia, in the Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries (2012)¹⁰, the Guide to asset recovery (Pointers for Practitioners, 2014)¹¹, which was under revision at the time of review, as well as in UNODC's Mutual Legal Assistance Request Writer Tool¹².

Germany has signed a number of multilateral agreements which are designed to facilitate cross-border asset recovery (see art. 59). Pursuant to the German legal system, however, performance of mutual legal assistance is also possible on the basis of the IRG without an existing international law agreement, including through diplomatic or ministerial channels.

Assessment of the effective implementation of this article, and subsequent articles, in practice was hampered by the absence of statistics on asset recovery. It was explained by the German authorities in this regard that improving the system of statistics concerning mutual legal assistance has been on the agenda of German policy makers repeatedly. In practice, the vast majority of requests for mutual legal assistance in criminal matters is sent and executed by Germany through direct channels, in particular to and from the competent judicial authorities of other Member States of the European

¹⁰

<http://www.bmju.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf>

¹¹ <http://star.worldbank.org/star/document/asset-recovery-under-german-law-english>

¹² <http://www.unodc.org/mla/index.html>

Union (for Germany, these are the prosecution offices and courts of the federal states (*Bundesländer*)). According to the authorities this has proven to be an efficient system without the need to involve a central authority.

In the case of requests under this Convention, these are channelled through Germany's central authority, the Federal Office of Justice (*Bundesamt für Justiz*). However, Germany does not collect statistics on requests for mutual legal assistance at either federal or Länder level.

The reviewers take note of the response and the discussion on this matter in the country visit. While acknowledging that the majority of requests are addressed through direct communication among the competent judicial authorities, in particular among EU member States and on the basis of bilateral treaties, it is nonetheless observed that statistics with respect to requests made and received on the basis of this Convention were not available, even though these requests are channelled through the central authority.

German authorities explained that there have been no concluded cases where Germany was asked to return or dispose of assets based on this Convention, but that two requests based on the Convention had been received from countries in Latin America, following information spontaneously shared by the German authorities. These cases were pending at the time of review, and it remained to be seen if the German courts would apply the Convention or German law as a legal basis (see section 1(3) IRG). In this context the authorities explained that there were difficulties in applying the Convention, in part because it has not become directly applicable national law. However, it was confirmed that the Convention could be used as a legal basis for international cooperation on asset recovery although it has not become directly applicable national law. Moreover, Germany's practice is to cooperate whenever possible.

Based on the above, it is recommended that Germany continue efforts towards improving the system of data collection concerning requests for mutual legal assistance by exploring ways to compile relevant information and statistics. This would also be in line with art. 11 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union concerning the regular collection and maintenance of comprehensive statistics on the subjects of asset recovery.¹³

Additional observations are included under the relevant articles below.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

- 1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity*

¹³ A similar recommendation was made in the OECD's Phase 4 peer review of implementation of the OECD Anti-Bribery Convention, Recommendation 5 regarding international cooperation, which was adopted by the Working Group on 14 June 2018.

of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under Article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please see the information under Article 14.

(b) Observations on the implementation of the article

As described under article 14, Germany's AML regime requires obliged entities to identify their customers including the customers' beneficial owners (section 10 et seq. of the Money Laundering Act). The due diligence requirements shall be fulfilled when: a) establishing business relations; b) carrying out a transaction with a value of €15,000 or more outside an existing business relationship; c) there is a suspicion of money laundering or terrorist financing; d) there is doubt as to the veracity of the identity of the customer or the beneficial owner (section 10(3)). Accordingly, beneficial owner identification is required not only for high-value accounts or transactions (sections 10(1)(2) and 11(5)). Where there is a suspicion of money laundering or terrorist financing, a report must be sent to the financial intelligence unit pursuant to section 43 of the Money Laundering Act.

The specific scope of the above-mentioned measures must reflect the respective risk of money laundering or terrorist financing, especially with regard to the contracting party, the business relationship or transaction. To this end, under section 4(1) and (2) and section 5 of the Money Laundering Act, obliged entities must carry out a risk assessment in order to identify the company-specific risks of money laundering and terrorist financing and must base their internal safeguards, as well as the type and scope of customer identification, on this assessment. Furthermore, when evaluating risks in an individual case, they must take into account at least the purpose of the account

or the business relationship, the amount of assets paid in by the customer or the scope of the transactions carried out, as well as the regularity or duration of the business relationship.

Enhanced due diligence is required, inter alia, in respect of “politically exposed persons” (PEPs), their family members or persons known to be close associates, as detailed in section 15(3)(1a) and section 15(4) of the Money Laundering Act; accordingly, adequate measures are to be taken to establish the source of funds involved in the business relationship or transaction and enhanced, ongoing monitoring of the business relationship is required.

For applicable penalties, see art. 14(1)(a) above.

Germany is in compliance with the provision.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 15(2) of the Money Laundering Act, obliged entities have to fulfil stricter due diligence obligations if they determine, as part of a risk analysis or in an individual case, taking into account the risk factors specified in annexes 1 and 2 to the Money Laundering Act, that a higher risk of money laundering or terrorist financing may exist. The obliged entities must specify the precise scope of the measures to be adopted in accordance with the respective higher risk of money laundering or terrorist financing.

Pursuant to section 15(3) of the Money Laundering Act, a higher risk shall be deemed to exist in particular where

1. the contracting party of the obliged entity or the beneficial owner is

- a. a politically exposed person, a family member or a person known to be a close associate, or
 - b. a natural or legal person located in one of the third countries identified by the European Commission as having a high risk pursuant to Article 9 of Directive (EU) 2015/849;
2. the transaction in question, in relation to comparable cases,
 - a) is particularly complex or large,
 - b) proceeds in an unusual manner or
 - c) takes place without any apparent economic or lawful purpose, or
 3. the financial institutions or financial companies are in a cross-border correspondent banking relationship with respondent institutions established in a third country or, subject to an assessment by the obliged entities as a higher risk, in a country of the European Economic Area.

Germany's Federal Financial Supervisory Authority (BaFin), working together with the German Banking Industry Committee, has developed "Interpretative notes and guidance on the prevention of money laundering, terrorist financing or other criminal offences". These provide financial institutions with detailed guidance on how the due diligence requirements under anti-money-laundering rules are to be fulfilled, including the identification of customers and the clarification of beneficial owners, as well as the treatment of PEPs. These interpretative notes and guidance are were revised by BaFin in the light of the new version of the Money Laundering Act that came into force on 26 June 2017. An updated version was published in December 2019.

Furthermore, BaFin published on its website the "Joint Guidelines under Art. 17 and 18 (4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit institutions should consider when assessing the money laundering and terrorist financing risk associated with individual and business relationships and occasional transactions". These guidelines were produced and published by the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs). BaFin took active part in the drafting of these guidelines. The guidelines aim to support a common understanding by firms and competent authorities across the EU, of what risk-based approach to AML/CFT entails and how it should be applied. The Guidelines set examples where firms must apply enhanced due diligence measures and examples where certain factors may contribute to increasing risks (inter alia customer risk factors).

BaFin also regularly informs banks via circulars about countries that have been listed by the European Commission and the Financial Action Task Force (Public Statement and "Improving Global AML/CFT Compliance: On-going Process" Document) as having inadequate systems to combat money laundering and terrorist financing. BaFin provides information about which countries must be subjected to stricter due diligence obligations by institutions when conducting transactions with these countries.

According to section 15 (3) (1b) of the Money Laundering Act, obliged persons have to apply enhanced customer due diligence and certain additional safeguard measures with respect to business relationships and transactions if the country is listed by the European Commission or listed by the FATF (section 15 (8) of the Money Laundering Act).

The German federal states (Länder), which are responsible for the supervision of the non-financial sector, have also drawn up a series of guidance notes (available online), which are intended to assist persons trading in goods, real estate agents and other obliged entities in the non-financial sector in fulfilling their due diligence obligations.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

Germany is in compliance with the provision.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The “Guidelines - Sound management of risks related to money laundering and financing of terrorism”, page 10, par. 46 require banks to have systems in place to detect unusual or suspicious

transactions or patterns of activity. In establishing scenarios for identifying such activity, a bank should consider the customer's risk profile developed as a result of the bank's risk assessment, information collected during its CDD efforts, and other information obtained from law enforcement and other authorities in its jurisdiction. For example, a bank may be aware of particular schemes or arrangements to launder proceeds of crime that may have been identified by authorities as occurring within its jurisdiction. Section 25 (h) of the Banking Act.

Germany requires that credit institutions shall operate and update appropriate IT systems which enable them to identify business relationships and individual transactions in payment operations that appear dubious or unusual in the light of knowledge of methods of money laundering, terrorist financing and other criminal actions. This requirement is assessed by BaFin within its supervisory activities (on-site and off-site inspections).

Please see the information under Article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

German authorities notify financial institutions, where appropriate, of legal persons or natural persons, to whose accounts institutions are expected to apply enhanced scrutiny. For example, the FATF "Specific Risk Factors in the Laundering of Proceeds of Corruption" were transmitted to financial institutions, as well as risk indicators for gambling, as confirmed during the country visit.

Based on the information provided, Germany is in compliance with the provision.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 8(1) of the Money Laundering Act, obliged entities must record and retain

1. the data and information collected during the course of fulfilling due diligence requirements

a) regarding contracting parties, persons acting on behalf of the contracting parties, if applicable, and beneficial owners,

b) on business relationships and transactions, especially transaction records, to the extent that they could be necessary for investigating transactions,

2. sufficient information about the performance and about the results of the risk assessment pursuant to section 10(2), section 14(1) and section 15(2) of the Money Laundering Act and about the appropriateness of the measures taken on the basis of these results,

3. the results of the investigation pursuant to section 15(5)(1) of the Money Laundering Act and

4. explanations of, and a comprehensible justification for, the results of the evaluation of a situation with respect to the notification obligation pursuant to section 43(1) of the Money Laundering Act.

The records pursuant to section 8(1)(1)(a) include records of the measures taken to identify the beneficial owners with regard to legal persons as defined in section 3(2).

The records must be retained for five years (section 8(4) of the Money Laundering Act), in accordance with Article 40 of the 4th EU Anti-Money Laundering Directive and FATF Recommendation 10.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please see the information under Article 14.

(b) Observations on the implementation of the article

Records must be retained for five years (section 8(4) AMLA), in accordance with article 40 of the 4th EU Anti-Money Laundering Directive and FATF Recommendation 10.

Germany is in compliance with the provision.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 33(1) No. 6 of the German Banking Act, the German Federal Financial Supervisory Authority (BaFin) must refuse authorization if an institution's main office and, to the extent that it is a legal person and not a branch within the meaning of section 53, its legal domicile are not located in Germany.

A “shell bank”, as defined in article 3(10) of Directive 2005/60/EC and the FATF Recommendations, would not obtain the necessary authorization to operate in Germany required under section 32 Banking Act, due to the fact that it does not have physical presence in the country.

According to section 37 of German Banking Act, BaFin will intervene against unauthorized or prohibited business. If banking business is carried out or financial services are provided without the required authorization, BaFin can order the entity and the members of its governing bodies to cease business operations immediately and to settle the business without delay. It may issue instructions for the settlement of the business and appoint a suitable person as the liquidator.

Furthermore, even the establishment or maintenance of a correspondent banking relationship or any other business relationship with a shell bank within the meaning of article 3(10) of Directive 2005/60/EC is explicitly prohibited according to section 25m No. 1 of German Banking Act.

Pursuant to section 25m of the German Banking Act (Kreditwesengesetz), the following are prohibited:

1. the establishment or maintenance of a **correspondent banking relationship** or any other business relationship with a shell bank as defined in section 1(22) of the Money Laundering Act and

2. the setting-up and management of these types of accounts in the name of the institution or on behalf of third-party institutions, where the customers of the institution or of the third-party institutions can operate the accounts independently for the purpose of conducting their own transactions.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

In order to conduct banking operations in Germany, a physical presence is required (sections 32-33, Banking Act).

Section 25m of the Banking Act further prohibits, inter alia, the establishment or maintenance of correspondent banking relationships or any other business relationships with a “shell bank”, as defined in section 1(22) of AMLA.

Germany is in compliance with the provision. This conclusion is consistent with the evaluation of FATF in 2010.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) Members of the Federal Parliament (Deutscher Bundestag)

Disclosure of remunerated side activities and other outside ties with respect to Members of Parliament (MPs) is governed by Sections 44a and 44b of the Members of the Bundestag Act (Abgeordnetengesetz -1977, most recently amended 2017) and the Code of Conduct for Members of the Bundestag in Annex 1 of the Rules of Procedure of the German Bundestag (Geschäftsordnung des Deutschen Bundestages: Anlage 1: Verhaltensregeln für Mitglieder des Deutschen Bundestages - 1986, most recently amended 2014) and Implementing Provisions to the Code of Conduct issued by the President of the Bundestag pursuant to Rule 1(4) of the Code of Conduct (Ausführungsbestimmungen zu den Verhaltensregeln für Mitglieder des Deutschen Bundestages - 2013).

In the beginning of an electoral term all MPs receive information on their disclosure obligations (a brochure with information about subjects to declare to the President of the Bundestag). Along with the brochure further information is handed out depending on whether or not the MP has been elected for the first time or reelected:

- MPs elected the first time receive an additional form by which they declare potential conflicts of interests according to the provisions of the Code of Conduct. They are obliged to submit the completed form within three months.
- Reelected MPs receive an extract of Bundestag's database on declarations pursuant to Rule 3 of the Code of Conduct. They are compelled to either correct or include information or to simply sign and send it back within three months.

Further information on disclosure obligations of MPs is provided for via the Bundestag's administrative service by telephone or email, on the website and the intranet of the Bundestag. According to Rule 7 of the Code of Conduct MPs are entitled and obliged to ask for advice in cases of doubt regarding the scope of their obligations under the Code of Conduct. Dedicated counsellors in Bundestag's administrative services provide such advice in a detailed manner.

Officials of Bundestag's Administrative Services check if submitted declarations are complete. If the information given is incomplete or ambiguous they notify the MP concerned and pursue clarification. Eventually, submitted information subjected to publication pursuant to Rule 3 of the Code of Conduct is published.

If there are sufficient indications that the duty to submit a correct and complete declaration within the relevant deadline has not been complied with, the President of the Bundestag, according to Rule

8 of the Code of Conduct, will prompt a statement from the MP concerned and then set in motion an investigation of the case. In doing so the President of the Bundestag is informed and assisted by the aforementioned counsellors.

The focus of disclosure is primarily on business activities and potential conflicts of interests regarding positions held. Nevertheless, received gifts, donations and sponsored travels are to be declared, too. Namely:

- Interests held in a private corporation or partnership, if this results in more than 25 percent of the voting rights, have to be declared (Rule 1(2) no. 6 of the Code of Conduct in conjunction with No. 7 para. 2 of the Implementing Provisions).
- Assets and Liabilities are not required to be declared.
- Income: According to Rule 1(2) no. 1 of the Code of Conduct, remunerated activities must be declared. Income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).
- Occupations in expert opinions and writing or lecturing activities have to be declared only if the income agreed upon exceeds € 1,000 per month or € 10,000 per year (Rule 1(2) no. 1 of the Code of Conduct). In this case income has to be declared, too (Rule 1(3) of the Code of Conduct).
- Activities as a member
 - o of a board of management, supervisory board, administrative board, advisory board or other body of a company or of an enterprise operated in another legal form (Rule 1(2) no. 2 of the Code of Conduct),
 - o of a board of management, supervisory board, administrative board, advisory board or other body of a corporation or institution under public law (Rule 1(2) no. 3 of the Code of Conduct),
 - o of a board of management or other managerial or advisory body of a club, association or similar organisation, or of a foundation of not exclusively local importance (Rule 1(2) no. 4 of the Code of Conduct)

must be declared regardless of whether the activity is remunerated or not. If the activity in question is remunerated, income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).

- The existence or making of agreements whereby the Member of the Bundestag is to be assigned certain activities or receive pecuniary benefits during or after membership of the Bundestag (Rule 1(2) no. 5 of the Code of Conduct) must be declared regardless of whether

the activity is remunerated or not. If the activity in question is remunerated, income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).

- Gifts received by MPs as a guest or host in connection with their mandate have to be notified and handed to the President of the Bundestag if their material value exceeds € 200. Members may apply to retain the gift in exchange for equivalent reimbursement to the Federal Cash Office (Rule 4(6) of the Code of Conduct, No. 11 of the Implementing Provisions).
- Donations to support political activities of MPs (including campaign contributions) must be declared if the value of the benefit individually exceeds € 5,000 or if individual donors' benefits fall short of this threshold but exceed it in total within a year (Rule 4(1), 4(2) of the Code of Conduct). If the aggregated value of donations exceeds € 10,000 the declarations are published pursuant to Rule 4(3) of the Code of Conduct.
- Gifts of pecuniary value by third parties to support the political activity of MPs (benefits) received in connection with
 - o interparliamentary or international activities or participation in events to state the viewpoints of the Bundestag (Rule 4(5) no. 1 of the Code of Conduct) or
 - o participation in events for the purpose of imparting political information, presenting the positions of the German Bundestag or of its parliamentary groups or representing the German Bundestag (Rule 4(5) no. 2 of the Code of Conduct,

such as reimbursements of travel, accommodation and subsistence expenses, must be declared (i.e. name and address of third party sponsor, value) if the value of the benefit individually exceeds € 5,000 or if individual donors' benefits fall short of this threshold but exceed it in total within a year (Rule 4(5) in conjunction with Rule 4(2) of the Code of Conduct). If the aggregated value of donations exceeds € 10,000 the declarations are published pursuant to Rule 4(5) in conjunction with Rule 4(3) of the Code of Conduct.

- Private gifts are exempt from declaration.

For the exercise of his or her mandate, a Member of the Bundestag may not accept any allowance or other pecuniary benefit besides those which the law provides for. In particular gifts which are only granted in the expectation that the interests of the donor will be represented and asserted in the Bundestag must not be accepted (Section 44a(2) of the Members of the Bundestag Act). Likewise donations for their political activity evidently made in the expectation of, or in return for, some specific financial or political advantage must not be accepted (Rule 4(4) of the Code of Conduct in connection with Section 25(2) of the Political Parties Act).

In cases where Ministers are also MPs, they are subject to the same provisions as MPs.

Public accessibility of disclosed information:

Pursuant to Section 44a(4) of the Members of the Bundestag Act in conjunction with Rule 3 of the Code of Conduct, declared information is publicly available.

The information subjected to publication by the Code of Conduct is published in the Official Handbook and on the website of Deutscher Bundestag, <http://www.bundestag.de/en/members>.

Public access to information concerning disclosure system functioning

Citizens are enabled to obtain public records by the Freedom of Information Act (Informationsfreiheitsgesetz 2005, most recently amended 2013). As Rule 3 of the Code of Conduct sets the boundaries for publicly available information, such entitlement is restricted correspondingly.

Admonishments, which are issued by the President of the Bundestag in less serious cases, or cases of minor negligence (e.g. failure to declare information in due time), are exempt from publication. In more severe cases of non-compliance a statement by the Presidium of the Bundestag stating that the MP concerned has failed to meet his or her duties by the Code of Conduct is published. The Presidium may as well decide to impose a coercive fine (Rule 8 of the Code of Conduct).

b) Members of the Federal Government

Relevant provisions are contained in the Act governing the legal status of the members of the Federal Government (Bundesministersgesetz 1953, most recent amendment: 2015; <http://www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf>).

Type of information disclosed:

- **Positions and Incomes:** Members of the Federal Government may not hold any paid outside positions. Exemptions can be made by the Federal Government in limited exceptional cases. Since 25 July 2015, new legal provisions, regulating cooling-off periods for members of the Federal Government, as well as for Parliamentary State Secretaries, are in force. The purpose of the Act is to avoid conflict of interest and to protect the trust of the general public in the integrity of the Federal Government by avoiding an outward impression that the administration of these office holders is biased by the expectation of subsequent career opportunities, and by precluding these office holders from privately benefitting from knowledge gained in office after the termination of such office. The Act provides that incumbent and former members of the Federal Government, as well as Parliamentary State Secretaries, who intend to take any occupation outside the public service within a period of

18 months after the termination of office, have to declare this to the Federal Government. The employment or other occupation may be prohibited if, by taking it, public interests may be negatively affected. Such refusal generally lapses after one year, but it may be extended to up to 18 months in cases where there is serious interference with public interests (section 6b (2)). The Federal Government would take its decision upon recommendation of a consultative body, whose members had been in functions at the top of state institutions or non-governmental organizations, or who have gained experience from holding an important political office. If the taking of the intended occupation is prohibited, the affected person has a right to a transitional allowance for at least the duration of the cooling off period. For additional detail on the cooling-off period see art. 8(5).

- Gifts: Members of the Federal Government have to declare gifts received in relation to their office to the Federal Government. The Federal Government decides on the disposal of the gifts.

c) Civil Servants

As mentioned under Art. 8(5) “II. Investments and assets disclosure requirements”, civil servants are generally not required to disclose their assets to the revenue authorities or to their employer, as this would conflict with constitutional law.

However, a disclosure obligation exists concerning financial and non-financial interests as well as employment relationships that may give rise to a conflict of interest, as described below. Relevant provisions are contained in the Federal Civil Service Act (2009, most recent amendment 2015) as well as in the Administrative Procedure Act (1976, most recent amendment 2003) and the Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration including the Anti-Corruption Code of Conduct annexed to the Directive (2004).

When taking the oath of office or agreeing to abide by the requirements of their position, staff members shall be informed of the risk of corruption (including conflict of interests) and the consequences of corrupt behavior. In addition, all staff members should be given an anti-corruption code of conduct, which provides inter alia for disclosure requirements in cases of possible conflict of interests. Staff members working in or transferred to areas especially vulnerable to corruption are given additional, job-specific instruction at regular intervals.

Type of information disclosed:

- Properties, Investment and Liabilities, Incomes, Gifts and Travel: If a civil servant recognizes, given a specific official task, that his/her obligations and private interests or the interests of third parties to whom he/ she feels obliged might come into conflict, the public official is under a duty to inform his/her supervisor so that he/she may respond appropriately (e. g. by releasing the public official from activities in a specific instance); such obligations and interests can include properties, investments, liabilities, incomes, gifts and travels.

- **Positions and Income:** Civil servants may only take up outside activities with prior approval of their office. When seeking approval, civil servants have to declare the income to be received from the outside activities; in addition, civil servants have to declare any changes in their income from outside activities. 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) 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). In case of a conflict of interest, staff may be prohibited from specific secondary employment.
- **Gifts:** Civil servants are prohibited from accepting gifts or any other in-kind advantages, irrespective of their value. If they should receive a gift, civil servants have to immediately notify the head of their office and declare the receipt of the gift.

Disclosed information is not publicly accessible.

The disclosure requirements for civil servants apply mutatis mutandis to members of the judiciary.

MEMBERS OF THE BUNDESTAG ACT (ABGEORDNETENGESETZ)

Section 44a

Exercise of the mandate

- (1) The exercise of the mandate of a Member of the Bundestag shall be central to his or her activity. Without prejudice to this obligation, activities of a professional or other nature alongside the exercise of the mandate are permissible in principle.
- (2) For the exercise of his or her mandate, a Member of the Bundestag may not accept any consideration besides those for which the law provides or any other pecuniary benefit. In particular, it is inadmissible to accept money or allowances with monetary value which are only granted in the expectation that the interests of the payer will be represented and asserted in the Bundestag. It is also inadmissible for a Member of the Bundestag to accept money or allowances with monetary value if he or she does not render an appropriate service in return. The foregoing provisions shall be without prejudice to the receipt of donations.
- (3) Considerations or pecuniary benefits which are inadmissible under paragraph 2 above or their monetary equivalent shall be payable to the federal budget. The President shall assert this entitlement by means of an administrative act, provided that a period of three years has not elapsed since the receipt of the consideration or pecuniary benefit. Loss of membership of the Bundestag shall not affect this entitlement. Details shall be regulated in the Code of Conduct pursuant to section 44b of this Act.
- (4) Activities predating the acceptance of the mandate and activities concurrent with the exercise of the mandate which may indicate combinations of interests with implications for the exercise of

the said mandate shall be disclosed and published in accordance with the Code of Conduct (section 44b). If disclosable activities or income are not reported, the Presidium may impose an administrative penalty of up to half of the annual Member's remuneration. The President shall affirm the penalty by means of an administrative act. The foregoing provisions shall be without prejudice to section 31 of the present Act. Details shall be regulated in the Code of Conduct pursuant to section 44b of this Act.

(5) In the case of a non-minor breach of order or failure to respect the dignity of the Bundestag during its sittings, the President may impose a fine of 1,000 euros on a Member of the Bundestag. Any repetition shall result in an increase in the fine to 2,000 euros. In the case of a serious breach of order or failure to respect the dignity of the Bundestag, a Member may be ordered to leave the Chamber for the remainder of the sitting and suspended from taking part in sittings of the Bundestag and meetings of its bodies for up to 30 sitting days. Details shall be regulated in the Rules of Procedure of the Bundestag.

Section 44b Code of Conduct

The Bundestag shall lay down its own Code of Conduct, which must include provisions relating to

1. cases in which there is an obligation to disclose activities pursued prior to membership of the Bundestag and activities pursued concurrently with the exercise of the mandate;
2. cases where there is a duty to disclose the type and amount of income where a specified minimum amount is exceeded;
3. the duty to keep separate account and disclose donations where specified minimum amounts are exceeded;
4. the publication of particulars in the Official Handbook and on the Internet;
5. procedure, as well as the rights and duties of the Presidium and President, in respect of decisions under section 44a(3) and (4) of this Act.

Please find the Code of Conduct for Members of the Bundestag as well as the Implementing Provisions attached.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Admonishments are being issued as a matter of routine. As such information is exempt from disclosure, there are no statistics on this issue. The latest statement indicating that a Member of the Bundestag has neglected his duties under the Members of the Bundestag Act has been published as a printed paper on April 11th, 2017 (BT-Drs. 18/11920).

(b) Observations on the implementation of the article

Germany has not established a specialized financial disclosure system. The disclosure requirements applicable to members of the Bundestag, federal government employees, civil servants and employees of the public service are primarily directed at the disclosure of interests, including certain

financial interests, outside activities, employment, donations, and substantial gifts or benefits from which a conflict of interest may result with respect to their public functions, as discussed extensively under para. 5 of article 8. While certain financial interests are included for this purpose¹⁴, as foreseen under article 8(5), there is no system of financial declarations, that is an obligation to declare assets and liabilities, for purposes of detecting unlawful wealth.

Germany has considered adopting financial declaration requirements for appropriate public officials¹⁵, but opted for a declaration system focused on the disclosure of interests, including certain financial interests such as income from secondary activities and donations, commensurate with the country's assessed corruption risk profile.

The observations under para. 5 of article 8 are referred to.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

During the preparations for the ratification of the Convention, consideration was given to introducing a corresponding requirement for public officials as outlined under this provision. The

¹⁴ For example, members of the Bundestag are required to declare income from secondary employment, and employees of the public service are also required to declare their secondary employment. Also, Bundestag members declare shareholdings in enterprises if they hold 25% of the voting rights in a company, but not other financial information, such as real estate and other significant property, income from investments, business contracts with State authorities, and other significant assets and liabilities. See art. 8(5) above. See also the Evaluation Report of Germany adopted by GRECO in the fourth evaluation round at its 65th Plenary Meeting (Strasbourg, 6-10 October 2014: <https://rm.coe.int/16806c639b>).

¹⁵ As mentioned under Art. 8(5) "II. Investments and assets disclosure requirements", civil servants are generally not required to disclose their assets to the revenue authorities or to their employer, as this would conflict with constitutional law. See also, Germany's fourth evaluation round compliance report adopted by GRECO at its 75th Plenary Meeting (Strasbourg, 20-24 March 2017).

outcome of these deliberations was that no use is to be made of the provisions of article 52 paragraph 6.

In terms of national law, German tax authorities are obliged to report suspected cases of bribery to public prosecutor's offices. The detection of suspected bribery payments during tax audits triggers a large number of the criminal investigations conducted by public prosecutor's offices.

In 2014, the Federal Republic of Germany committed itself to the automatic exchange of financial account information by signing the Multilateral Competent Authority Agreement for the Common Reporting Standard (CRS). The first exchange of information for the 2016 reporting period began on 30 September 2017. The multilateral agreement came about largely as the result of Germany's initiative. By now, over 100 countries have committed themselves to the CRS. The national implementation of the agreement was carried out by means of the Act on the Automatic Exchange of Financial Account Information in Tax Matters (Finanzkonten-Informationsaustauschgesetz, or FKAustG).

German reporting financial institutions are obliged to collect the data listed in the [FKAustG](http://www.gesetze-im-internet.de/fkaustg/index.html) (<http://www.gesetze-im-internet.de/fkaustg/index.html> in German) for every reporting account, as of the beginning of the 2016 calendar year. They are obliged to send this data, or have this data sent by a third-party provider, in officially defined data sets to the Federal Central Tax Office (BZSt) - which was defined as the competent authority - by 31 July of the following calendar year.

The data that is to be reported by the financial institutions to the Federal Central Tax Office includes:

section Date and place of birth

section Address

section Account number

section The name and identifying number of the reporting German financial institution

section Account balance or value as of the end of the relevant calendar year

section In the case of custodial accounts, the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, and credited to the account

section In the case of depository accounts, the total gross amount of interest that was paid or credited to the account

section In the case of all other types of account, the total gross amount paid or credited to the account holder with respect to the account and with respect to which the reporting German financial institution is the obligor or debtor. The aggregate amount of any redemption payments made during the reporting period is to be included.

section In the case of custodial accounts, the total gross proceeds from the sale or redemption of financial assets paid or credited to the account with respect to which the German financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder

The submitted data are forwarded by the BZSt to the CRS partner countries by 30 September of the calendar year following the calendar year to which the data refer.

In return, the BZSt receives data from the CRS partner countries regarding the foreign reporting accounts whose holders are persons who are tax residents of Germany. The information is forwarded to the responsible revenue authorities of the Länder, who are responsible for carrying out the taxation procedure.

A reporting German financial institution as defined in the FKAustG is a

section financial institution established in Germany (but not its branches located abroad)

section as well as branches of a financial institution established in a foreign country that are located in Germany.

A financial institution is defined as an institution which is active in the Federal Republic of Germany as

section a custodial institution (e.g. a bank that administers a customer's securities account),

section a depository institution (e.g. a bank that manages current or savings accounts on behalf of its customers),

section an investment entity (e.g. investment funds) or

section a specified insurance company (e.g. companies that sell life insurance policies).

The financial information that must be reported includes various types of investment income (including interest, dividends, income from certain insurance contracts and other similar income), as well as account balances and proceeds from the sale of financial assets.

Reportable accounts include the accounts of reportable natural persons and legal persons (including trusts and foundations). The standard also includes the obligation to check passive entities and, where appropriate, provide notification of the natural persons who exercise ultimate effective control over these entities.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the implementation of the CRS underlying the automatic exchange of financial account information, the establishment of domestic reporting channels and the overall improvement of data quality have been a priority in recent years. The Federal Central Tax Office (Bundeszentralamt für Steuern – BZSt), which is responsible for the relevant audits, took the opportunity to work with financial institutions to remedy the causes of inadequate data quality. As the implementation of the CRS progressed, audit activities were gradually stepped up. In 2018, the BZSt already carried out 157 internal service examinations. In 2019, the number of in-house audits was 98 and fines were imposed in three cases. Since 2019, field service audits have also been carried out by the BZSt, which also checks compliance by financial institutions with the due diligence obligations imposed by the CRS. Due diligence measures include the identification of the account holder.

(b) Observations on the implementation of the article

Without prejudice to AML measures, including due diligence requirements for domestic and foreign politically exposed persons, Germany has considered but does not require public officials

to disclose their interest in or control over foreign financial accounts.

Germany's Federal Central Tax Office (BZSt) receives data on foreign reporting accounts whose holders are persons who are tax residents of Germany from partner countries through the Common Reporting Standard (CRS) for the automatic exchange of financial account information. The Federal Republic of Germany signed the Multilateral Competent Authority Agreement for the CRS in 2014.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under German law, states - like other legal persons - have legal capacity and thus have the capacity to be parties to court proceedings within the meaning of section 50 of the Code of Civil Procedure [Zivilprozessordnung, ZPO]. Foreign legal persons with legal capacity under their own country's law are entitled to assert their claims before German civil courts.

Code of Civil Procedure

Section 50 (Capacity to be a party to court proceedings)

(1) Any person having legal capacity shall also have the capacity of being a party to court proceedings.

(2) An association having no legal capacity may sue and be sued; in a legal dispute, the association shall have the same position as an association having legal capacity.

In addition, please see the information under Art. 53, subparagraph (b)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The capacity of States to be parties to court proceedings is consistent with the rulings of the Federal Court of Justice.

See for example Urteil vom 13. Juli 1972 - III ZR 29/70, NJW 1972, 1862.

(b) Observations on the implementation of the article

Under German law, states and other legal persons (both domestic and foreign) have legal capacity to be parties to court proceedings (section 50 ZPO). The capacity of States to be parties to court proceedings is consistent with the rulings of the Federal Court of Justice.

Germany recognises the rights of States to “initiate civil action in its courts to establish title to or ownership of property”. A recent court judgment was cited to support this conclusion. Germany is in compliance with the provision.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Independently of involvement of the criminal prosecution authorities, every person, including a legal person, damaged by a criminal offence is free to take action under civil law, e.g., to assert claims for payment of compensation for damages incurred due to a criminal offence committed by the defendant. Assets that have been taken from public funds due to a criminal offence may, pursuant to section 823 (2) Civil Code (Bürgerliches Gesetzbuch/BGB) in conjunction with a statute intended to protect another person, for example breach of trust pursuant to section 266 Criminal Code, be returned as compensation for damages. For the substantive law requirements for

compensation, please see the information under Art. 35 of the Convention (question 140 of Germany's self-assessment checklist for the first review cycle; https://www.unodc.org/documents/treaties/UNCAC/SA-Report/2016_09_27_Germany_SACL.pdf).

The injured person must lay out the facts of the case to the court; the court does not investigate ex officio. As such, the injured person is primarily responsible for substantiating the case and providing evidence as to whether and which incriminated assets exist, or how other damages were incurred by way of a criminal offence.

Therefore, suing possible criminal offenders or holders of illicit assets under civil law offers the advantage that the injured person is in control of the proceedings and may assert his claims personally and directly. The German courts specifically have jurisdiction if the defendant has his usual place of residence or permanent residence in Germany. Under certain preconditions, pursuant to section 23 of the Code of Civil Procedure (Zivilprozessordnung - ZPO), the German court in whose district the assets of the defendant are located has jurisdiction. Claims of more than €5,000 require representation before the court by an attorney.

As soon as an enforceable judgment has been obtained from the court, the plaintiff can initiate compulsory execution. However, execution within Germany presupposes that assets of the defendant are located there. If the plaintiff fears that the defendant will move his assets to an undisclosed location in the course of the civil proceeding and therefore prevent a future execution, he may move for seizure by way of injunctive relief pursuant to sections 916 et seq. ZPO. Claims to seizure (section 916 et seq. ZPO) and injunctions (section 935 et seq. ZPO) may be issued if a claim and a reason for such measures can be substantiated. The latter means that a showing of special urgency is necessary because otherwise the claims are in danger of being thwarted.

Only a summary hearing takes place; this is based on the currently available facts. In this proceeding, the moving party is obligated to substantiate its claim. In contrast to criminal proceedings, the court does not investigate ex officio.

Code of Civil Procedure

Section 23

Specific jurisdiction of assets and of an object

For complaints under property law brought against a person who has no place of residence in Germany, that court shall be competent in the jurisdiction of which assets belonging to that person are located, or in the jurisdiction of which the object being laid claim to under the action is located. Where claims are concerned, the debtor's place of residence and, in cases in which an object is liable for the claims as collateral, the place at which the object is located shall be deemed to be the location at which the assets are located.

Section 916 Claim to seizure

(1) Seizure is a remedy serving to secure compulsory enforcement against movable or immovable property for a monetary claim or a claim that may evolve to become a monetary claim.

(2) The admissibility of a seizure is not ruled out by the fact that the claim is subject to conditions or has a fixed maturity date, unless the claim so subject to conditions does not have any current asset value in light of the remote possibility of the condition in fact occurring.

Section 917

Grounds for a writ of seizure to be issued in the case of seizure against the assets of a potential debtor

(1) Seizure is an available remedy wherever there is the concern that without a writ of pre-judgment seizure being issued, the enforcement of the judgment would be frustrated or be significantly more difficult.

(2) It is to be deemed sufficient grounds for a writ of seizure to be issued if the judgment would have to be enforced abroad and reciprocity has not been granted. No grounds for a writ of seizure need be given if the seizure is being implemented solely by way of securing the compulsory enforcement against a ship.

Section 918

Grounds for a writ of seizure to be issued in the case of a debtor being arrested in person

Arresting a debtor in person is an available remedy only if this is required in order to ensure compulsory enforcement against the property of the debtor when such compulsory enforcement is at risk.

Section 919

Court responsible for the seizure

Both the court before which the main action is being pursued as well as the local court (Amtsgericht, AG) in the district of which the object to be seized or the person whose personal liberty is to be limited are situate or resident shall be responsible for issuing the writ of seizure.

Section 920 Request for writ of seizure

(1) The request is to set out the designation of the claim, specifying the amount of money or the monetary value, as well as the grounds for a writ of seizure to be issued.

(2) The claim and the grounds for a writ of seizure to be issued are to be demonstrated to the

satisfaction of the court.

(3) The request may be recorded with the registry for the files of the court.

Section 921

Decision regarding the request for a writ of seizure

Insofar as the claim or the grounds for a writ of seizure to be issued have not been demonstrated to its satisfaction, the court may issue a writ of seizure, provided that security is provided for the disadvantages that the opponent risks suffering. The court may make the issuance of the writ of seizure dependent on security being provided even if the claim and the reasons for a writ of seizure to be issued have been demonstrated satisfactorily.

Section 922

Judgment ordering seizure and order of seizure

(1) The decision regarding the request shall be delivered by a final judgment if the matter is dealt with in a hearing for oral argument, and in all other cases by a court order. Where a decision ordering the seizure is to be enforced abroad, the decision is to cite the reasons on which it is based.

(2) The party that has obtained the court order of seizure is to have that order served.

(3) The court order dismissing the request for a writ of seizure or declaring that security must first be provided shall not be communicated to the opponent.

Section 923 Authorisation to avert enforcement

The writ of seizure is to determine an amount of money that, if lodged, will suspend the enforcement of the seizure and will entitle the debtor to file a petition for the enforced seizure to be set aside.

Section 924 Opposition

(1) Filing an opposition against the court order directing the seizure is an available remedy.

(2) In its opposition, the party filing it is to demonstrate the grounds that it intends to assert in order for the seizure to be set aside. The court is to schedule a hearing for oral argument ex officio. Where the court responsible for the seizure is a local court (Amtsgericht, AG), the opposition shall be lodged in writing, or it is to be recorded with the registry for the files of the court, citing the grounds that are to be asserted as the basis on which the seizure is to be set aside.

(3) Lodging an opposition will not suspend the enforcement of the seizure. However, the court may issue an interim order pursuant to section 707; section 707 (1), second sentence, shall not be applied.

Section 925

Decision following an opposition having been lodged

- 1) In cases in which an opposition is lodged, a final judgment is to decide on whether or not the seizure is lawful.
- (2) The court may confirm the seizure as a whole or in part, may modify or repeal it, and may also make the confirmation, modification, or repeal dependent on security being provided.

Section 926

Order as to proceedings having to be brought in the courts

- (1) If the main action is not pending, the court responsible for the seizure is to order, upon corresponding application being made and without holding a hearing for oral argument, that the party having obtained the writ of seizure is to bring proceedings in the courts within a period to be determined.
- (2) Should this order not be complied with and a corresponding application be made, the seizure is to be set aside in a final judgment.

Section 927

Seizure set aside due to a change in circumstances

- (1) Also after the seizure has been confirmed, a petition may be filed for it to be set aside due to a change in circumstances, in particular because the reasons for the writ of seizure to be issued have been conclusively dealt with, or because an offer has been made to provide security.
- (2) The decision is to be delivered by a final judgment; it shall be issued by the court ordering the seizure and, where the main action is pending, by the court before which the main action is being pursued.

Section 928 Enforcement of the seizure

The rules governing compulsory enforcement shall apply mutatis mutandis to the enforcement of the seizure unless otherwise provided for by the sections hereinbelow.

Section 929

Court certificate of enforceability; enforcement period

- (1) A writ of seizure shall require a court certificate of enforceability only if it is to be enforced for a different creditor than the creditor designated in the writ of seizure, or against a different debtor

than the debtor designated in the writ of seizure.

(2) The enforcement of the writ of seizure is no longer an available remedy if one (1) month has lapsed since the date on which the writ of seizure was issued or on which it was served on the party at the request of which it was issued.

(3) The enforcement may admissibly be pursued prior to the writ of seizure being served on the debtor. However, it shall be without effect if the writ of seizure is not served within one (1) week following the enforcement and prior to the expiry of the period determined for same in the preceding subsection.

Section 930

Enforcement against movable property and receivables

(1) The seizure of movable property is enforced by attachment. The attachment shall be implemented in accordance with the same principles as any other attachment; it creates a security right having the effects set out in section 804. The court responsible for the seizure shall have jurisdiction, as execution court, for the attachment of receivables.

(2) Any money that has been attached, and any amount of the proceeds accruing to the creditor in the course of the proceedings for the distribution of assets available for creditors, will be lodged.

(3) The court responsible for execution may direct, upon corresponding application being made, that a movable asset of a physical nature be sold at auction if it is subject to the risk of a significant loss of value or if its storage would entail unreasonable costs, and that the proceeds be lodged.

(4) Enforcing seizure against an unregistered ocean-going vessel is inadmissible where the vessel is travelling and not lying at harbour.

[...]

Section 935

Injunction regarding the subject matter of the litigation

Injunctions regarding the subject matter of the litigation are an available remedy given the concern that a change of the status quo might frustrate the realisation of the right enjoyed by a party, or might make its realisation significantly more difficult.

Section 936

Application of the rules governing arrest

The rules regarding the order of writs of seizure and regarding the attachment procedure shall apply mutatis mutandis to the order of injunctions and the further procedure, unless the following sections set out deviating rules.

Civil Code (Bürgerliches Gesetzbuch/BGB)

Section 823 Liability in damages

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The requirements for civil law claims for damages are laid out in the guide to asset recovery available at <http://star.worldbank.org/star/resource/asset-recovery-under-german-law-english>.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Assets that have been taken from public funds due to a criminal offence may be returned as compensation for damages to injured persons, pursuant to section 823(2) Civil Code in conjunction with a statute intended to protect another person, for example breach of trust (section 266 StGB).

Germany's legislation is in compliance with the provision.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the reformed confiscation of proceeds of crime legislation, assets can be confiscated irrespective of claims by injured parties (Section 73 para 1 Criminal Code).

Any injured party, including a state, can then claim victim compensation during enforcement proceedings by registering their claim at the public prosecution office under reference to the criminal court judgment that determines their status as injured party as well as the damage incurred; a civil law title or special judicial admission is not required.

In addition, please see the information under Art. 57.

Criminal Code

Section 73

Confiscation of the proceeds of offences from principal and secondary participants

(1) Where the principal or secondary participant has obtained something by an unlawful act or for such an unlawful act, the court shall order its confiscation.

(2) Where the principal or secondary participant has derived benefits from what was obtained, the court shall also order their confiscation.

(3) The court may order confiscation of objects that the principal or secondary participant has acquired

1. By the sale of the object obtained or as compensation for its destruction, damage, or seizure, or
2. On the basis of a right obtained.

Code of Criminal Procedure

Section 111i Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall expire as soon as this becomes part of the estate under administration. The collateral mortgage shall

not expire for objects situate in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply mutatis mutandis to the lien on the collateral mortgage lodged pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefor are common knowledge.

Section 459h Compensation of the aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his successor in title. Section 111i shall apply mutatis mutandis.

Section 459j Procedure for restitution and surrender

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to restitution or to surrender pursuant to section 459h (1) within six months of having been notified that the confiscation order has become final.

(2) Where the entitlement of the claimant filing the request is immediately evident from the confiscation order and the determinations underlying it, the object confiscated shall be restituted or surrendered to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the restitution or surrender subject to the provisions set out in section 459h (1) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the restitution or surrender, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, restitution in integrum shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to restitution or surrender pursuant to section 459h (1) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident.

Section 459k

Procedure for the disbursement of the realisation proceeds

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to disbursement of the realisation proceeds pursuant to section 459h (2) within six months of having been notified that the confiscation order has become final. The request is to set out the amount of the claim.

(2) Where the entitlement of the claimant filing the request and the amount of the claim are immediately evident from the confiscation order and the determinations underlying it, the proceeds of realisation shall be disbursed in that scope to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the disbursement of the realisation proceeds subject to the provisions set out in section 459h (2) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the disbursement, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, restitution in integrum shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to disbursement of the realisation proceeds pursuant to section

459h (2) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident. Enforceable legal documents under public law for receivables in money that have become final shall be equivalent to an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

The confiscation of proceeds of offences from principal and secondary participants is mandatory under the reformed confiscation of proceeds of crime legislation irrespective of claims by injured parties (section 73(1), Criminal Code). Any injured party, including a State, can then claim victim compensation during enforcement proceedings by registering their claim at the public prosecution office under reference to the criminal court judgment that determines their status as injured party as well as the damage incurred; a civil law title or special judicial admission are not required (sections 459h, 459j, 459k Criminal Procedure Code). Notice is given to aggrieved persons in accordance with section 459i of the Criminal Procedure Code.

The cited provisions apply mutatis mutandis to legal persons (section 73b, Criminal Code).

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to sections 48 and 49 of the German Act on International Cooperation in Criminal Matters (IRG), assistance for criminal proceedings may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. In cases of confiscation, assistance can only be provided, inter alia, where such an order could have been made according to German law. For detailed requirements, please see section 49 below.

Act on International Cooperation in Criminal Matters

Section 48 Principle

For criminal proceedings assistance may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. Part IV of this Law shall also apply to requests for the enforcement of an order for confiscation, made by a court exercising other than criminal jurisdiction in the requesting State if the order is based on a punishable offence.

Section 49

Additional Prerequisites for Admissibility of Assistance

(1) The enforcement shall not be admissible unless

1. a competent authority of the foreign State submitting the complete, legally binding and enforceable decision has requested it;

2. in the proceedings on which the foreign decision is based the convicted person had an opportunity to be heard and to present an adequate defence, and the sanction has been imposed by an independent court or, in the case of a fine, was imposed by an authority whose decision may be appealed to an independent court;

3. under German law notwithstanding possible procedural obstacles and, as appropriate *mutatis mutandis*,

(a) a criminal penalty, measure of rehabilitation and incapacitation or a regulatory fine could have been imposed in respect of the offence on which the foreign judgment is based or,

(b) where enforcement of an order for confiscation is requested, such an order could have been made;

4. no decision of the kind mentioned in s. 9 no. 1 has been made, unless the enforcement of an order for confiscation is requested and such an order could be made independently under s. 76a of the Strafgesetzbuch;

5. the statute of limitations for the enforcement under German law has not lapsed or would not have lapsed *mutatis mutandis*; the above notwithstanding the enforcement of an order for confiscation shall be admissible if

a) German criminal law does not apply to the offence on which the order is based or

b) such an order could be made mutatis mutandis by analogous application of s. 76a(2) no. 1 of the Strafgesetzbuch.

(2) If a custodial sanction has been imposed in a foreign State and the convicted person is located there, enforcement shall not be admitted unless the convicted person, after having been advised, consented and his consent was entered into the record of a court in the requesting State or the consent was declared before a German consular career official empowered to certify legally relevant declarations. The consent cannot be revoked.

[...]

(4) If German law does not recognise any type of sanction corresponding to the sanction imposed in the foreign State, enforcement shall not be admissible.

(5) If in the foreign order for confiscation a decision has been made concerning the rights of third parties, it shall be binding unless

a) the third party had not been given sufficient opportunity to defend their rights, or

b) the decision is incompatible with a German civil court decision issued in the same matter or

c) the decision relates to third party rights to real estate located on German territory or to a real estate rights; third party rights shall also include priority notices.

The full text of the IRG is available in English at: https://www.gesetze-im-internet.de/englisch_irg/index.html

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

According to sections 48 and 49 of the German Act on International Cooperation in Criminal Matters (IRG), assistance in criminal proceedings may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. In cases of confiscation, assistance can only be provided, inter alia, where such an order could have been made according to German law (section 49, IRG).

Sections 48 and 49 of the IRG apply to any country unless there are international treaties that govern these provisions (see section 1 paragraph 3 IRG). Special provisions for EU member countries are contained in sections 88-89 IRG.

It was explained that to recognize a foreign court order the judicial authorities examine the order to ensure that it is final, due process was followed, etc.

Furthermore, based on its legislation on mutual legal assistance in criminal matters, it was explained that Germany is, in principle, able to provide cooperation for offences involving legal persons where conduct pertaining to a criminal or regulatory offence underlies the proceedings in a requesting state (criminal, civil and/or administrative) and that conduct would constitute a criminal or regulatory offence under German law, the latter applying to legal persons under German law (such as, e.g., administrative fines to be imposed on legal persons for corruption offences and “civil forfeiture” of proceeds of corruption).

Germany’s legislation is in compliance with the paragraph under review. The basic provisions of articles 48 and 49 of the IRG provide clear guidance for international practitioners.

However, there are reported challenges in applying the Convention as a legal basis, as noted under art. 51. There have been no cases confirming its application in practice.

Other case examples were discussed in the country visit where Germany had returned assets through the enforcement of foreign orders, including a fraud case where German authorities returned confiscated assets to the requesting country, as well as a case where Germany enforced a foreign court order and returned assets.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under German law, a court has to issue a confiscation order if any property was acquired through or involved in a criminal offence.

The offence of money laundering also explicitly covers objects which originate from predicate offences committed abroad (section 261(8) of the Criminal Code [Strafgesetzbuch, StGB]). These objects may be confiscated (section 261(7) Criminal Code).

Criminal Code Section 261

Money laundering; hiding unlawfully obtained financial benefits

(1) Whosoever hides an object which is a proceed of an unlawful act listed in the 2nd sentence below, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its confiscation or its being officially secured shall be liable to imprisonment from three months to five years. Unlawful acts within the meaning of the 1st sentence shall be

1. felonies;

2. misdemeanours under

(a) Sections 108e, 332 (1) and (3) as well as section 334, also in conjunction with section 335a, (b) Section 29 (1) 1st sentence No 1 of the Drugs Act and section 19 (1) No 1 of the Drug Precursors (Control) Act;

3. misdemeanours under section 373 and under section 374 (2) of the Fiscal Code, and also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments (Implementation) Act;

4. misdemeanours

(a) under section 152a, section 181a, section 232 (1) to (3), 1st sentence and (4), section 232a (1) and (2), section 232b (1) and (2), section 233 (1) to (3), section 233a (1) and (2), section 242, section 246, section 253, section 259, sections 263 to 264, section 265 c, section 266, section 267, section 269, section 271, section 284, section 299, section 326 (1), (2) and (4), section 328 (1), (2) and (4) and section 348;

(b) under section 96 of the Residence Act and section 84 of the Asylum Procedure Act and section 370 of the Fiscal Code, section 38(1) to (4) of the Securities Trading Act as well as sections 143, 143a and 144 of the Act on the Protection of Trade Marks and other Symbols, 106 to 108b of the Act on Copyright and Related Rights, 25 of the Utility Models Act, 51 and 65 of the Design Act, 142 of the Patent Act, 10 of the Semiconductor Protection Act and 39 of the Plant Variety Rights (Protection) Act. which were committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences; and

5. misdemeanours under section 89a and under section 129 and section 129a (3) and (5), all of which also in conjunction with section 129b (1), as well as misdemeanours committed by a member of a criminal or terrorist organisation (section 129 and section 129a, all of which also in conjunction with section 129b (1)).

The 1st sentence shall apply in cases of tax evasion committed on a commercial basis or as a gang under section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion, of unlawfully acquired tax repayments and allowances, and in cases under the 2nd sentence no 3 the 1st sentence shall also apply to an object in relation to which fiscal charges have been evaded.

[...]

(7) Objects to which the offence relates may be subject to a confiscation order. Section 74a shall apply.

(8) Objects which are proceeds from an offence listed in subsection (1) above committed abroad shall be equivalent to the objects indicated in subsections (1), (2) and (5) above if the offence is also punishable at the place of its commission.

(9) Whosoever

1. voluntarily reports the offence to the competent public authority or voluntarily causes such a report to be made, unless the act had already been discovered in whole or in part at the time and the offender knew this or could reasonably have known and

2. in cases under subsections (1) or (2) above under the conditions named in No 1 above causes the object to which the offence relates to be officially secured

shall not be liable under subsections (1) to (5) above. Whosoever is liable because of his participation in the antecedent act shall not be liable under subsections (1) to (5) above, either. [...]

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

In addition to the mandatory confiscation of assets (section 73(1) StGB), objects originating from predicate offences to money-laundering committed abroad may also be confiscated (section 261(7)-(8) StGB). Germany's legislation is in compliance with the provision.

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the new confiscation legislation, the scope of non-conviction based confiscation has been extended, which broadens the possibilities of German authorities to seek or execute mutual legal assistance related to such proceedings. Confiscation of proceeds of crime shall be ordered if it is impossible to prosecute or sentence a person for the crime. Confiscation can thus be ordered in cases of death, flight, or unfitness to stand trial (section 76a para 1 Criminal Code). It is also possible to confiscate the proceeds of an offence which has become statute barred and for which therefore no conviction can be obtained (section 76a para 2 Criminal Code).

In addition, according to section 76a para 4 Criminal Code, proceeds can be confiscated without a conviction if they have been seized in proceedings brought for the suspicion of organized crime (under section 76 a para 4, 3rd sentence). In such cases, the court needs only be satisfied that the proceeds are of a criminal origin; no proof of a specific offence is necessary. The court may base its conviction of the criminal origin of the proceeds on circumstantial evidence including a major disparity between the value of the seized assets and the legal income of the defendant (section 76a para 4 Criminal Code, section 437 Code of Criminal Procedure). The procedural provision governing independent confiscation in proceedings brought for the suspicion of organized crime provides indicators the court may take into account when forming its conviction as to the whether the object originates from an unlawful act (section 437 Code of Criminal Procedure).

In 2017, the Act on International Cooperation in Criminal Matters was amended in order to introduce the principle of mutual recognition as the general basis for cooperation between Member States of the EU in the field of mutual legal assistance.

Criminal Code

Section 76a Independent confiscation

(1) If it is impossible to prosecute or sentence a certain person for the crime, the court shall independently order the confiscation of the object or that the object be rendered unusable, provided that, in all other regards, the pre-requisites are given subject to which the measure is stipulated by law. Where confiscation is permissible, the court may independently order it subject to the pre-requisites set out in the first sentence. The confiscation shall not be ordered if there has been no request to prosecute, authorisation to prosecute, or request to prosecute by a foreign state, or if a decision with regard to said confiscation has already been taken and become final.

(2) Subject to the pre-requisites stipulated by sections 73, 73b, and 73c, it shall be permissible for the court to independently order the confiscation of the proceeds of offences and to independently confiscate the value of the proceeds of offences also in those cases in which the prosecution of the crime has become statute-barred. Subject to the pre-requisites stipulated by sections 74b and 74d, the same shall apply to instances in which the court independently orders an object to be confiscated by way of security or that it be rendered unusable, or in which it independently orders documents to be confiscated.

(3) Subsection (1) is to be applied also if the court refrains from meting out punishment or if the proceedings are withdrawn based on a regulation that allows this to be done, as the public prosecutor's office or the court may decide at its discretion, or as they may decide by mutual consent.

(4) An object originating from an unlawful act, which has been seized in proceedings brought for the suspicion of a crime having been committed that is listed in the third sentence hereof, is to be confiscated independently also in those cases in which it is impossible to prosecute or sentence for the crime the person affected by the confiscation. Where the confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final; section 75 (3) shall apply mutatis mutandis. Crimes within the meaning of the first sentence are the following:

1. Under the present Code:

- a) Preparation of a serious violent offence endangering the state pursuant to section 89a and financing of terrorism pursuant to section 89c subsections (1) to (4),
- b) Forming criminal organisations pursuant to section 129 (1) and forming terrorist organisations pursuant to section 129a subsections (1), (2), (4), (5), in each case also read in conjunction with section 129b (1),
- c) Controlling prostitution pursuant to section 181a (1), also read in conjunction with subsection (3),
- d) Distribution, acquisition, and possession of child pornography in the cases governed by section 184b (2),
- e) Human trafficking, forced prostitution, and forced labour professionally organised as a commercial undertaking by a crime gang pursuant to sections 232 to 232b as well as human trafficking organised by a crime gang for the purpose of work exploitation and exploitation while taking advantage of an unlawful deprivation of liberty pursuant to sections 233 and 233a,
- f) Money laundering; hiding unlawfully obtained financial benefits pursuant to section 261 subsections 1, 2 and 4,

2. Under the Fiscal Code:

- a) Tax evasion subject to the pre-requisites set out in section 370 (3) number 5, b) Professional, violent or organised smuggling pursuant to section 373,
- c) Receiving, holding or selling goods obtained by tax evasion in the case of section 374 (2),

3. Under the Asylum Act:

- a) Incitement to submit fraudulent applications for asylum pursuant to section 84 (3),
- b) Commercial and organised incitement to submit fraudulent applications for asylum pursuant to section 84a,

4. Under the Residence Act:

- a) Smuggling of foreigners into the federal territory pursuant to section 96 (2),
- b) Smuggling of foreigners into the federal territory resulting in death as well as smuggling for gain and as organised gangs pursuant to section 97,

5. Under the Foreign Trade and Payments Act:

Crimes intentionally committed as set out in sections 17 and 18,

6. Under the Narcotics Act:

- a) Crimes as defined by a regulation included by reference in section 29 (3), second sentence, number 1, subject to the pre-requisites set out therein,
- b) Crimes pursuant to sections 29a, 30 (1) numbers 1, 2 and 4 as well as pursuant to sections 30a and 30b,

7. Under the Act on the Control of Weapons of War:

- a) Crimes pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), in each case also read in conjunction with section 21,
- b) Crimes pursuant to section 22a subsections (1) to (3),

8. Under the Weapons Act:

- a) Crimes pursuant to section 51 subsections (1) to (3),
- b) Crimes pursuant to section 52 (1) numbers 1 and 2 letters c and d as well as subsections (5) and (6).

Code of Criminal Procedure

Section 437

Special provisions governing independent confiscation proceedings

In taking the decision on independent confiscation pursuant to section 76a (4) of the Criminal Code, the court may base its conviction as to the object originating from an unlawful act in particular on any gross imbalance between the value of the object and the legal income of the person affected.

Moreover, in taking its decision it may also take the following into account:

1. The result of the investigations of the offence giving rise to the proceedings; 2. The circumstances under which the object was found and secured; as well as 3. The other personal and economic circumstances of the person affected.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case Example for Article 54 subparagraph 1(c) - non-conviction based confiscation:

Translated excerpt of: Local Court Stuttgart-Bad Cannstatt, Order of 16 March 2018 - 5 Gs 15/18:

“On 07/11/2017, an identity check on the U1 metro line towards Fellbach at Augsburgers Platz station in the Bad Cannstatt district of Stuttgart resulted in the seizure from the accused person XXX of a cash sum of 9,000 euros, denominated in 180 x 50-euro notes.

By order of 08/02/2018, Stuttgart Public Prosecutor's Office discontinued investigation proceedings against the accused on suspicion of money laundering pursuant to section 170 (2) of the Code of Criminal Procedure (Strafprozessordnung – StPO), since that suspicion could not be corroborated in the course of further investigations. In the final analysis, it could not be ruled out that the money had arisen from offences not featuring in the list of section 261 of the Criminal Code (Strafgesetzbuch – StGB).

On 08/02/2018, Stuttgart Public Prosecutor's Office moved for an order of confiscation of the seized banknotes pursuant to sections 76a (4) StGB, 435 (1), first sentence, (2), 436 (1), first sentence, 437 StPO. The accused and his defence attorney had the opportunity to provide statements.

The motion by Stuttgart Public Prosecutor's Office is admissible and well-founded.

With section 76a (4) StGB, the legislature has created a new instrument for asset recovery. This provision serves the fight against terrorism and organised crime. The instrument allows the (independent) confiscation of assets of unclear (criminal) origin without the need to prove that a specific criminal offence has been committed. It is sufficient if the court can satisfy itself that the asset results from some unlawful act. In substance, this new asset recovery instrument is a form of independent extended confiscation.

As distinguished from non-independent extended confiscation (section 73a StGB), not all offences will suffice as grounds for independent extended confiscation pursuant to section 76a (4) StGB. Rather, the latter is tied to (an initial suspicion of) a specific offence from the list of offences in

section 76a (4), third sentence, StGB (Köhler/Burkhard: "Die Reform der strafrechtlichen Vermögensabschöpfung", part 2/2, NStZ 2017, 665 et seq.).

In the present case, the cash sum of 9,000 euros was seized in investigation proceedings for money laundering pursuant to section 261 StGB. This is an offence listed in section 76a (4), third sentence, no. 1f StGB. Due to insufficient evidence, the accused person cannot be convicted of money laundering.

Based on the overall circumstances, the court is satisfied that the cash has resulted from an unlawful act. Pursuant to section 437 StPO, the court may base this conclusion in particular on a gross imbalance between the value of the object and the legal income of the person concerned. Furthermore, in arriving at its decision it may also consider, in particular, 1) the result of investigations into the offence that provided cause for the proceedings, 2) the circumstances under which the object was discovered and seized, and 3) the other personal and financial circumstances of the person concerned.

The identity check on the metro line took place because – according to the information provided by the police officers – the accused and his companion were behaving suspiciously and looking around nervously. Additionally, the smell of marijuana was discernible in the metro [...]. Police systems revealed that the accused and his companion had come to the attention of the police on multiple occasions since 2001 for jointly committed drug trafficking and had both been convicted on 26/06/2003 by judgment of Esslingen Local Court for joint concealment of unlawfully acquired assets. [...]

After the cash had been seized, the accused, without being asked to do so, attempted to explain his possession of the money by stating that this was to be used to purchase a car. Upon request, however, he was not able to provide specific details and initially indicated that he intended to buy the vehicle from an acquaintance for an acquaintance. He could not specify a car dealership and, having hesitated for some time, resorted to saying that an acquaintance wanted to pick him up at the terminus, Fellbach. However, he would not and could not name his customer and acquaintance. In his witness examination of 20/12/2017 he diverged from this, stating that half of the money was his and the other half belonged to his future partner, with whom he had intended to buy a Sprinter van and set up his own business. Shortly afterwards, in the course of his examination, the future partner became the relative of an acquaintance, whom he claimed only to have known by his first name. The accused has not provided a name to this very day.

In submissions by his defence counsel of 12/03/2018, the story changed and it was no longer half, but only 3,000 euros of the money seized that belonged to him. It is obvious that these deviations – his initially claimed intention of buying a car, then the claim of 4,500 euros belonging to him, which in the end went down to 3,000 euros – only serve to "explain away" the gross imbalance between the cash sum seized and the accused's legal income.

Pursuant to the proof of income from November 2015 to October 2016 (!) submitted by letter of 12/03/2018, the accused earned – with the exception of November 2015 – just over 1,300 euros net per month. There is nothing to indicate that anything had changed in this respect in 2017; on the

contrary: during his police examination, the accused stated his take-home pay as now being only 1,200 euros. He stated that he was working as a skilled warehousing assistant, and had formerly worked on a construction site. [...] During his examination, the accused further stated that he had a wife who was not in employment and a 15-month-old child. He explained that he lived with his parents, to whom he paid part of the rent. Even considering child benefit and child-raising allowance, it seems impossible to the court that, given his strained financial situation, the accused could even have saved the small sum of 3,000 euros.

Aside from the aforementioned conviction by Esslingen Local Court, the accused was also convicted, inter alia, on 08/05/2007 by judgment of Stuttgart Local Court of jointly committed drug trafficking and sentenced to 8 months in prison, which was suspended on probation. By judgment of 14/04/2010, he was sentenced by Stuttgart Local Court to 2 years and 9 months' imprisonment for trafficking a substantial quantity of drugs in one and the same act as unlawful possession of a substantial quantity of drugs.

Having considered all of the above, as well as how the seized cash was denominated, it is to be assumed that the funds originated from drugs sales and were to be used in order to acquire more drugs – at the very least that the cash originated from a minimum of one unlawful act. There is no explanation otherwise as to why, so far, the person to whom a part of the money allegedly belongs has not been named, nor why he should have undertaken no efforts to have his share returned.

[...]"

(b) Observations on the implementation of the article

Confiscation of proceeds of crime shall be ordered if it is impossible to prosecute or sentence a person for the crime. Confiscation can thus be ordered in cases of death, flight, or unfitness to stand trial (section 76a para 1 Criminal Code). This may be considered independent, non-conviction based confiscation.

It is also possible to confiscate the proceeds of an offence which has become statute barred and for which therefore no conviction can be obtained (section 76a para 2 Criminal Code).

In addition, according to section 76a para 4 Criminal Code, proceeds can be confiscated without a conviction if they have been seized in proceedings brought for the suspicion of organized crime (under section 76 a para 4, 3rd sentence). In such cases, the court needs only be satisfied that the proceeds are of a criminal origin; no proof of a specific offence is necessary. In substance, this new asset recovery instrument is a form of independent extended confiscation.

As distinguished from non-independent extended confiscation (section 73a Criminal Code), not all offences will suffice as grounds for independent extended confiscation pursuant to section 76a (4) Criminal Code.

A recent case example was provided. Germany is in compliance with the provision.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to section 111 b of the German Code of Criminal Procedure (in cases of MLA in conjunction with section 67 of the Act on International Cooperation in Criminal Matters), objects may be secured by seizure if there are grounds (=sufficient factual indications) to assume that the conditions for their forfeiture or for their confiscation have been fulfilled.

Objects may be handed over at the request of another State as long as no pertinent final and enforceable foreign order for confiscation exists (ie in cases that do not fall under Article 57 subparagraphs 3 a) and b)): According to section 66 German Act on International Cooperation in Criminal Matters (IRG), at the request of a competent authority of a foreign State objects may be handed over which the person concerned or an accomplice have obtained for or through the offence on which the request is based; which the person concerned or an accomplice have obtained through the sale of such object or as a replacement for its being destroyed, damaged or taken away or on the basis of a right accrued to them or as usufruct or; which were created by or used or meant to be used in the commission or preparation of the offence on which the request is based.

According to section 66 paragraph 2 number 3, surrender shall not be admissible unless measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

Section 58 paragraph 3 of the Act on International Cooperation in Criminal Matters (IRG) provides safeguarding measures in cases of a request for enforcement relating to an order for confiscation, or in cases of a request for preliminary measures in order to ensure enforcement through seizure.

Code of Criminal Procedure

Section 111b

(1) If there are grounds to assume that the conditions for confiscation or destroying an object or making it unusable have been fulfilled, it can be seized to secure execution of sentence. Section 94 subsection (3) shall remain unaffected.

(2) Sections 102 to 110 shall apply mutatis mutandis.

Act on International Cooperation in Criminal Matters

Section 58

Measures Safeguarding Enforcement (...)

(3) If the request for enforcement relates to a fine, a regulatory fine or an order for confiscation, or if a competent authority of the requesting State has, with identification of the person sought, the offence on which the criminal proceedings are based and the time and place of its commission prior to receipt of such request, requested preliminary measures for the purpose of ensuring enforcement under ss. 111b to 111d of the Strafprozessordnung, s. 67(1) shall apply mutatis mutandis. For the purpose of the preparation of an order for confiscation in the requesting State, which may also relate to the monetary value, decisions under ss. 111b to 111d of the Strafprozessordnung may be issued if the conditions of s. 66(2) nos. 1 and 2 are fulfilled.

Section 66 Handing Over of Objects

(1) At the request of a competent authority of a foreign State objects may be handed over

1. which may serve as evidence in foreign proceedings or
2. which the person concerned or an accomplice have obtained for or through the offence on which the request is based,
3. which the person concerned or an accomplice have obtained through the sale of such object or as a replacement for its being destroyed, damaged or taken away or on the basis of a right accrued to them or as usufruct or
4. which were created by or used or meant to be used in the commission or preparation of the offence on which the request is based.

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the actus reus and mens rea of a criminal offence or of an offence permitting the imposition of a fine under German law or unless mutatis mutandis it would be such an offence under German law,
2. an order for seizure by a competent authority of the requesting State is submitted or a declaration of such an authority shows that the requirements for seizure would exist if the objects were located in the requesting State and
3. measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

(3) The handing over under subsection (1) nos. 2 to 4 above shall be admissible only as long as no pertinent final and enforceable foreign decision exists with regard to the above-mentioned objects.

(4) The public prosecution service at the Landgericht shall prepare the decision about the handing over and shall execute it if granted. The public prosecution service at the Landgericht in whose district the object is located shall have jurisdiction. S. 61(2) 2nd sentence shall apply mutatis mutandis.

Section 67 Search and Seizure

(1) Objects that may be considered for handing over to a foreign State may be seized or otherwise secured even prior to the receipt of the request for surrender. To this end, a search may be conducted.

(2) If the conditions specified in s. 66(1) no. 1 and (2) no. 1 apply, objects may also be seized or otherwise secured if necessary for the enforcement of a request which is not directed at the handing over of the objects. Subsection (1) 2nd sentence above shall apply mutatis mutandis.

(3) The Amtsgericht in whose district they are to be performed shall have jurisdiction to order the search and seizure. S. 61(2) 2nd sentence shall apply mutatis mutandis.

(4) If cases of emergency the public prosecution service or its agents (s. 152 of the Gerichtsverfassungsgesetz) may order the search and seizure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

As noted above, the provisions of the German criminal procedure law permit the tracing of assets even if there is merely an initial suspicion, i.e. an adequate factual basis to allow the conclusion that an offence has been committed.

Based on the information provided and the case examples discussed during the country visit, Germany is in compliance with the provision.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under paragraph 2 (a).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Objects may be seized if there are sufficient factual grounds to assume that the conditions for their forfeiture or confiscation have been fulfilled (section 111b CPC, in conjunction with section 67 IRG). Seized objects may be handed over to the competent authority of a foreign State (section 66 IRG). Germany is in compliance with the provision

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under article 54 paragraph 2 subparagraph (a).

According to section 111 b of the German Code of Criminal Procedure, objects may be secured by seizure if there are grounds to assume that the conditions for their forfeiture or for their confiscation have been fulfilled.

If compelling reasons are present, ordering the provisional seizure of property (sections 111b et seq. of the Code of Criminal Procedure) is the normal statutory procedure (“should”). For all other cases, section 111b grants the law enforcement authorities a wide margin of discretion (“can”) to take decisions on provisional measures and preservation of seized assets, which are also applicable in international cooperation cases. This differentiated approach provides the law enforcement authorities with flexibility in terms of seizure options - flexibility which is necessary in order to make appropriate decisions on a case-by-case basis. At the same time, it protects the persons concerned against overly hasty interference and disproportionate seizures in minor cases.

If there are grounds to assume that the conditions for confiscation of equivalent value have been fulfilled, attachment may be ordered in respect of the movable and immovable assets of the person concerned, for the purpose of securing the execution of sentence (section 111e et seq. Code of Criminal Procedure).

In addition, where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts (“extended confiscation of the proceeds of offences”, section 73a Criminal Code).

Subject to confiscation is anything invested in the illegal activity; expenses incurred by offenders do not have to be considered when confiscating assets and no plea invoking a loss of enrichment may be made. If, following the judgement, an offender is found to have previously undiscovered assets, these may be confiscated at a later stage.

Code of Criminal Procedure Section 111 b

(1) If there are grounds to assume that the conditions for confiscation or destroying an object or making it unusable have been fulfilled, it can be seized to secure execution of sentence. Section 94 subsection (3) shall remain unaffected.

(2) Sections 102 to 110 shall apply mutatis mutandis.

Criminal Code

Section 73a

Extended confiscation of the proceeds of offences from principal and secondary participants

(1) Where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts.

(2) Where the principal or secondary participant was involved in some other unlawful act prior to the confiscation having been ordered pursuant to subsection (1) and where a decision is to be taken once again regarding the confiscation of his objects, the court shall take account, in so doing, of the order already issued.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Section 111b CPC grants the law enforcement authorities a margin of discretion to take decisions on provisional measures and preservation of seized assets, which are also applicable in international cooperation cases. Germany is in compliance with the provision.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this

Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to Numbers 19 and 20 of the Guidelines for Relations with Foreign Countries in Matters of Criminal Law (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten – RiVAST), a request for legal assistance being received by the performing authority shall immediately be submitted to the competent approval authority. Following the approval of the legal assistance, the request shall, as long as it has not been foreseen differently in the statute and treaty, be dealt with by the enforcing authority in accordance with the same provisions which would apply where the request had been submitted by a German authority.

Guidelines for Relations with Foreign Countries in Matters of Criminal Law (RiVAST)

No 19

Decision on approval of legal assistance

(1) A request for legal assistance being received by the performing authority shall immediately be submitted to the competent approval authority.

(2) Where the approval authority intends to reject the request for legal assistance, it shall inform the highest justice and administrative authority, attaching also the request, and wait for its statement.

(3) Where the approval authority deems necessary that Oberlandesgericht (editor's note: Higher Regional Court) renders a decision on the admissibility of the legal assistance in accordance with section 61, par 1, sentence 2 IRG, it shall inform the highest justice and administrative authority, attaching also the request, and wait for its statement.

(4) Where the Oberlandesgericht decides to have a decision rendered by Federal Supreme Court

(section 61, par 1, sentence 4 i.V.m. section 21 IRG), the prosecution office at the Oberlandesgericht transmits the documents immediately to the Federal Prosecution Office General; It shall simultaneously report to the superior authority.

(5) In the event of incoming requests, the violation of the provisions on the public legal duties or smuggling, the approval authority ensures the involvement of the tax and customs search services, unless the request is about delivery or enforcement legal assistance.

No 22 Dealing with requests

(1) Following the approval of the legal assistance, the request shall, as long as it has not been foreseen differently in the law and contract, be dealt with by the enforcing authority in accordance with the same provisions which would apply where the request had been submitted by a German authority; this applies also the coercive measures, which are indispensable for dealing with the request (section 59 par. 3, section 77 IRG). Specific wishes of the requesting authority shall be met, as long as no binding provisions prohibit this.

(2) The accomplishment of legal assistance shall not as a rule start before the approval of the legal assistance. Exceptionally, the enforcing authority may accomplish the legal assistance before obtaining the approval in the event of imminent danger, where no reserves about granting the approval exist. Where the accomplishment of the legal assistance is done prior to obtaining the approval, the enforcing authority shall send the request and the accomplishment documents to the approval authority.

(3) Where in accordance with the German provisions the participants in the proceedings may be present in the course of investigation acts, presence shall be allowed by the enforcing authority also to the respective persons being involved in foreign proceedings. Permission to the foreign judges or officials to be present in their official capacity may be granted only after the consent of the competent authority (compare no 138, 139), as long as this is not granted in connection with certain states in general.

(4) Where appointments information is requested, the appointments have to be set in terms of time in such a way that the participants residing abroad can participate therein. In the appointments information report it shall be indicated that it is up to the requesting authority to inform the proceedings participants residing abroad.

(...)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

The common practice is for the requesting State to be informed of the progress of the procedure, e.g. about the lodging of legal remedies or the legal force of the judicial decision etc.

(b) Observations on the implementation of the article

Germany is in compliance with this provision.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Requests on tracing assets can be made by a police MLA request or judicial MLA request; the execution of freezing or confiscation orders can be requested by judicial MLA.

There is a variety of asset tracing instruments, including, inter alia, an automated bank account access system, a register of beneficial owners (transparency register), land registers and business registers. For detailed information on asset tracing possibilities in Germany, please cf. the [German Asset Tracing Country Profile](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf) (http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf (p. 52)).

In addition, please see the information under article 54.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

In addition to the information provided under this paragraph and article 54 para. 2, requests from foreign jurisdictions may be communicated between the German FIU and an FIU from abroad (see art. 58 below).

Germany is also in a position to exchange information with foreign contact points in the context of the CARIN network work in order to carry out measures for the purpose of confiscation. Germany has two CARIN contact points, one for police and one for judicial cooperation. The information exchange with the foreign contact partners of the CARIN network takes place in accordance with the national law, especially the current data protection regulations. There is no statistical recording of incoming and outgoing requests.

Germany is in compliance with the provision.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Requirements are not explicitly regulated in German law. The standards set out in the Convention are sufficient for an effective formal request.

In addition, the provisions of the *Guidelines for Relations with Foreign Countries in Matters of Criminal Law (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten - RiVAST)* are relevant. The purpose of the RiVAST is to provide clear directions to national and requesting authorities.

No. 17 Defective transmission

(1) Where a request has been transmitted through a non-authorized channel, it shall be dealt with as long as no specific hindering causes exist. The accomplishment documents shall be sent back through the authorized channel.

(2) Where a request has been received by a non-competent authority, it shall be transmitted immediately to the competent approval authority. The requesting authority shall be informed through the authorized channel about the handover. Where a request has been received by a non-competent authority over the highest justice and administrative authority, the information about the handover shall be addressed to the highest justice and administrative authority and not to the requesting authority.

No. 18 Supplementation

Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request.

No. 22 Dealing with requests

(1) Following the approval of the legal assistance, the request shall, as long as it has not been foreseen differently in the law and contract, be dealt with by the enforcing authority in accordance with the same provisions which would apply where the request had been submitted by a German authority; this applies also the coercive measures, which are indispensable for dealing with the request (section 59 par. 3, section 77 IRG). Specific wishes of the requesting authority shall be met, as long as no binding provisions prohibit this.

(2) The accomplishment of legal assistance shall not as a rule start before the approval of the legal assistance. Exceptionally, the enforcing authority may accomplish the legal assistance before obtaining the approval in the event of imminent danger, where no reserves about granting the approval exist. Where the accomplishment of the legal assistance is done prior to obtaining the approval, the enforcing authority shall send the request and the accomplishment documents to the approval authority.

(3) Where in accordance with the German provisions the participants in the proceedings may be present in the course of investigation acts, presence shall be allowed by the enforcing authority also to the respective persons being involved in foreign proceedings. Permission to the foreign judges or officials to be present in their official capacity may be granted only after the consent of the competent authority (compare no 138, 139), as long as this is not granted in connection with certain states in general.

(4) Where appointments information is requested, the appointments have to be set in terms of time

in such a way that the participants residing abroad can participate therein. In the appointments information report it shall be indicated that it is up to the requesting authority to inform the proceedings participants residing abroad.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

There are no formal measures corresponding to the requirements of art. 55 para 3 (and art. 46 para 15) of the Convention in German law. However, Germany has established *Guidelines for Relations with Foreign Countries in Matters of Criminal Law (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten - RiVSt)*. The guidelines (RiVSt) provide that MLA requests are to be dealt with even if a request does not contain the requirements laid out by the Convention: Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request, No. 18 RiVSt. However, the guidelines do not specify the required content and are not available online other than in the German language.

In practice, it was explained that German authorities encourage early consultations by requesting States and work with foreign authorities to assist them in bringing their MLA requests in line with art. 55 para 3 in order for the request to be executed. In particular cases, the authorities also provide requesting countries with templates for submitting requests.

The following “Practical pointers” to requesting countries are included in Germany’s asset recovery guide (page 10)¹⁶, although the brochure has not yet been updated to reflect the reform of asset recovery.

Practical pointers

Within the framework of a criminal proceeding, the German law enforcement authorities may carry out financial investigations, including enquiries with regard to existing data (among others, at the resident registration offices, at the national vehicle register, in land registers or by way of centralised account enquiries). Success cannot be predicted for a specific case; this will substantially depend on the state of knowledge in the requesting state’s criminal proceedings and associated investigative approaches in Germany. It is important to notify of personal information as concretely as possible, including possible deviating spellings, birth dates as well as information on personal identification documents. The investigation is also facilitated if indications of connections to Germany are explained, such as repeated trips to certain locations, names and addresses of relatives or friends in Germany, or knowledge gained from intensive business relationships to Germany,

Measures against the will of the persons affected may need to be carried out as early as at the stage of tracing assets; this may include intrusion into their rights by way of searches and seizures. German law stipulates that stricter requirements are necessary in such cases (cf. also Art. 12 (9), Art. 13 (3), Art. 18 (2) UNTOC [United States Convention against

¹⁶ <http://star.worldbank.org/star/document/asset-recovery-under-german-law-english>

Transnational Organised Crime]). Important in this context is dual criminality (e.g. pursuant to sections 67, 66 (2) (1) IRG; cf. Article 18 (9) UNTOC). In practical terms, therefore, it is crucially important to portray in detail the factual situation upon which the domestic proceeding is based in the request for mutual legal assistance. This is the only way to enable the necessary assessment as to whether the preconditions of the relevant German provisions have been met (see also Art. 13 (2), (3) letter (c), Art. 18 (3) UNTOC).

Reasons should be provided which indicate that rapid freezing of assets seems necessary. If the request is to be treated confidentially, this must be explained as well.

Cooperation will be facilitated if a contact person is named in the request, along with availability by telephone and e-mail, as well as information about languages spoken. This enables quick contact in the case of minor questions.

Based on the information provided, Germany is encouraged to include updated information on the required content for MLA requests in the next version of the asset recovery guide, in order to provide greater certainty to requesting countries and due to the fact that the Guidelines for requesting countries (RiVAST) do not specify the required content, and are not available online other than in the German language.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Act on International Cooperation in Criminal Matters

Section 1

Scope of Application

(1) This Act shall govern the relations with foreign States regarding legal cooperation in criminal matters.

(2) Criminal matters under this Act shall include proceedings resulting from an offence which under

German law would constitute a regulatory offence sanctionable by a fine or which pursuant to foreign law is subject to a similar sanction, provided that a court of criminal jurisdiction determines the sentence.

(3) Provisions of international treaties shall take precedence before the provisions of this law to the extent that they have become directly applicable national law.

(4) This Act shall govern the support in criminal proceedings involving a Member State of the European Union.

Section 59

Admissibility of Assistance [...]

(3) Legal assistance may be provided only in those cases in which German courts and executive authorities could render mutual legal assistance to each other.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

Germany is in compliance with this provision.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Germany provided copies of its legislation to the secretariat during the course of the review.

In addition, Germany furnished the guide to asset recovery to the Secretary General of the United Nations in English and German in 2015.

The guide is available at <http://star.worldbank.org/star/document/asset-recovery-under-german-law-english> - please note that the reform of asset recovery is not yet included in the brochure.

(b) Observations on the implementation of the article

The guide is a very useful tool for the international community. The additional material in this evaluation could be considered as an official furnishing of the legislation. Germany is in compliance with this provision.

Moreover, the revised version of the guide is eagerly expected.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Germany does not make the taking of measures conditional on the existence of a relevant treaty. The UNCAC is the necessary and sufficient treaty.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

Germany is in compliance with this provision.

There have been no concluded cases where Germany was asked to return or dispose of assets based on this Convention. Two requests based on the Convention were pending at the time of review, as described under article 51.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The requirements for MLA to be granted are, inter alia, laid out in the Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf (for terrorism offences), in the Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries (2012) <http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf> as well as in UNODCs Mutual Legal Assistance Request Writer Tool <http://www.unodc.org/mla/index.html>.

Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request, No. 18 Guidelines for Relations with Foreign Countries in Matters of Criminal Law.

Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system, Section 73 Act on International Cooperation in Criminal Matters (IRG). One of the governing principles of German law is the principle of

proportionality, which is derived from the general rule of law and fundamental rights. According to this principle, an act of an authority must be suitable, necessary and reasonable in order to be lawful. For asset recovery, the principle of proportionality is stated in Section 74 b of the Criminal Code.

Guidelines for Relations with Foreign Countries in Matters of Criminal Law

No 18 Supplementation

Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request.

Criminal Code

Section 74f Principle of proportionality

(1) If confiscation is not otherwise prescribed it may not be ordered in cases under sections 74 and 74a if it is disproportionate to the act committed and the blameworthiness of the person affected by the confiscation order. In cases under sections 74 to 74 b and section 74d the court shall defer the confiscation order if the purpose of a confiscation order can also be attained through a less incisive measure thus. Particular consideration shall be given to instructions

1. to destroy the objects;
2. to remove particular fittings or distinguishing marks from or otherwise modify the objects; or 3. to dispose of the objects in a specified manner.

If the instructions are carried out the deferment order shall be rescinded; otherwise the court shall subsequently order the confiscation

[...]

Act on International Cooperation in Criminal Matters

Section 73

Limitations on Assistance (Ordre Public)

Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system. Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union.

[...]

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Germany is in compliance with this provision.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to number 196 of the Guidelines for Relations with Foreign Countries in Matters of Criminal Law (RiVAST), the requested State Party shall give the requesting State Party an opportunity to present its reasons in favour of continuing the measure. This provision concerns the mutual legal assistance between member states of the European Union. Nevertheless, it is also a general principle of the cooperation with other states, which takes place in Germany's daily practice.

Guidelines for Relations with Foreign Countries in Matters of Criminal Law (RiVAST)

Number 196

Duration and revocation of freezing measures

(1) The authority granting enforcement may, in accordance with the circumstances of the individual case, set appropriate conditions in order to limit the duration of freezing measures. Prior to this, the competent authority of the requesting Member State is, where applicable, to be given the opportunity to provide a statement within an appropriate time limit. If applicable, the time limits of section 111b (3) of the Code of Criminal Procedure (Strafprozessordnung, StPO) are to be followed and the requesting authority is to be asked for supplementary information on the stage reached in the proceedings and on the criminal suspicion concerned in order to permit an examination of whether the preconditions are in place for the measure to be continued.

(2) Paragraph 1, second sentence, shall apply mutatis mutandis where asset freezing mechanisms are to be revoked.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Consultations are held before provisional measures are lifted (No. 196 RiVAST). Germany is in compliance with this provision.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Confiscation from a third party is only permissible under certain conditions which serve to protect the rights of third parties who acted in good faith (sections 73b and 74a Criminal Code).

According to section 66 paragraph 2 number 3 of the German Act on International Cooperation in Criminal Matters (IRG), surrender shall not be admissible unless measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

Criminal Code

Section 73b

Confiscation from others of the proceeds of offences

(1) The order of confiscation pursuant to sections 73 and 73a shall be directed against another person who is not the principal or secondary participant if

1. That person has obtained something by the offence and the principal or secondary participant acted on his behalf;

2. The object so obtained

a) Was transferred to that person without consideration or without a legal reason, or

b) Was transferred to that person and he recognised, or ought to have recognised, that the object obtained originates from an unlawful act, or

3. The object so obtained

a) Has devolved to that person in his capacity as heir, or

b) Has been transferred to that person in his capacity as a party entitled to the compulsory portion of an estate or as a legatee.

Numbers 2 and 3 of the first sentence shall have no application if the object obtained was previously transferred, against consideration and on the basis of a legal reason, to a third party who did not recognise or did not have any reason to recognise that the object obtained originates from an unlawful act.

(2) Where, subject to the pre-requisites set out in subsection (1), first sentence, number 2 or number 3, the other party obtains an object which is equivalent in value to the object obtained, or benefits that have been derived from such object, the court shall order its/their confiscation as well.

(3) Subject to the pre-requisites stipulated by subsection (1), first sentence, number 2 or number 3, the court may also order the confiscation of whatever was acquired

1. By the sale of the object obtained or as compensation for its destruction, damage, or seizure, or

2. On the basis of a right obtained

Section 74a

Extended conditions of confiscation

If a law refers to this provision, objects can be subject to a confiscation order as an exception to section 74(3) if at the time of the decision the person who owns or has a right to them

1. at least with gross negligence contributed to them being used for the act or its preparation or being the object of the act, or

2. acquired them dishonestly with knowledge of the circumstances that would have allowed their confiscation.

Handing Over of Objects (...)

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the actus reus and mens rea of a criminal offence or of an offence permitting the imposition of a fine under German law or unless mutatis mutandis it would be such an offence under German law,
2. an order for seizure by a competent authority of the requesting State is submitted or a declaration of such an authority shows that the requirements for seizure would exist if the objects were located in the requesting State (...)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

Speaking from experience, it can be stated that so far, any required assurance pursuant to section 66 (2) no. 3 IRG has always been provided. We have no information on any breach of assurance in this regard.

(b) Observations on the implementation of the article

The rights of bona fide third parties are protected (section 66(2) IRG, section 58 (3) IRG). Germany is in compliance with this provision.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The purpose of sections 61a, 92c IRG is to authorise “spontaneous sharing of information”, i.e. transmission of data without prior request. Section 61a IRG is the general legal basis for spontaneous sharing of information. Section 92c IRG is the special provision at European level, to the extent provided for by an international agreement or Framework Decision 2006/960/JHA. However, section 61a IRG in conjunction with section 91 (1) IRG is also applicable to Member States of the EU to the extent that section 92c IRG does not contain any specific provisions.

Regarding section 61a IRG:

Section 61a (1) IRG regulates the requirements for spontaneous transmission of information by German courts and public prosecution offices. The provision applies solely to “personal data from criminal proceedings”.

A transmission may be made only to “public authorities” of another State or to intergovernmental or supranational authorities.

Section 61a (1) no. 1 IRG allows data to be shared spontaneously only if the transmission “would be permissible without request to a German court or to a German public prosecution office”. This is particularly aimed at preventing German requirements from being circumvented by transmission and return transmission of personal data.

The preconditions for spontaneous sharing of information for foreign criminal proceedings are specified in section 61a (1) no. 2 a) IRG. Thus, a transmission is only permitted if facts warrant the assumption that the transmission is necessary in order to prepare a request for legal assistance for the purpose of prosecution or execution of a sentence, and the criminal offence at issue is punishable under German law by a maximum penalty of more than five years of imprisonment. This means that the information cannot be directly used as evidence in the foreign proceedings. Lastly, there should be no legal bar to arranging the legal assistance - it must be possible for the German authorities to comply with the request for mutual legal assistance.

If an adequate level of data protection is ensured in the receiving State in accordance with section 61a (1) 2nd sentence IRG, this provision stipulates that the range of relevant criminal offences can also be expanded to encompass offences of “significant gravity”, in deviation from section 61a (1) no. 2 a) IRG.

In contrast to section 61a (1) no. 2 a) IRG, section 61a (1) no. 2 b) IRG does not require that information be shared only for criminal prosecution purposes; it is preventive in nature. It must be necessary in the individual case to avert an existing danger to the existence or the security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a criminal offence of the type referred to in section 61a (1) no. 2 a) IRG.

Pursuant to section 61a (1) no. 3 IRG, the receiving authority in the foreign country must be competent to implement the appropriate measures under section 61a (1) no. 2 IRG.

Section 61a (2) IRG also lays down conditions for transmitting information. The foreign State must observe the time limits pursuant to German law for data deletion and for review of data deletion, and the use of the transmitted data is subject to strict restrictions due to data protection. If an error pursuant to section 61a (4) IRG occurs in the transmission of data, the transmitted data must be immediately deleted or corrected by the receiving State upon receipt of respective notification by the Federal Republic of Germany.

Lastly, section 61a (3) IRG prohibits transmission of information if it is evident that the interests of the person affected by the data transmission outweigh the receiving State's interest in receiving the information.

Regarding section 92c IRG:

As a rule, the addressees of the provision are public authorities within the meaning of section 2 of the Federal Data Protection Act [Bundesdatenschutzgesetz, BDSG]. Potential recipients must be public authorities of a Member State of the European Union or a Schengen-Associated State as well as bodies and institutions of the EU itself.

Spontaneous data transmission pursuant to section 92c (1) IRG is permitted only for data that give rise to the suspicion that an offence has been committed.

Like section 61a IRG, section 92c (1) IRG allows data to be shared spontaneously only if transmission of data would be permissible without making a request to a German court or to a German public prosecution office.

In contrast to the stricter requirement of necessity under section 61a (1) no. 2 IRG, the transmission is only required to be useful in initiating criminal proceedings in the receiving State or assisting criminal proceedings already pending there (section 92c (1) no. 2 a) and b) IRG). In essence, authorisation to transmit information spontaneously at the European level does not require that the criminal offence be of a particular seriousness, but it does exclude the spontaneous sharing of data for preventive reasons.

Lastly, pursuant to section 92c (1) no. 3 IRG, the authority to whom the data are transmitted must have jurisdiction for the measures under no. 2.

With regard to the procedure, transmission prohibitions, and correction and deletion obligations, section 92c (2) IRG refers to section 61a (2-4) IRG.

Act on International Cooperation in Criminal Matters

Section 61a

Transmission of Personal Data Without Request

(1) Courts and the public prosecution service may transmit personal data from criminal proceedings to the public authorities of another State as well as to Interstate and supranational authorities without request by the latter if

1. transmission without request to a German court or to a German public prosecution service were admissible,
2. facts exist which warrant the expectation that the transmission is necessary
 - a) in order to prepare a request by the receiving State for assistance for the purpose of prosecution or enforcement of a sentence for an offence which would be punishable by a maximum term of more than five years' imprisonment under German law, and the conditions for granting assistance on request would be fulfilled if such a request was made or
 - b) in the individual case to avert a danger to the existence or security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a crime as described under a) above, and
3. the public authority to which the data are transmitted is competent to implement the appropriate measures under no. 2 above.

If an adequate level of data protection is ensured in the receiving State, the 1st sentence no. 2a) above shall apply with the proviso that an offence punishable under German law by a maximum term of more than five years' imprisonment shall be substituted by an offence of significant gravity.

(2) The transmission shall occur under the condition that

- a) time limits pursuant to German law for data deletion and for review of data deletion will be observed,
- b) transmitted data will only be used for the purposes for which they were transmitted and
- c) transmitted data will be deleted or corrected immediately upon information in accordance with subsection (4) below.

(3) Transmission shall be precluded if it is evident to the court or the public prosecution service that -taking into consideration the special public interest in the transmission - the protected interests of the person demand the preclusion of the transmission in the individual case; the protected interests of the person concerned include the existence of an adequate level of data protection in the receiving State.

(4) The receiving authority shall be notified without undue delay upon discovery that the transmission of data was inadmissible or that the transmitted data were incorrect.

Section 92c

Data Transmission without Request

(1) To the extent that an international agreement or Framework Decision 2006/960/JHA so provide, public authorities may transmit without request personal data that give rise to the suspicion that an offence has been committed, to public authorities of another Member State of the European Union or a Schengen-associated State as well as organs and institutions of the European Union, if

1. a transmission without request to a German court or prosecution service were permissible and 2. the transmission is useful in

a) initiating criminal proceedings in another Member State or b) assisting criminal proceedings already pending there and

3. the authority to whom the data are transmitted has jurisdiction for the measures under no. 2 above.

(2) S. 61a(2) to (4) shall apply mutatis mutandis.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

In addition to the information provided, information sharing and the exchange of data are addressed under sections 33 et seq. of the Money Laundering Act.

Germany is in compliance with this article. Practical examples of the implementation of art. 56 of the Convention were provided during the country visit (see also art. 58 below).

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Return of confiscated property to the prior legitimate owner can be achieved either directly under German national law, by claiming compensation or damages during criminal or through civil proceedings (see below), or through mutual legal assistance (please see the information under Article 57 paragraph 2 and subparagraphs 3 (a) and (b)).

Under German law, the confiscation of an object generally has the effect of transferring ownership of the property or the right to the state (section 75 Criminal Code). However, confiscated objects - or, where appropriate, the equivalent value - must be handed over to any aggrieved persons who, as a result of an offence, have become entitled to compensation (section 459h Code of Criminal Procedure). These particularly include the former rightful owners within the meaning of section 75(1).

Any injured party, including a state, can claim victim compensation during enforcement proceedings by registering their claim at the public prosecution office under reference to the criminal court judgment that determines their status as injured party as well as the damage incurred (section 111i, 111n, section 459 h ff. Code of Criminal Procedure); a civil law title or special judicial admission are not required.

If the illegally obtained object still exists and can be seized from the offender, the court orders confiscation of the illegally obtained object in its judgment. The object then passes to the state once the judgment becomes final and binding. If victims contact the competent public prosecution office within six months, the confiscated object will be returned to them during criminal enforcement proceedings. If the illegally obtained object is no longer existent, the court, in its judgment, orders the confiscation of a monetary amount equivalent to the (no longer available) illegally obtained object. This means the offender is ordered to pay the state a sum of money equivalent to the value of the illegally obtained object. On this basis, once the judgment has become final and binding, the public prosecution office can enforce against the perpetrator's (already temporarily frozen) assets and monetize seized objects.

The competent authority for compensation out of the proceeds of the offence during enforcement proceedings is the public prosecution authority (cf. sections 459h, 459j and 459k Code of Criminal Procedure). The public prosecution authority will inform the victim as soon as the confiscation order has become legally binding (section 459i Code of Criminal Procedure). After receiving the information, the victim may claim compensation within six months (section 459j para 1 and section 459k para 1 Code of Criminal Procedure).

If the compensation claim can be based on the factual findings of the confiscation orders, the prosecution authority will order the compensation. In case the factual findings are not a sufficient to support the compensation claim, the court will have to decide on the claim (cf. section 459j para 2 and section 459k para 2 Code of Criminal Procedure).

Compensation can only be claimed with regard to losses/damages that correspond (section 459h Code of Criminal Procedure). Further damages or a compensation for pain and suffering will have to be claimed in separate proceedings.

If the proceeds are sufficient to satisfy any victim who is entitled to claim compensation, the public prosecution will distribute the proceeds among the victims in accordance with their respective compensation claims. In case the proceeds are not sufficient to satisfy all compensation claim, the public prosecution will file for the opening of insolvency proceedings (sections 111i, 459 h para 2 sentence 2 Code of Criminal Procedure). In such cases, the public prosecution office will release the temporarily frozen assets for the insolvency proceedings. The victim will then be compensated in the insolvency proceedings together with the perpetrator's other creditors. The victim compensation model thus adheres to the principle of equal treatment of creditors.

Finally, if the public prosecution rejects a compensation claim of a victim is partially or fully, the victim may invoke the court (section 459o Code of Criminal Procedure). If the court rejects a compensation claim, the victim may file a complaint.

If the victim wants to claim further damages, they can either invoke the civil court or claim such damages in an adhesion procedure (“Adhäsionsverfahren”) during the criminal proceedings. For civil action to establish title or ownership of property, or to claim compensation or damages, please see the information under Art. 53 subparagraphs a) and b).

The adhesion procedure allows the victim to claim damages (or compensation for pain and suffering) within the criminal proceedings (section 403 Code of Criminal Procedure). A request of the victim is sufficient to initiate the procedure. This request can also be submitted in oral form at the trial hearing (section 404 para 1 Code of Criminal Procedure).

In case the criminal court fully grants the application (section 406 para 1 sentence 1), the victim obtains a title which can be enforced against the offender.

Criminal Code Section 75

Effects of the confiscation

(1) Where confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final if the object

1. Belongs to the person affected by the order at that time or if the person affected by the order is entitled to the object at that time, or if the object
2. Belongs to some other person, or if some other person is entitled to it, who has granted it for the offence or for other purposes while being aware of the circumstances of the offence.

In other cases, title to the property or the right shall devolve to the state once six months have expired following the notice as to the order of confiscation having become final, unless that person who held title to the property or held the right has previously filed his right with the enforcement authority.

(2) In all other regards, the rights of third parties to the object shall continue in force. In the cases designated in section 74b, however, the court shall order the expiry of these rights. In the cases provided for by sections 74 and 74a, the court may order the expiry of the right of a third party if that third party 1. Has contributed at least negligently to the object being used by the offender as a means or resource, or to its being the object of the offence, or

2. Has acquired the right to the object in a reprehensible manner while being aware of the circumstances giving rise to the confiscation.

(3) Until the devolution of title to the property or of the right, the order of confiscation or the order reserving the right to confiscate shall have the effect of a prohibition of disposal within the meaning of section 136 of the Civil Code.

(4) In the cases governed by section 111d (1), second sentence, of the Code of Criminal Procedure, section 91 of the Insolvency Statute shall have no application.

Code of Criminal Procedure Section 459h

Compensation of the aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his successor in title. Section 111i shall apply *mutatis mutandis*.

Section 459j Procedure for restitution and surrender

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to restitution or to surrender pursuant to section 459h (1) within six months of having been notified

that the confiscation order has become final.

(2) Where the entitlement of the claimant filing the request is immediately evident from the confiscation order and the determinations underlying it, the object confiscated shall be restituted or surrendered to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the restitution or surrender subject to the provisions set out in section 459h (1) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the restitution or surrender, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, restitution in integrum shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to restitution or surrender pursuant to section 459h (1) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident.

Section 459k Procedure for the disbursement of the realisation proceeds

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to disbursement of the realisation proceeds pursuant to section 459h (2) within six months of having been notified that the confiscation order has become final. The request is to set out the amount of the claim.

(2) Where the entitlement of the claimant filing the request and the amount of the claim are immediately evident from the confiscation order and the determinations underlying it, the proceeds of realisation shall be disbursed in that scope to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the disbursement of the realisation proceeds subject to the provisions set out in section 459h (2) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the disbursement, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, restitution in integrum shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to disbursement of the realisation proceeds pursuant to section 459h (2) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident. Enforceable legal documents under public law for receivables in money that have become final shall be equivalent to an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure.

Section 111i Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall expire as soon as this becomes part of the estate under administration. The collateral mortgage shall not expire for objects situated in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply mutatis mutandis to the lien on the collateral mortgage lodged pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefore are common knowledge.

Section 403 [Conditions]

The aggrieved person or his heir may, in criminal proceedings, bring a property claim against the accused arising out of the criminal offence if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in proceedings before the Local Court irrespective of the value of the matter in dispute.

Section 404

[Application by the Aggrieved Person]

(1) The application asserting the claim may be made in writing or orally to be recorded by the registry clerk, or also orally at the main hearing before the closing speeches begin. The application must specify the subject of, and the grounds for, the claim and should set forth the evidence. If the application is not made at the main hearing, it shall be served on the accused.

[...]

Section 406 [Decision]

(1) The court shall grant the application in the judgment in which the accused is pronounced guilty of a criminal offence or in which a measure of reform and prevention is ordered in respect of such criminal offence, so far as the application is based on such criminal offence. The decision may be limited to the ground for, and part of, the asserted claim; section 318 of the Code of Civil Procedure shall apply *mutatis mutandis*. The court shall dispense with a decision if the application is inadmissible or insofar as it appears unfounded. In all other cases the court may dispense with a decision only if the application is not suitable to being dealt with in criminal proceedings even after taking into account the legitimate interests of the applicant. An application will be unsuited to being dealt with in criminal proceedings particularly where its further examination, even where a decision is only conceivable on the ground for, or a part of, the asserted claim, would considerably protract the proceedings. Where the applicant has asserted a claim in respect of damages for pain and suffering (section 253 subsection (2) of the Civil Code) a decision may only be dispensed with in accordance with the third sentence.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Given that the new asset confiscation legislation entered into force on 1 July 2017, there is no experience yet with regard to compensation of victims.

(b) Observations on the implementation of the article

Germany is in compliance with this provision, taking into account the observations under para. 3 of the article.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under subparagraphs 3 (a) and (b).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

Given that the new asset confiscation legislation entered into force on 1 July 2017, there is no experience yet with regard to compensation of victims.

(b) Observations on the implementation of the article

Please see the observations under the provisions of paragraph 3.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is

planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In general, where confiscation of an object is ordered, title to the property or the right shall devolve to the German state once the order becomes final, section 56 para 4 IRG in conjunction with section 75 Criminal Code.

When enforcing an order for confiscation from a requesting state, section 56b IRG provides for the possibility to enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the confiscated assets.

A precondition for such an agreement is that reciprocity is assured (section 56 (1), section 88f. IRG) and whether an agreement can be concluded must be decided on a case-by-case basis.

Full return of all assets to the requesting state can be agreed on in the ad hoc agreement under section 56b.

For Member States of the European Union, section 88f of the Act on International Cooperation in Criminal Matters (IRG) stipulates that half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56a) its value exceeds EUR 10,000 and no agreement under s. 56b(1) has been reached. This shall not apply if the consent necessary under s. 56b(2) was refused.

Act on International Cooperation in Criminal Matters

Section 56 Granting Assistance

[...]

(4) The granting of a request for legal assistance seeking the enforcement of an order for confiscation or shall be equivalent to a final order and decision within the meaning of ss. 73, 74 of the Strafgesetzbuch. S. 433 of the Strafprozessordnung shall apply mutatis mutandis.

Section 56b

Agreement on Disposal, Return and Distribution of Seized Assets

(1) The authority in charge of granting assistance may enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the assets resulting from the enforcement of an order for confiscation if reciprocity is assured.

(2) Agreements relating to objects within the meaning of ss. 1 and 10 of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung require the consent of the Representative of the Federal Government for Cultural and Media Affairs. If the consent is refused, s. 16(3) 2nd sentence of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung* shall apply mutatis mutandis.

Part IX.

Assistance by Enforcement to Member States of the European Union

Section 88f Distribution of Revenue

Half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56a) its value exceeds EUR 10,000 and no agreement under s. 56b(1) has been reached. This shall not apply if the consent necessary under s. 56b(2) was refused.

Criminal Code

Section 75

Effects of the confiscation

(1) Where confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final if the object

1. Belongs to the person affected by the order at that time or if the person affected by the order is entitled to the object at that time, or if the object
2. Belongs to some other person, or if some other person is entitled to it, who has granted it for the offence or for other purposes while being aware of the circumstances of the offence.

In other cases, title to the property or the right shall devolve to the state once six months have expired following the notice as to the order of confiscation having become final, unless that person who held title to the property or held the right has previously filed his right with the enforcement authority.

(2) In all other regards, the rights of third parties to the object shall continue in force. In the cases designated in section 74b, however, the court shall order the expiry of these rights. In the cases provided for by sections 74 and 74a, the court may order the expiry of the right of a third party if that third party

1. Has contributed at least negligently to the object being used by the offender as a means or resource, or to its being the object of the offence, or

2. Has acquired the right to the object in a reprehensible manner while being aware of the circumstances giving rise to the confiscation.

(3) Until the devolution of title to the property or of the right, the order of confiscation or the order reserving the right to confiscate shall have the effect of a prohibition of disposal within the meaning of section 136 of the Civil Code.

(4) In the cases governed by section 111d (1), second sentence, of the Code of Criminal Procedure, section 91 of the Insolvency Statute shall have no application.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

See also the information under para 5 of this article.

(b) Observations on the implementation of the article

In general, confiscated property vests in the German state once the order becomes final (section 56 para 4 IRG in conjunction with section 75 Criminal Code).

However, when enforcing an order for confiscation from a requesting state, the authority in charge of granting assistance may enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the assets if reciprocity is assured (section 56b IRG). Such decisions are taken on a case by case basis and must be based on objective reasons, such as victim compensation or if the content of such an agreement is normal practice in the requesting State (No. 189 RiVAST).

For Member States of the European Union, section 88f of the IRG applies, which stipulates rules on the disposal of assets for competent authorities of requesting Member States.

The compensation of injured parties (subpara. 3(c) of this article) is addressed separately from the return, as it is granted from public funds.

Paragraph 3 of article 57 sets forth binding obligations for States parties to return confiscated property to requesting States in the case of embezzlement of public funds or of laundering of embezzled public funds.

There is no provision requiring the return of confiscated assets by Germany to the requesting State in the above-mentioned cases. Confiscated assets may be returned (in full, for all offences) to requesting countries under section 56b IRG, if there is an ad hoc agreement between the competent authorities that stipulates such return.

The authorities clarified that an ad hoc agreement is required because the Convention is not directly applicable in Germany. Furthermore, the principles of the Convention would be applied in each ad hoc agreement even though the Convention is not directly applicable. This means that in cases of requests under the Convention, there would be no discretion to refuse to return assets.

The reviewers took note of the explanation provided by the German authorities. However, this explanation does not appear to be supported, given that the Convention is not directly applicable in Germany, and the mandatory return of assets in the afore-mentioned cases is not stipulated in the legislation (or in any regulation, procedure or policy document, including the asset recovery guide). Accordingly, decisions on asset return may be taken on a case by case basis without any reference to the binding obligation under article 57(3), a fundamental requirement of this Convention.

In the absence of cases, and given that the Convention is not directly applicable, it is recommended that Germany adopt measures providing for the mandatory return of assets in line with article 57. It would also be beneficial to include a reference to the obligations under this article in the updated asset recovery guide.

During the country visit the authorities indicated that they would consider including such a reference to the Convention, and in particular article 57, in the new version of the guide.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under subparagraph 3(a).

The conclusion of an ad hoc agreement (described under subparagraph 3 (a)) is possible irrespective of the type of the underlying offence.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Please refer to the observations under subparagraph 3 (a) of article 57.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under article 53, subparagraph (b) and subparagraph (c), and article 57, paragraph 3 (a).

In addition, compensation of the injured party is required under Section 56a of the German Act on International Cooperation in Criminal Matters (IRG). The party injured by the offence on which the foreign decision is based shall receive compensation from public funds if a German or foreign court has issued an enforceable decision awarding damages against the convicted person or if the latter has declared his obligation to pay to the injured person in an enforceable document (title) and, inter alia, the injured person shows that he could not obtain full satisfaction of his claim from the enforcement of the title. Compensation is awarded in exchange for cession of the claim for damages to an equal amount.

Act on International Cooperation in Criminal Matters

Section 56a Compensation of the Injured Party

(1) If upon the request of another State a foreign decision ordering confiscation was executed into the assets of the convicted person within German territory, the party injured by the offence on which the foreign decision is based shall receive compensation from public funds if

1. a German or foreign court has issued an enforceable decision awarding damages against the convicted person or if the latter has declared his obligation to pay to the injured person in an enforceable document (title),
2. the title is enforceable within German territory,
3. the injured person shows that the title covers the damages arising from the offence on which the decision for confiscation is based and

4. the injured person shows that he could not obtain full satisfaction of his claim from the enforcement of the title.

Compensation shall be awarded in exchange for cession of the claim for damages to an equal amount. (2) Compensation shall not be granted if the rights of the injured person under s. 73e(1) 2nd sentence continue to exist.

(3) The amount of compensation shall be limited by the remaining revenue accruing to German public funds from the enforcement of the confiscation order into the domestic assets. If several injured parties have filed an application under subsection (1) above, their compensation shall be determined by the sequence of their applications. If several applications are filed on the same day and the revenue is insufficient to satisfy these persons they shall receive compensation pro rata according to the amount of the claims for damages.

(4) The application shall be filed with the competent enforcement authority. It may be denied if six months have passed since the end of the enforcement proceedings related to the asset from which compensation could be paid. The enforcement authority may set appropriate time limits in which the injured person must adduce the necessary documentation.

(5) The decision of the enforcement authority may be reviewed in the civil courts.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

Given that the new asset confiscation legislation entered into force on 1 July 2017, there is no experience yet with regard to compensation of victims.

(b) Observations on the implementation of the article

In addition to the information provided under the previous paragraphs, the compensation of injured parties (victims) is required under Section 56a of the German Act on International Cooperation in Criminal Matters (IRG). The party injured by the offence on which the foreign decision is based shall receive compensation from public funds, inter alia, if a German or foreign court has issued an enforceable decision awarding damages against the convicted person and the injured persons show that they could not obtain full satisfaction of their claim from the enforcement of the title.

Please refer to the observations under subparagraph 3 (a) of article 57.

(c) Successes and good practices

The possibility (according to the conditions established in article 56a of IRG) of compensation from public funds if the injured persons show that they could not obtain full satisfaction of their claim from the enforcement of the title can be considered as a good practice, especially for victims of corruption offences.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Generally, the affected states waive all claims of reimbursement of costs (section 75 IRG). An exception is made in case of exorbitant costs.

Act on International Cooperation in Criminal Matters

Section 75 Costs

The reimbursement of costs incurred in the provision of legal assistance from the requesting State may be waived.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

(b) Observations on the implementation of the article

Germany generally waives all claims of reimbursement of costs, except if costs are exorbitant (section 75 IRG). Germany is in compliance with this provision.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information under article 57 para 3 (b).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

The overall experience with regard to the distribution of assets on the basis of sections 56b and 88f IRG has been very positive in recent years.

Germany has entered into ad hoc asset disposal agreements with other EU member States in specific cases. Since 2012, at the federal level, there have been nineteen agreements regarding asset disposal in specific cases involving two foreign States. The number of asset disposal agreements at the State level is reported to be significantly higher.

(b) Observations on the implementation of the article

Germany is in compliance with the provision. However, the lack of statistics poses a challenge in terms of practical evaluation.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In 2002, Germany created a body known as the Zentralstelle für Verdachtsmeldungen in German and the Financial Intelligence Unit in English, which was located at the Federal Criminal Police Office. With the entry into force of the new Money Laundering Act on 26 June 2017, this body has now been moved from the remit of the Federal Ministry of the Interior to the remit of the Federal Ministry of Finance. Its German name has been changed to the Zentralstelle für Finanztransaktionsuntersuchungen and it has been re-established as an autonomous agency with an administrative focus (instead of the previous organisation along police lines). The FIU is an autonomous organisational unit, and works independently in exercising its powers and mandate.

As well as the suspicious transaction reports from obliged entities pursuant to section 43 of the Money Laundering Act, the FIU also receives reports from revenue authorities, which are obliged to submit these on the basis of the Fiscal Code (section 31b). In addition to the revenue authorities, the FIU will also receive suspicious transaction reports from other authorities pursuant to section 44 of the Money Laundering Act, if these authorities are aware of facts that indicate that an asset is connected with money laundering or terrorist financing.

Once a suspicious transaction report related to money laundering has been received, the reported information is first of all checked to see if it is “abnormal”. The FIU has now been equipped with significantly more staff, new software and additional powers to access data, allowing it to comprehensively analyse the suspicious transaction reports that it receives and to augment these reports with additional information. Only the “substantial” reports are then forwarded to the competent law enforcement authorities. This filter function of the FIU is intended to relieve the law enforcement authorities, allowing them to better concentrate on the complex proceedings which often require time-consuming investigations. In addition, depending on the circumstances of the individual case, other domestic authorities such as the Federal Office for the Protection of the Constitution (i.e. the domestic intelligence agency) are also notified of any findings resulting from the analysis of the suspicious transaction reports.

The FIU guarantees that each individual case is subject to immediate screening upon receipt. This ensures in particular that cases with a fixed deadline, as well as other urgent cases and reports involving potential terrorist financing, are prioritised and processed immediately. The FIU reports that, depending on when the corresponding suspicious transaction report is received, cases subject to a fixed deadline pursuant to section 46 (1), first sentence, number 2 of the AML Law are passed on to the responsible prosecuting authority either on the same day or, at the latest, the following workday. This ensures that any criminal procedural measures (to secure funds) can be ordered on time.

The exchange of information on the international level is also being simplified and thereby intensified.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

With the 2017 budget, 100 staff posts were released during the first stage of the FIU transfer to the Customs Administration. A further 65 were scheduled to be added in 2018. As of September 2018, these budgeted posts were occupied by 101 members of staff. The increase in staffing levels forming part of stage 2 of the FIU transfer, planned for 2018 – taking staffing levels up to 165 – has been proceeding according to plan. Given the growing number of transaction reports, the Central Customs Authority has calculated a total staff requirement of 475 for the FIU (including service staff). In finding staff for these (budgeted) posts, the Customs Administration will continue to pursue a multidisciplinary approach and hire large numbers of externally trained staff.

There is little information available yet on the implementation of measures by the new FIU located within the remit of the Finance Ministry, because it only became operational on 26 June 2017. However, as noted under article 14, the new FIU has received 57,714 reports of suspicious transactions between becoming operational on 26 June 2017 and 30 April 2018. As of 30 April 2018, all incoming reports had been processed, and 31,235 reports had been forwarded to law enforcement authorities or placed under further monitoring by the FIU, where the requirements were not met to pass them on to criminal prosecution authorities (section 32 (2) of the Money Laundering Act). As of September 2018, more than half of the cases still open had already been fully assessed and were at the final administrative processing stage. The FIU will publish its first annual report in 2019.

The FIU that was located at the Federal Criminal Police Office published an annual report about its activities in 2016. According to this annual report, a total of 40,690 suspicious transaction reports were sent to the FIU in 2016 (compared with 29,108 in 2015). Of these, 35,038 reports came from banks.

The figures are also available online here: [2002 – 2015 \(in English\)](#); [2002 – 2016 \(in German\)](#).

Development of the number of suspicious transaction reports filed pursuant to the Money Laundering Act, 2007–2016

2016	40,690
2015	29,108
2014	24,054
2013	19,095
2012	14,361
2011	12,868
2010	11,042
2009	9,046
2008	7,349
2007	9,080

Number of reports filed pursuant to the Money Laundering Act by reporting party, 2015-2016

		2016	2015
Credit institutions	Credit banks	16,682	9,679
	Saving banks (Sparkassen and Landesbanken)	11,115	9,380
	Credit unions and co-operatives	3,869	3,538
	Deutsche Bundesbank and main branches	58	53
	Other	3,314	2,797
	Total	35,038	25,447
Insurance companies		120	149
Financial services providers		4,316	2,253
Financial enterprises		587	459
Authorities (Sec. 14 and 16 of the MLA)		377	526
	Total	5,400	3,387
Parties required to report (Sec. 2(1) no 7-13 of the MLA)	Lawyers	5	29
	Legal advisors (chamber)	2	0
	Patent attorneys	0	0
	Notaries	2	1
	Debt-collection companies, asset managers	0	0
	Auditors	2	3
	Certified accountants	0	0
	Tax consultants	3	1
	Agents in tax matters	0	0
	Trustees, service providers for companies	1	2
	Real estate agents	28	34
	Casinos	55	52
	Operators and brokers of online gambling	0	0

	Persons who deal in goods	151	116
	Total	249	238
Other reports filed pursuant to the Money Laundering Act 36 28		3	36
Total		40,690	29,108

FIU's International Cooperation (section 33 et seq. Money Laundering Act), including through Egmont channels

For the 2016 reporting year, 1,590 enquiries/spontaneous transmissions of information were registered from within Germany and abroad. This corresponds to a reduction in case numbers by around 27% compared to the 2015 reporting year.

In 2015, a considerable increase by 733 cases to 2,181 cases had been recorded. This number comprises both the enquiries received from foreign FIUs and those sent to the FIU Germany by German law enforcement agencies. This was an increase rate of more than 50% compared to the previous year.

This development is mainly due to the enormous increase of the number of cases reported especially by two foreign FIUs.

Development of the case numbers of the FIU information exchange:

2007	744
2008	773
2009	906
2010	1,044
2011	1,017
2012	1,219
2013	1,207
2014	1,448
2015	2,181
2016	1,590

More detailed statistics can be found in the FIU's annual reports, which are available at the following address:

https://www.bka.de/EN/CurrentInformation/AnnualReports/FinancialIntelligenceUnitGermany/financialintelligenceunitgermany_node.html

2002 - 2016 (in German):
https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/FinancialIntelligenceUnitDeutschland/financialintelligenceunitdeutschland_node.html

(b) Observations on the implementation of the article

The new Money Laundering Act created the legal framework for the reorganization of Germany's FIU. The new FIU became operational on 26 June 2017 and is organized along administrative lines under the Federal Ministry of Finance. The FIU guarantees that each case is subject to immediate screening upon receipt, to ensure that cases with a fixed deadline, urgent cases, and reports involving potential terrorist financing, are prioritized.

Regarding the reorganization of the FIU, Germany reported that a timeframe of approximately 12 months was set for the FIU's transfer to and reorganization as part of the Central Customs Authority, including for the provision of new IT infrastructure. With the newly created authority becoming operational as planned on 26 June 2017, unforeseen difficulties were initially experienced with the FIU-specific IT system, seriously impeding setup and expansion as well as workflow itself, and resulting in casework backlogs at the FIU. Since November 2017, however, the IT system has been operating as planned. Thanks to far-reaching personnel measures, including temporary support from other departments, significant progress was made in reducing the backlog and stabilizing FIU workflow. The above referenced statistics confirm that as of 30 April 2018, no cases remained unprocessed.

Based on the information provided and the discussions in the country visit it is recommended that Germany continue steps to capacitate the newly established FIU, including through the provision of necessary resources and satisfaction of increased staff requirements to effectively carry out its mandate.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

During current contract negotiations with other States the provisions of this chapter are respected and proposed by Germany.

Below is the list of Germany's bilateral and multilateral agreements on mutual legal assistance, which also cover matters related to asset recovery, including the tracing and return of tax evasion proceeds:

Bilateral:

Andorra: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Anguilla (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Antigua and Barbuda: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Bahamas: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Bermuda (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

British Virgin Islands (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Cayman Islands (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Cook Islands: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Czechia: Vertrag vom 2. Februar 2000 zwischen der Bundesrepublik Deutschland und der Tschechischen Republik über die Ergänzung des Europäischen Übereinkommens über die Rechtshilfe in Strafsachen vom 20. April 1959 und die Erleichterung seiner Anwendung

Gibraltar (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Grenada: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Guernsey (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des

Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Hong Kong SAR, China: Abkommen vom 26. Mai 2006 zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Sonderverwaltungsregion Hongkong der Volksrepublik China über die gegenseitige Rechtshilfe in Strafsachen

Isle of Man (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Israel: Zusatzvertrag vom 20. Juli 1977 zwischen der Bundesrepublik Deutschland und dem Staat Israel über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung

Italy: Vertrag vom 24. Oktober 1979 zwischen der Bundesrepublik Deutschland und Italien über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung

Jersey (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Kosovo: Agreement on Judicial Cooperation in Criminal Matters between the Federal Republic of Germany and the Government of the Republic of Kosovo, 29 June 2015.

Liechtenstein: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Monaco, Principality: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Montserrat (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Netherlands: Vertrag vom 30. August 1979 zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung

Netherlands: Vereinbarung (durch Notenwechsel) vom 10. Dezember 2001/22. Januar 2002 zwischen der Regierung der Bundesrepublik Deutschland und der Regierung des Königreichs der Niederlande zur Änderung des Vertrags vom 30. August 1979 zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung sowie über die Erstreckung seiner Anwendung auf die Niederländischen Antillen und Aruba

Poland: Vertrag vom 13. Juli 2003 zwischen der Bundesrepublik Deutschland und der Republik Polen über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung

Switzerland: Vertrag vom 13. November 1969 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über die Ergänzung des Europäischen Übereinkommens vom 20. April 1959 über die Rechtshilfe in Strafsachen und die Erleichterung seiner Anwendung

Switzerland: Vertrag vom 27. April 1999 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über grenzüberschreitende polizeiliche und justizielle Zusammenarbeit

Switzerland: Vertrag vom 8. Juli 1999 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über die Änderung des Vertrages zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über die Ergänzung des Europäischen Übereinkommens über die Rechtshilfe in Strafsachen vom 20. April 1959 und die Erleichterung seiner Anwendung vom 13. November 1969 nach seinem Artikel 3 Absatz 1

St. Lucia: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

St. Vincent and the Grenadines: Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

Turks and Caicos (UK): Abkommen auf dem Gebiet der Rechts- und Amtshilfe und des Informationsaustauschs (findet auch auf Steuerstrafsachen Anwendung)

USA: Zusatzvertrag vom 18. April 2006 zum Vertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika über die Rechtshilfe in Strafsachen

USA: Vertrag vom 14. Oktober 2003 zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika über die Rechtshilfe in Strafsachen

Multilateral:

European Union:

- Übereinkommen vom 29. Mai 2000 über die Rechtshilfe in Strafsachen zwischen den Mitgliedstaaten der Europäischen Union
- Protokoll vom 16. Oktober 2001 zu dem Übereinkommen über die Rechtshilfe in Strafsachen zwischen den Mitgliedstaaten der Europäischen Union
- Rahmenbeschluss 2003/577/JI des Rates vom 22. Juli 2003 über die Vollstreckung von Entscheidungen über die Sicherstellung von Vermögensgegenständen oder Beweismitteln in der Europäischen Union
- Rahmenbeschluss 2006/783/JI des Rates vom 6. Oktober 2006 über die Anwendung des Grundsatzes der gegenseitigen Anerkennung auf Einziehungsentscheidungen in der Europäischen Union
- Rahmenbeschluss 2006/960/JI des Rates vom 18. Dezember 2006 über die Vereinfachung des Austauschs von Informationen und Erkenntnissen zwischen den Strafverfolgungsbehörden der Mitgliedstaaten der Europäischen Union

Council of Europe:

- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 16 May 2005.
- Europäisches Übereinkommen vom 20. April 1959 über die Rechtshilfe in Strafsachen
- Zusatzprotokoll vom 17. März 1978 zum Europäischen Übereinkommen über die Rechtshilfe in Strafsachen
- Zweites Zusatzprotokoll vom 8. November 2001 zum Europäischen Übereinkommen über die Rechtshilfe in Strafsachen;
- Übereinkommen vom 8. November 1990 über Geldwäsche sowie Ermittlung, Beschlagnahme und

Einziehung von Erträgen aus Straftaten

Japan/EU:

Abkommen vom 30. November 2009 / 15. Dezember 2009 zwischen der Europäischen Union und Japan über die Rechtshilfe in Strafsachen

USA/EU:

Abkommen vom 25. Juni 2003 zwischen der Europäischen Union und den Vereinigten Staaten von Amerika über Rechtshilfe

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

Germany has signed several multilateral agreements to facilitate cross-border asset recovery and can cooperate on asset recovery regardless of the existence of a treaty.

Germany has adopted agreements and arrangements in line with the article under review.