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ANNEX 5

**ANNEX**

**GERMANY**

*to the*

**EU Anti-Corruption Report**

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# GERMANY

## 1. INTRODUCTION – MAIN FEATURES AND CONTEXT

### *Anti-corruption framework*

**Strategic approach.** Both prevention and control of corruption is seen as key in fighting corruption in Germany. Germany invests in preventive programmes as a cost-effective way to control corruption. The Council of Europe's Group of States against Corruption (GRECO) has acknowledged the work done by German public institutions to prevent corruption, including the Guidelines for Prevention of Corruption in the Federal Administration.<sup>1</sup> It is a general practice in public institutions to appoint contact persons for corruption prevention. There are clear and public guidelines prohibiting gifts in the civil service. Germany has extended regulations concerning the receipt of gifts and hospitality and the disclosure of activities for five years after leaving public office.<sup>2</sup> The open online information system (BundOnline2005) introduced centralised electronic procurement procedures in the federal administration. The Federal Court of Audit (*Bundesrechnungshof*) checks compliance with statutory provisions. While it is not yet a nationwide practice, some *Länder* keep registers of bidders who have been excluded from public procurement procedures.

**Legal framework.** German criminal legislation does not fully cover the liability of elected officials for corruption and certain types of behaviour related to corruption in the private sector. Despite being a founding member of GRECO and having signed the two Council of Europe Conventions against Corruption in 1999, it remains one of the few European countries which have not ratified these conventions or the United Nations Convention against Corruption (UNCAC)<sup>3</sup>. In its coalition agreement in 2013, the parties forming the new German federal government have declared that they would amend the criminal statute on bribery of elected public officials,<sup>4</sup> which may facilitate the ratification of UNCAC.

An assessment by GRECO in November 2012 pointed to areas related to party funding in which more needs to be done.<sup>5</sup> While Germany has implemented several GRECO recommendations in the areas of transparency and sanctions, it has yet to implement some other recommendations. In particular, GRECO noted that Germany had given limited attention to recommendations to ensure timely publication of campaign accounts, to make direct donations to parliamentarians and candidates who are political party members more transparent, and to make further resources available to the *Bundestag* administration for supervising party funding. Overall, the level of compliance with the recommendations in the

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1 The latest guidelines from 1998 were published in 2012 under the title "Empfehlungen zur Korruptionsprävention in der Bundesverwaltung "-

[http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED\\_Verwaltung/Korruption\\_Sponsoring/empfehlungen\\_zur\\_richtlinie\\_korruptionspraevention\\_de.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsoring/empfehlungen_zur_richtlinie_korruptionspraevention_de.pdf?__blob=publicationFile)

2 Transparency International (TI): Building Integrity and Reducing Corruption Risk in Defence Establishment: Ethics and business conduct in defence establishments – the improvement of national standards, by Ben Magahy and Mark Pyman, 2009, p.23; <http://archive.ti-defence.org/publications/664-ethics-and-business-conduct-in-defence-establishments--the-improvement-of-national-standards>.

3 Mainly due to non-compliance with the UNCAC provisions on the criminal liability of officials

4 CDU/CSU/SPD Deutschlands Zukunft gestalten p. 77.  
<https://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf> p. 152.

5 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2915\\_Germany\\_Interim\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2915_Germany_Interim_EN.pdf).

Third Evaluation Round remained 'globally unsatisfactory'. This was also the case in October 2013.<sup>6</sup>

**Institutional framework.** Detailed rules regulate the work of the public administration. Comprehensive codes of conduct aim to prevent corruption at federal level and in many *Länder*.<sup>7</sup> According to research, 99% of the authorities contacted apply the 'four eyes' principle, whereby two individuals must approve important decisions, 80% have internal anti-corruption guidelines, 74% randomly monitor decision making where the risk of corruption is more prevalent, 62% have identified areas with high corruption risks, and 57% have appointed an anti-corruption commissioner.<sup>8</sup> A comparatively high number of people working in the public sector are willing to press criminal charges against corrupt colleagues.<sup>9</sup> Certain German municipalities, such as Hamburg, provide examples of local best practice for fostering integrity in the public sector.<sup>10</sup>

### *Opinion polling*

**Perception surveys.** According to the 2013 Special Eurobarometer on Corruption, 92% of German respondents do not feel personally affected by corruption in their daily lives (the EU average is 70%). Nevertheless, 59% believe that corruption is widespread in their country (the EU average is 76%).

**Experience of corruption.** Less than 1% of German respondents indicate that they were asked or expected to pay a bribe over the previous 12 months (EU average: 4%), while 9% said they personally knew someone who had taken bribes (EU average: 12%).

**Business surveys.** While in the 2013 Eurobarometer survey, 50% of Germans (the third highest percentage in the EU) said that bribery and abuse of power for personal gain are widespread in private companies, a majority of business representatives did not think that corruption was a problem for their company when doing business in Germany. Only 3% of respondents said they were expected to pay a bribe.<sup>11</sup>

In the area of public procurement, according to the 2013 Eurobarometer business survey, 20% of those who participated in public procurement procedures in the past three years reported that they were prevented from winning because of corruption (EU average: 32%). Almost all negative practices in the context of public procurement are perceived to be less common than the EU average. Respondents in Germany reported tailor-made specifications for particular companies in 48% of cases (EU average 57%). Collusive bidding was reported to be a widespread practice by 54% of the respondents (EU average 52%). Conflicts of interests in the evaluation of bids were noted by 47% of respondents (EU average: 54%) and 43% reported to unclear selection or evaluation criteria (EU average 51%).

### *Background issues*

**Law enforcement and judiciary.** The judicial system has taken specific steps to tackle bribery and related crimes. Police and prosecutors take part in prevention programmes. Eight out of sixteen *Länder* have specialised anti-corruption units in their prosecution offices.

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6 Greco RC-III (2013) 15E,

7 GRECO (2004) Second Evaluation Round, Report on Germany, Strasbourg, paragraphs 25 to 26.

8 Salvenmoser et al. *Kriminalität im öffentlichen Sektor*, 2010, PricewaterhouseCoopers, Frankfurt a.M., pp. 41-42.

9 Salvenmoser et al. (2010), *ibid.*, p.32.

10 <http://www.hamburg.de/contentblob/4104536/data/korruptionsbekämpfung-in-hamburg.pdf>.

11 2013 Flash Eurobarometer 374.

Germany is among the few EU Member States that publish comprehensive statistics on cases reported to the police and criminal investigations launched, compiled annually by the Federal Criminal Police (BKA).<sup>12</sup> In 2011, the BKA noted 46 795 corruption cases reported to the police, and 1 528 ongoing investigations, down from 1 813 in 2010. According to a recent survey, 83% of German judges and prosecutors opposed the right of ministers of justice to instruct prosecutors in specific cases,<sup>13</sup> and 50% of them think it is important to abolish this right.<sup>14</sup> Public prosecution departments are bound by instructions coming from the executive power, although in some *Länder*, the relevant minister publicly declared he did not intend to give instructions in individual cases.<sup>15</sup>

**Conflict of interests and asset disclosure.** German MPs are not obliged to declare their assets.<sup>16</sup> Recent debates have focused on the extent and transparency of additional income earned by parliamentarians. In 2013, the *Bundestag* adopted rules that require Members to disclose more details in future, at least indicating the category in which the income from an outside activity falls. The new rules came into force at the beginning of a new parliamentary mandate, in 2013.<sup>17</sup>

There are no precise rules regarding a waiting period for politicians and high-level public servants between leaving public service and taking up private employment.

**Freedom of information.** The federal law on access to information adopted in 2005<sup>18</sup> covers the federal bodies and agencies. Brandenburg was the first *Land* to pass a Freedom of Information Act in 1998, followed by Berlin in 1999 and then by others. In five federal states, however, this area remains unregulated: while Baden-Württemberg presented a draft law in 2013,<sup>19</sup> four federal-states (Bavaria, Hesse, Lower-Saxony<sup>20</sup>, and Saxony) do not have legislation on access to public information. The legislation in Hamburg is particularly noteworthy, as it includes an obligation to proactively publish data, documents and contracts on the Internet without a request by a citizen.<sup>21</sup>

**Whistleblowing.** While employees have legal guarantees against arbitrary dismissal in the public and private sectors, Germany has no specific legislation on protecting whistleblowers. A number of draft laws has been discussed in the *Bundestag*, but no legislation has been passed.<sup>22</sup> According to a survey, 44% of federal, 36% of *Länder*, and 23% of local or

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12 BKA: Bundeslagebild 2011 (page 6):

[http://www.bka.de/DE/ThemenABisZ/Deliktsbereiche/Korruption/korruption\\_node.html?\\_nnn=true](http://www.bka.de/DE/ThemenABisZ/Deliktsbereiche/Korruption/korruption_node.html?_nnn=true)

13 Roland Rechtsreport (2014) *Sonderbericht: das deutsche Rechts- und Justizsystem aus Sicht von Richtern und Staatsanwälten* p. 10, at: [http://www.roland-konzern.de/media/downloads/ROLAND\\_Rechtsreport\\_2014\\_Sonderbericht\\_Richter\\_und\\_Staatsanwaelte.pdf](http://www.roland-konzern.de/media/downloads/ROLAND_Rechtsreport_2014_Sonderbericht_Richter_und_Staatsanwaelte.pdf). The

report is based on a representative survey of 1770 judges and prosecutors in Germany and was prepared under the aegis of the German Association of Judges.

14 Roland Rechtsreport p. 10, 16, 53.

15 See GRECO first round report, paragraph 83 et seq; Transparency International Germany (2012) *Nationaler Integritätsbericht Deutschland – Pillar 5 / law enforcement*; see also the declaration of the Minister of Justice of North Rhine- Westphalia not to give instructions.

16 GRECO noted that public officials are not required to make declarations of income (except for tax purposes and in the context of ancillary employment) or assets, since such an obligation would conflict with German constitutional law and data protection law. First Evaluation Round, Greco Eval I Rep (2001) 12E Final, paragraph 97.

17 [http://www.bundestag.de/dokumente/textarchiv/2013/43074864\\_kw08\\_pa\\_geschaeftsordnung](http://www.bundestag.de/dokumente/textarchiv/2013/43074864_kw08_pa_geschaeftsordnung).

18 Gesetz zur Regelung des Zugangs zu Informationen des Bundes - "Informationsfreiheitsgesetz vom 5. September 2005 (BGBl. I S. 2722). <http://www.gesetze-im-internet.de/ifg/BJNR272200005.html>

19 [http://informationsfreiheit.org/wp-content/uploads/2013/03/BW-IFG-FDP-15\\_3114\\_D.pdf](http://informationsfreiheit.org/wp-content/uploads/2013/03/BW-IFG-FDP-15_3114_D.pdf)

20 The government of Lower-Saxony has announced its intention to implement a Freedom of Information Act, which should replicate the law of Hamburg: SPD/BÜNDNIS90-DIE GRÜNEN (2013) *Erneuerung und Zusammenhalt – Koalitionsvereinbarung 2013-2018* p. 68, at <http://www.spdnds.de/content/362590.php>.

21 Hamburgisches Transparenzgesetz <http://www.luewu.de/gvbl/2012/29.pdf>

22 Draft laws on whistleblowers' protection discussed in Bundestag: BT-Drs. 17/8567 and BT- Drs. 17/9782.

municipal authorities have a whistleblowing system in the form of a hotline, website or ombudsman.<sup>23</sup> A private initiative providing a technical tool for protecting whistleblowers, is also in place. The Business Keeper Monitoring System, used for instance by the authorities in Lower Saxony, is a tool providing anonymity for corruption reports made electronically and aims at the early and effective disclosure of risks within companies and public authorities.<sup>24</sup>

**Transparency of lobbying.** Lobbying is not regulated in Germany. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. On a voluntary basis, associations may register on a list of the Federal Parliament.<sup>25</sup> There are currently more than 2 000 organisations registered.<sup>26</sup> There are similar voluntary lists in Brandenburg and the Rhineland Palatinate.<sup>27</sup> However, they are limited to associations and there is no register of self-employed lobbyists, lawyers, think tanks or NGOs.

## 2. ISSUES IN FOCUS

### *Criminal liability of officials*

According to the German criminal code, a public official commits a criminal offence when giving or taking a bribe. However, Members of Parliaments and members of municipal councils do not fall under the criminal code definition of public officials (*Amtsträger*).<sup>28</sup> The bribery provisions apply inter alia to all public officials including *elected* officials such as mayors (*kommunale Wahlbeamte*). However, 'delegates' (i.e. assembly members) do not fall under the definition of public officials and are subject to limited criminal liability (i.e. limited to buying or selling a vote according to section 108e criminal code). 'Delegates'<sup>29</sup> are Members of the European Parliament, a parliament of the Federal Republic or the *Länder* and (insofar as they act in their legislative capacity) members of municipal assemblies, as well as members of assemblies of municipal associations. Elected members of municipal assemblies (*Gemeinderatsmitglieder*) only qualify as public officials to the extent that they are not acting in a legislative but in an administrative capacity. Section 108e of the criminal code (limited to buying or selling a vote) applies to their legislative capacity. This has been confirmed with regard to municipal councils by the jurisprudence of the *Bundesgerichtshof*.<sup>30</sup> Therefore, while bribery is a crime, the criminal liability of elected officials (assembly members) is limited to buying or selling votes, otherwise they do not incur any criminal penalty for their act of passive or active bribery.<sup>31</sup> This issue is one of the main reasons for not having ratified

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23 Salvenmoser et al. PricewaterhouseCoopers, p. 43.

24 <http://www.business-keeper.com/whistleblowing-compliance.html>.

25 See Annex 2 of the Bundestag's Rule of Procedure.

26 <http://www.bundestag.de/dokumente/lobbyliste/index.html>.

27 <http://www.landtag.rlp.de/Dokumente/Rechtsgrundlagen/>;

[http://www.landtag.brandenburg.de/de/parlament/register\\_der\\_interessenvertretungen\\_in\\_brandenburg/607534](http://www.landtag.brandenburg.de/de/parlament/register_der_interessenvertretungen_in_brandenburg/607534)

28 Strafgesetzbuch (StGB) Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), das durch Artikel 5 Absatz 18 des Gesetzes vom 10. Oktober 2013 (BGBl. I S. 3799) geändert worden ist <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>.

29 According to section 108e of the criminal code.

30 Federal Court of Justice, judgment of 9 May 2006 – 5 StR 453/05; <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=578a524a31dcc8c974a4fc601779de64&nr=36159&linked=pm&Blank=1>; and judgment of 12 July 2007 – 2 StR 557/05: "Municipal mandate holders are not public officials if they are not entrusted with concrete administrative tasks over and above the exercise of their free mandate in the municipal assembly and the concomitant tasks."

31 Despite its title: "Abgeordnetenbestechung" – § 108e StGB § 108e StGB: "(1) Wer es unternimmt, für eine Wahl oder Abstimmung im Europäischen Parlament oder in einer Volksvertretung des Bundes, der Länder, Gemeinden oder Gemeindeverbände eine Stimme zu kaufen oder zu verkaufen, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft. (2) Neben einer Freiheitsstrafe von mindestens sechs Monaten wegen einer Straftat nach Absatz 1

the Council of Europe Criminal Law Convention on Corruption and the United Nations Convention against Corruption. The underlying argument is related among other things to the free exercise of the mandate protected under Article 38 of the German Basic Law. Repeated attempts to find a legislative solution have not yet succeeded.

GRECO has criticised MP's exemption from criminal liability for certain acts related to corruption. In 2011 it stated that Germany had not implemented several recommendations and urged the legislator to tighten existing criminal law provisions and to introduce new ones, mostly related to the criminalisation of corruption of elected public officials and foreign public officials.<sup>32</sup>

A prime example where such omission of criminalisation is relevant is where MPs or members of a local governments, without exercising a public function, use their influence to obtain undue advantages for themselves or for a third party. Such behaviour on the part of elected officials is currently not criminalised. Germany has many elected officials who are therefore exempt from criminal liability for bribery offences by default.<sup>33</sup> As GRECO has pointed out, members of local self-governing bodies (e.g. communal and city councils and county councils) who are not entrusted with administrative duties are also exempt from liability.<sup>34</sup> Public officials are generally prohibited from accepting benefits. Since donations for an election campaign (regardless of their value) are considered a benefit, elected officials risk becoming criminally liable if they, or their political party, accept donations despite the fact that election campaign donations are legitimate. This can create a major disadvantage for the incumbent because his challenger does not yet hold public office, and therefore does not qualify as a public official. In order to guarantee a fair and equal treatment of both incumbent and challenger during an election campaign, the Federal Court of Justice held in the 'Wuppertal/Kremendahl' case that donating to an incumbent's election campaign is only a criminal offence if the donation is made to 'buy influence' over the future office holder.<sup>35</sup>

### *Corruption in the private sector*

According to the World Economic Forum's Global Competitiveness Report 2013-14, out of 152 countries Germany is ranked the 4th most competitive economy of the world.<sup>36</sup> Germany has transposed Framework Decision 2003/568/JHA on corruption in the private sector.<sup>37</sup> However, doubts remain on whether some aspects of the bribery offence are adequately covered. Contrary to Article 2(1) of the framework decision, which covers a wide range of situations, section 299 of the criminal code restricts the scope to the distortion of competition in the purchase of goods and commercial services, and unfair preference in the context of competition. Consequently, when distortion of competition cannot be proven, the provision

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kann das Gericht die Fähigkeit, Rechte aus öffentlichen Wahlen zu erlangen, und das Recht, in öffentlichen Angelegenheiten zu wählen oder zu stimmen, aberkennen.“ See: <http://dejure.org/gesetze/StGB/108e.htm>.

32 GRECO (2009) Third Evaluation Round, Evaluation Report on Germany on Incriminations (Theme I), Strasbourg, paragraph 107 (“major lacuna”) and paragraph 123; GRECO (2011) Third Evaluation Round, Compliance Report on Germany, paragraph 15 to 24.

33 In 2009, GRECO referred to estimates of over 220 000 elected officials:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)3\\_Germany\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)3_Germany_One_EN.pdf).

34 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)3\\_Germany\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)3_Germany_One_EN.pdf).

35 [http://www.justiz.nrw.de/nrwe/lgs/dortmund/lg\\_dortmund/j2006/14\\_V\\_P\\_3\\_05urteil20060316.html](http://www.justiz.nrw.de/nrwe/lgs/dortmund/lg_dortmund/j2006/14_V_P_3_05urteil20060316.html)  
<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=d2211d69ab16661059b222cbcd620370&nr=30859&pos=0&anz=1>

36 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf).

37 Report from the Commission based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector; COM/2007/0328 final.

does not apply.<sup>38</sup> GRECO also urged Germany to amend rules on bribery in the private sector by expanding their scope beyond unfair preference in the competitive purchase of goods or commercial services, in order to cover all situations in which the offence was committed in the course of business activity.<sup>39</sup>

Moreover, the German criminal code does not expressly penalise corruption through an intermediary, as stipulated in Article 2(1) of the framework decision. Such conduct may be implicitly covered through other offences, based on the interpretation provided by the jurisprudence.<sup>40</sup>

GRECO has also noted that trading in influence – defined as the promising, giving or offering, any undue advantage to anyone who asserts that he is able to exert an improper influence over the decision-making, as well as requesting, receiving or accepting such an offer<sup>41</sup> – is not criminalised in Germany.<sup>42</sup> Thus German law does not include an offence leading to the prohibition to exert influence within the meaning of Article 12 of the Council of Europe's Criminal Law Convention on Corruption.<sup>43</sup> Such acts are however covered to a large extent by other offences in German law. Giving a bribe through a third person (intermediary) or to a third person (so that the bribe remains with the third person) is an offence under section 331 of the criminal code. In addition, if assets are placed in so called slush funds in a company and are to be used to create advantages for the company through bribery or by buying influence, removing and keeping these assets in reserve is punishable as a breach of trust towards the company in accordance with section 266 of the criminal code. This liability is triggered regardless of whether the use of the money is punishable as such. The intention to use the money in the economic interest of the company is also immaterial in this case.

A public debate on corruption in the private sector has emerged recently in the context of the healthcare and pharmaceuticals sector. Since they are part of the private sector, private healthcare facilities fall outside the scope of provisions that prohibit gifts of gratitude or advantages to create a climate of appreciation or dependency in the public sector. For instance, self-employed doctors who accept presents or money from the pharmaceutical industry do not violate rules on bribery. The Federal Court of Justice ruled in 2012 that doctors under contract with the public health insurance companies do not commit an offence under section 332 of the criminal code when accepting bribes.<sup>44</sup> The Federal Minister for Health proposed legislative amendments to enable prosecution in such cases.

### ***Foreign bribery***

Germany has a strong track record on fighting foreign bribery. The OECD has commended the rigour with which Germany enforces legislation in this area. Efforts have led to a steady increase in the number of cases investigated since 2007 and it has resulted in prosecutions and sanctions imposed in foreign bribery-related cases against individuals. The OECD also welcomed legislative measures and jurisprudence resulting in increased reporting of

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38 A declaration submitted by Germany at the time of the adoption of the framework decision expired in 2010.

39 Third Evaluation Round, Evaluation Report on Germany on Incriminations, GRECO EVAL III Rep (2009) 3E, paragraph 112.; GRECO (2011) Third Evaluation Round, Compliance Report on Germany, paragraphs 15 to 24.

40 Third Evaluation Round, Evaluation Report on Germany on Incriminations, GRECO EVAL III Rep (2009) 3E, paragraph 112.

41 An internationally accepted definition is provided by Article 12 of the Criminal Law Convention on Corruption. <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>

42 Third Evaluation Round, Evaluation Report on Germany on Incriminations, GRECO EVAL III Rep (2009) 3E, paragraph 114.; GRECO (2011) Third Evaluation Round, Compliance Report on Germany, paragraphs 15 to 24.

43 Germany has not ratified this Convention. It is possible to enter a reservation to this provision of the Convention.

44 Decision of 29th March 2012, GSSSt 2/11; <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&nr=60678&linked=pm>.

suspicions of foreign bribery by tax auditors. Nevertheless, the OECD has recommended further measures to ensure effective, proportionate and dissuasive sanctions, pointing out that sanctions imposed on individuals fell within the lower range of prison sentences and that most prison sentences were suspended.<sup>45</sup> With regard to legal persons, Germany amended its legislation in line with OECD recommendation and substantially raised the maximum level of the administrative fine that can be imposed in corruption cases.<sup>46</sup> In 2011, Germany ranked fourth out of 28 countries in the Transparency International Bribe Payers' Index in terms of the perceived likelihood of companies from these countries paying bribes abroad.<sup>47</sup>

Compliance systems in the private sector have become more elaborate in recent years, especially in global companies dealing with international business transactions. This happened as a result of high-profile cases which triggered a significant change in attitudes towards corruption in particular among German multinational corporations.<sup>48</sup> Anti-corruption compliance has become a central issue, prompted in part by investigations by the US Securities and Exchange Commission which can impose considerable fines.<sup>49</sup> Consequently, many large companies (59% in 2011) have implemented compliance programmes, creating compliance units, and in some cases withdrawing from markets with a high corruption risk.<sup>50</sup> Some of these programmes, for example those implemented by Siemens, Daimler-Benz, Volkswagen and Deutsche Bank, are considered to have set an international benchmark.<sup>51</sup>

#### ***Good practice: the Siemens compliance system***

*The German private sector has made major investments relevant for anti-corruption policies and compliance procedures in the recent years: In particular, many big German companies have implemented comprehensive compliance strategies, staffed compliance units, and in some cases retreated from markets with a high corruption risk.*

*An example is the compliance system put in place by Siemens. Legal proceedings against Siemens AG arising from serious allegations of bribery were concluded in 2008 by the prosecution service in Munich and in Washington DC. The two decisions in that case changed the approach to compliance in the business sector. In addition to paying the fines and asset recovery imposed in Germany (approx. EUR 600 million) and in the US (approx. EUR 620 million), and recovering assets, Siemens put a compliance program in place so as to avoid paying the highest amount of fines the US authorities could impose. Under this program, equal emphasis is put on prevention, detection and response given to allegations of misconduct. In addition to the steps taken inside the company, as part of the settlement, Siemens agreed to pay USD 100 million over 15 years to support organizations and projects combating corruption and fraud through collective action, training and education.*

Moreover, the Federal Ministry for Economic Cooperation and Development recently presented an anti-corruption concept aimed at reducing corruption in development and

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45 OECD Working Group on Bribery in International Business Transactions, Report on the application of the Convention on Combating Bribery on Foreign Public Officials in International Business Transactions, adopted on 17th of March 2011.

46 The legislative amendment providing for a tenfold increase in administrative fines against legal persons (i.e. from 1 million to up to EUR 10 million) entered into force on June 30 2013. (BGBl. 2013, Teil I Nr. 32, S. 1738).

47 <http://bpi.transparency.org/bpi2011/results/>.

48 Karl Sidhu, Anti-Corruption Compliance Standards in the Aftermath of the Siemens Scandal, 10 German Law Journal 1343-1354 (2009), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=1167>

49 <http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>.

50 Bussmann, K. / Nestler, Cl. / Salvenmoser, S. (2011) Wirtschaftskriminalität Frankfurt a.M./Halle, p. 34.

51 Bussmann, K. / Nestler, Cl. / Salvenmoser, S. supra, p. 60.

cooperation projects.<sup>52</sup> Following a number of bribery cases in the defence sector,<sup>53</sup> the Ministry of Defence has set up a new detailed procedure for preventing bribery and corruption.<sup>54</sup> Nevertheless, when it comes to small and medium sized enterprises, corporate governance programmes and compliance structures are not yet widespread.<sup>55</sup>

### 3. FUTURE STEPS

Germany is in the top rank internationally in terms of fighting corruption and is perceived to be among the consistently best performers. German authorities and private companies have built a good reputation for their recent efforts to prevent and combat foreign bribery. The German authorities and major players such as large corporations have provided several examples of their readiness to address problems and tackle loopholes when they arise. Continuing this trend will be central to future anti-corruption work.

Some issues have still not been dealt with, such as the lack of sanctions for corruption of elected officials and the absence of a ‘revolving door’ policy, especially in the public sector. Further steps could be taken to promote integrity and raise awareness of foreign bribery among small and medium-sized enterprises.

The following points would require further attention:

- Ensuring that dissuasive criminal and administrative sanctions are in place in key areas such as passive and active bribery of **elected officials** at all state levels.
- Further strengthening preventive action regarding the funding of political parties by giving consideration to GRECO recommendations on **electoral campaign accounts and donations**.
- Expanding the legislation transposing the Framework Decision 2003/568/JHA on combating **corruption in the private sector** with regard to some elements of the bribery offence. Promoting integrity and raising awareness among small and medium-sized enterprises with regard to the foreign bribery offence.

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52 Bundesministerium Für Wirtschaftliche Zusammenarbeit (2012) Antikorruption und Integrität in der deutschen Entwicklungspolitik Berlin.

53 For example, in the so-called submarines case, in 2011, the Munich court convicted managers of a German company given the bribery in relation to procurement contracts with Portugal and Greece.

54 TI: Codes of conduct in defence ministries and armed forces: What makes a good code of conduct? May 2011, pp. 28 to 31; BMVg-ES Fighting Corruption in the German Bundeswehr (15 October 2001).

55 National Integrity System Report Germany. Transparency International Germany, 2012. See pillar 13.