

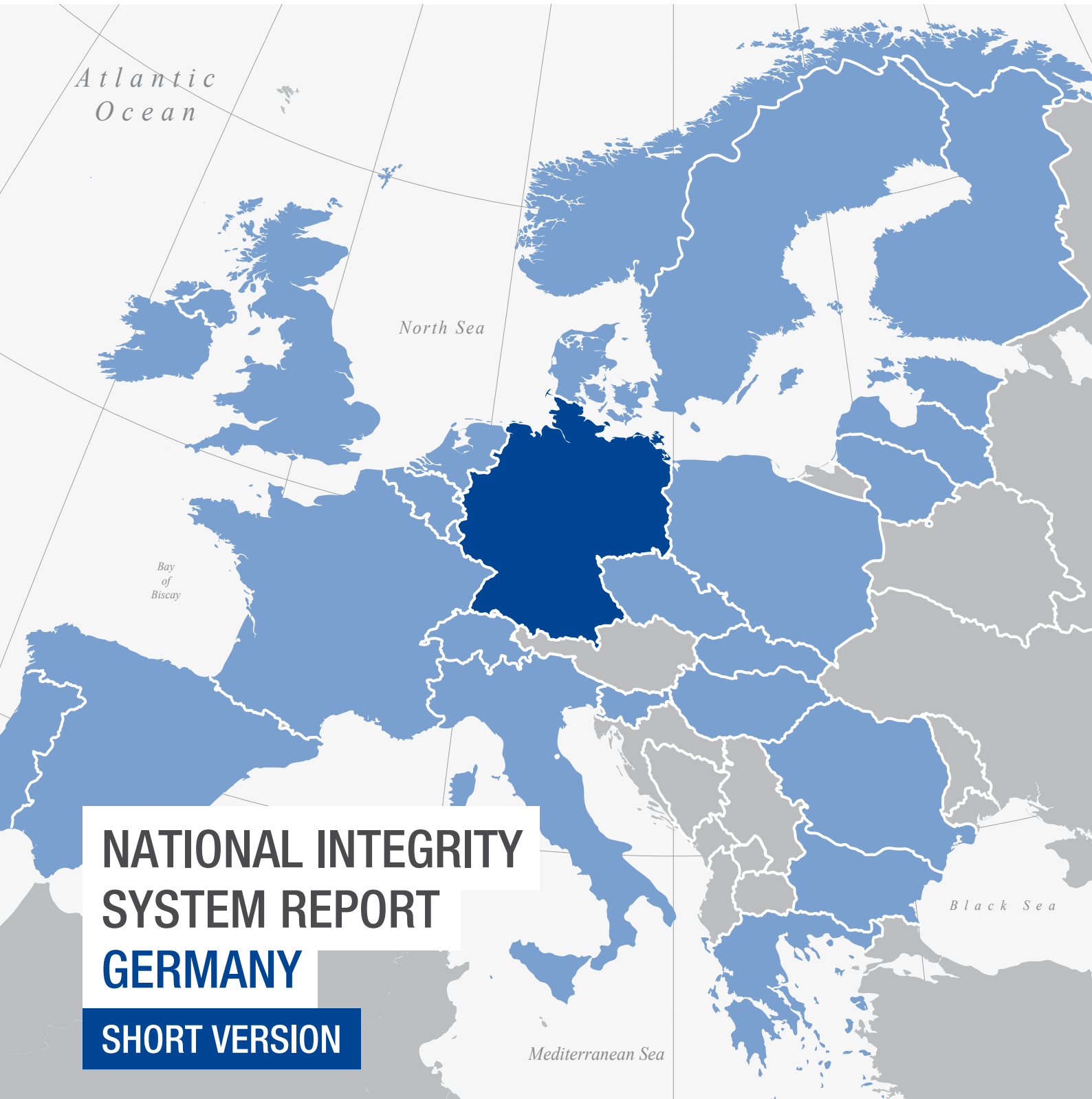
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National Integrity System Germany

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**NATIONAL INTEGRITY
SYSTEM REPORT
GERMANY**

SHORT VERSION

Transparency International is a non-profit-making, non-partisan movement of like-minded people from around the world who are committed to the global fight against corruption. Transparency International was founded in 1993 in London and Berlin and operates internationally. The International Secretariat of Transparency International sustains the global work of the organisation. It supports and coordinates the work of the national chapters which currently operate independently in over 90 countries.

Transparency International Deutschland e.V. works across Germany to effectively and sustainably combat and contain corruption. This is only possible if the state, private sector and civil society work together and coalitions are formed. Working and regional groups convey objectives to key areas, develop solutions and keep a critical eye on societal and political developments.

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Managing Director: Dr. Christian Humborg, Transparency International Deutschland e.V.

Lead Researcher: Dr. Dieter Korczak, GP Forschungsgruppe

Authors: Dr. Dieter Korczak, Maria Bossmann, Patrick Pfefferkorn, Beate Huber (GP Forschungsgruppe)

External Reviewer: Martin Kreutner

Project Coordinators: Ricarda Bauch, Transparency International Deutschland e.V.
Paul Zoubkov, Transparency International Secretariat

Project Assistant: Tobias Hecht, Transparency International Deutschland e.V.

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1. Introduction

Research team

Dr. rer.pol. Dieter Korczak, Diplom-Volkswirt (Lead researcher)

Diplom-Sozialwissenschaftlerin Maria Bossmann

Magister artium Patrick Pfefferkorn

Diplom-Gesundheitswirtin (FH) Beate Huber

GP Forschungsgruppe

Institut für Grundlagen- und Programmforschung

Nymphenburgerstr. 47

80335 Munich

We would like to thank the members of the NIS Advisory Group, the Working and Regional Groups and the Board from Transparency International Deutschland e.V. as well as the people who took part in interviews for their cooperation and support.

Advisory Group

Cornelia Gädigk, Senior Public Prosecutor, Hamburg

Dr. Lutz Hachmeister, Director of the Institute for Media and Communication Policy

Dr. Jens Harms, State Court of Audit President (retired)

Bernd Kehrberg, Ministerial Counsellor, North Rhine-Westphalia Ministry of the Interior

Dr. Matthias Korte, Ministerialdirigent, Federal Ministry of Justice

Dr. Konstantin von Notz, Member of the Bundestag, Alliance '90/ The Greens

Steffen Salvenmoser, RA CFE StA a.D., Partner PriceWaterhouseCoopers Frankfurt

Konrad Stege, Ministerialdirigent (retired), Schleswig-Holstein Ministry of Interior

Florian Toncar, Member of the Bundestag, Free Democratic Party

Dr. Bernhard Wankel, Nuremberg Higher Regional Court Division Presiding Judge

Burkhard Wilke, Managing Director, German Central Institute for Social Issues (DZI)

Dr. Sebastian Wolf, Advisory Group Chairman, University of Konstanz

Transparency International Deutschland e.V. Working and Regional Groups

Working Group on Central Register/Public Procurement

Working Group on Federal and State Administration

Working Group on Freedom of Information

Working Group on Law Enforcement

Working Group on Political Corruption

Working Group on Transparency in the Media

Working Group on Transparency in Civil Society

Working Group on the Private Sector

Working Group on Whistleblowing

Saxony Regional Group

Interviewees

Dr. Klaus Abele, Counsel of choice for corruption prevention working for the State of Baden-Württemberg

Michael Alberg-Seberich, Assistant Managing Director, Active Philanthropy

Stephan Andrä, Head of Presidential Department, North Rhine-Westphalia Court of Audit

Karin Brandt, Public Procurement Verification, Assistant Anti-Corruption Officer, Potsdam Local Government Administration

Charlotte Buttkus, Research and Analysis Department, Phineo (Platform for social investors)

Gregor Hackmack, Founder and Manager of www.abgeordnetenwatch.de

Lothar Hermes, RA, Head of Saxony Regional Group

Hans Leyendecker, Journalist, Investigative Research Süddeutsche Zeitung

Ulrich Müller, Executive Managing Director, LobbyControl e.V.

Marion Nobbe, Journalist

Konstantin von Notz, Member of the Bundestag, Alliance '90/ The Greens

Petra Rademacher, Internal Audit Coordinator, Anti-Corruption Officer, Potsdam Local Government Administration

Gisela Rüß, former Anti-Corruption Officer for the State of Brandenburg, Head of the Working Group on Federal and State Administration

Steffen Salvenmoser, RA CFE StA a.D., Partner at PriceWaterhouseCoopers, Frankfurt

Wolfgang Schloh, Assistant Commissioner for Citizens' Affairs Mecklenburg-Western Pomerania

Rupert Graf Strachwitz, Director of the Maecenata Institute

Andrea Titz, Senior Public Prosecutor, Assistant Chair of the German Association of Judges

Florian Toncar, Member of the Bundestag, Free Democratic Party

Martin Wenning-Morgenthaler, Presiding Judge, Speaker New Judges Association

Federal Returning Officer, Wiesbaden

Land Returning Officer Bavaria, Munich

Anonymous, Senior Public Prosecutor (retired)

Anonymous, Senior Public Prosecutor

Anonymous, Chief Inspector, State Office of Criminal Investigation

Anonymous, State Court of Audit Presidents (retired)

Translation

abanico - interpreting & translations

Liability for subsequent changes made to the translation lies with Transparency International Deutschland e.V.

2. About the National Integrity System (NIS) report

The National Integrity System (NIS) project is part of an EU-wide initiative in the fight against corruption and is financially supported by the Prevention of and Fight Against Crime Programme of the European Commission Directorate-General for Home Affairs. A total of 23 EU Member States are involved in the project and will each produce a national NIS report. Independently of the EU-funded project, NIS reports will also be produced in Luxembourg, Norway and Switzerland.

The National Integrity System (NIS) report provides a broad overview of anti-corruption efforts in a given country. It analyses the central institutions within the country according to its mechanisms for preventing and combating corruption. 13 institutions (referred to as pillars here) form the National Integrity System (NIS): legislature, executive, judiciary, public sector, law enforcement, electoral management body, ombudsman, supreme audit institution, anti-corruption agency, political parties, media, civil society and private sector. If these institutions function well and have effective prevention mechanisms in place, they interact to form a robust National Integrity System that provides effective safeguards to stave off corruption. If this system demonstrates weaknesses, it is prone to corruption. Transparency International Deutschland e.V. (Transparency Germany) defines corruption as the abuse of entrusted power for private gain.¹

Corruption has many negative effects for society overall. Distortions of competition lead to higher prices and fees or lower quality. Non-transparent action on the part of the government and the public sector weakens general legal certainty. Ultimately, a national economy affected cannot reach its potential level of affluence if its market mechanism is disrupted by corrupt players.² Corruption within a society leads above all, however, to a loss of trust and to a weakening of democratic institutions. Corruption can also cause environmental damage and reinforce social injustice.

2.1 The National Integrity System (NIS) concept

The National Integrity System (NIS) concept was developed by Transparency International. It represents a comprehensive approach to combating corruption. Since its development in the late 1990s, more than 80 reports have been produced. Many of these reports have been the springboard for civil society campaigns and regulatory reforms. Even though there is no 'one size fits all' solution to combating corruption effectively, there is, however, consensus regarding the framework conditions required in order to promote integrity and guard against corruption. The NIS report analyses these framework conditions in relation to the existing statutory position and their application. The analysis stands in the context of the societal, economic, political and cultural framework conditions in the respective country. It is based on an all-encompassing approach to corruption prevention and attempts to describe all the relevant institutions and their relationships to each other. Consequently, the NIS analysis does not seek to offer an in-depth analysis of each pillar, but takes a broader view.

The NIS report is carried out by a local civil society organisation. For the purpose of a consultative approach, central stakeholders in government, civil society, the private sector and other relevant sectors are involved from the outset with a view to building the required political will and civic demand for reforms.

1 Cf. Transparency Germany, <http://www.transparency.de/Ueber-uns.44.0.html>

2 Cf. Transparency Germany (2008): Schäden durch Korruption, <http://transparency.de/Schaeden-durch-Korruption.1186.0.html>

The analysis aims first and foremost to provide a qualitative assessment. The pillars are analysed using three dimensions: capacity, governance and role in the overall system. The dimensions are in turn described using standard indicators:

- **Capacity:** resources, independence
- **Governance:** transparency, accountability, integrity
- **Role:** pillar-specific indicators, such as efforts made in the fight against corruption

Legal framework conditions and their application are discussed and documented with the help of defined scoring and guiding questions. The preparation of the report is guided by central scoring questions that are referred to in the body of the report for each pillar and indicator.

The qualitative examination is supplemented by a quantitative assessment. The scoring system is designed to provide a quantitative assessment of the facts gathered and supplements the narrative report.³ Scoring is based on a five-point scale where the entire scale can be used (1, 2, 3, 4, 5). Scores 1, 3 and 5 are defined in terms of their significance for each of the individual indicators of the 13 pillars. Generally speaking, a score of five indicates a comprehensive legal framework or effective implementation and application. A score of one implies the lack of any kind of regulations. In practice, a score of one means that existing regulations do not prove effective and fail to have the desired effect. A score of three indicates that there is a series of regulations in place, which, however, have loopholes, or that some of the existing regulations are ineffective in practice. Comments may be inserted at the end of the analysis of individual indicators to justify a departure from the maximum score or to emphasise certain aspects. Consequently, not every indicator analysis necessarily contains a comment.

The five-point scoring scale is converted to a scale from zero to one hundred for the overall examination of the pillar. An average is calculated for each of the three dimensions. The overall pillar score is attained from the averages of the dimensions.⁴ The final scores indicate the overall robustness of the framework conditions and their application in the case of each pillar.

| | |
|--------|-------------|
| 100-80 | very strong |
| 80-60 | strong |
| 60-40 | moderate |
| 40-20 | weak |
| 20-0 | very weak |

2.2 Preparation of the NIS report in Germany

As part of a public invitation to tender, Transparency Germany commissioned the *GP Forschungsgruppe (Institut für Grundlagen- und Programmforschung)* under the direction of Dr. Dieter Korczak to compile the NIS report in Germany. With a view to adopting a consultative approach, numerous stakeholders were involved and cooperated in the compilation of the report.

The preparation of the report was accompanied and supported by an Advisory Group. The Board of Transparency Germany appointed twelve representatives from the societal pillars to be analysed as members of the NIS Advisory Group.⁵ The NIS Advisory Group met on a total of two occasions. In a first step, the options available to the Advisory Group for supporting the lead researcher were discussed at the meeting on 19 June 2010. It was agreed that the members of the NIS Advisory Group would sup-

3 For further information on the methodology of the reports, please visit http://www.transparency.org/policy_research/nis/methodology

4 Conversion of the scale: 1 point = 0 points; 2 points = 25 points; 3 points = 50 points; 4 points = 75 points; 5 points = 100 points

5 See Introduction

port the compilation of the report by furnishing an analysis of weak points in order to provide initial guidance for the breadth of the analysis. At the second meeting on 13 September 2011, the Advisory Group discussed the outcomes of the report and the scoring system. The members of the Advisory Group are not individually liable for the contents of the report. Liability lies with the lead researcher.

The *GP Forschungsgruppe* prepared the first draft of the report between mid-October 2010 and May 2011. Interviews were conducted in addition to the research and analysis of primary and secondary literature. At least two interviews were to be carried out for each pillar: 1) with a person with significant work experience in the respective field and 2) with a person, who was able to assess the pillar from an external perspective. A total of 29 interviews were conducted either in verbal or written form (two interviewees were interviewed in relation to several pillars). Furthermore, the access to information from ministries and public authorities could be tested in practice. Additional tests were, however, dispensed as Transparency Germany could draw from a wealth of experience with applications in accordance with the Freedom of Information Acts.

A detailed examination of the draft report ensued among the Transparency Germany Working Groups. The relevant chapters of the report were discussed with the Transparency Germany experts, who have already been looking into the risks of corruption in certain areas for many years and pushing for further regulatory developments. The result of the peer reviews conducted by the Board and the Working Groups of Transparency Germany were included in the draft report. The Working Groups had supported the lead researcher to some extent in the run-up to producing the report in the form of their professional expertise or made themselves available for key informant interviews.

An external reviewer was consulted for the purpose of further ensuring the quality of the NIS report thereby guaranteeing an independent and external review of the draft report. This task is performed by a country expert outside the organisation ideally living abroad. Martin Kreutner took on this task for the German country report. He worked for 10 years as head of the Office of Internal Affairs in the Austrian Federal Ministry of the Interior. Moreover, he is an advisor in the Transparency International Austrian Chapter, expert and peer reviewer for the UN, the Council of Europe and the World Bank, and court-appointed expert in general criminology.

The NIS report for Germany has, like all country reports, been cross-checked by the Transparency International Secretariat. The aim is to ensure that standard methodology is used wherever possible in all NIS reports and the results are both plausible and traceable.

Prior to the publication of the report, the Executive Summary of the report and possible follow-up activities were discussed with representatives of the Board, the Working and Regional Groups and the NIS Advisory Group at the NIS workshop on 13 October 2011. The Executive Summary represents the Transparency Germany catalogue of recommendations derived from the report. Liability for the analysis of the individual pillars lies with the the lead researcher.

Once the report is passed by the Board of Transparency Germany, in-depth discussions are to be held with various coalition partners regarding the outcomes of the report at seminars and a round table event.

3. Executive Summary

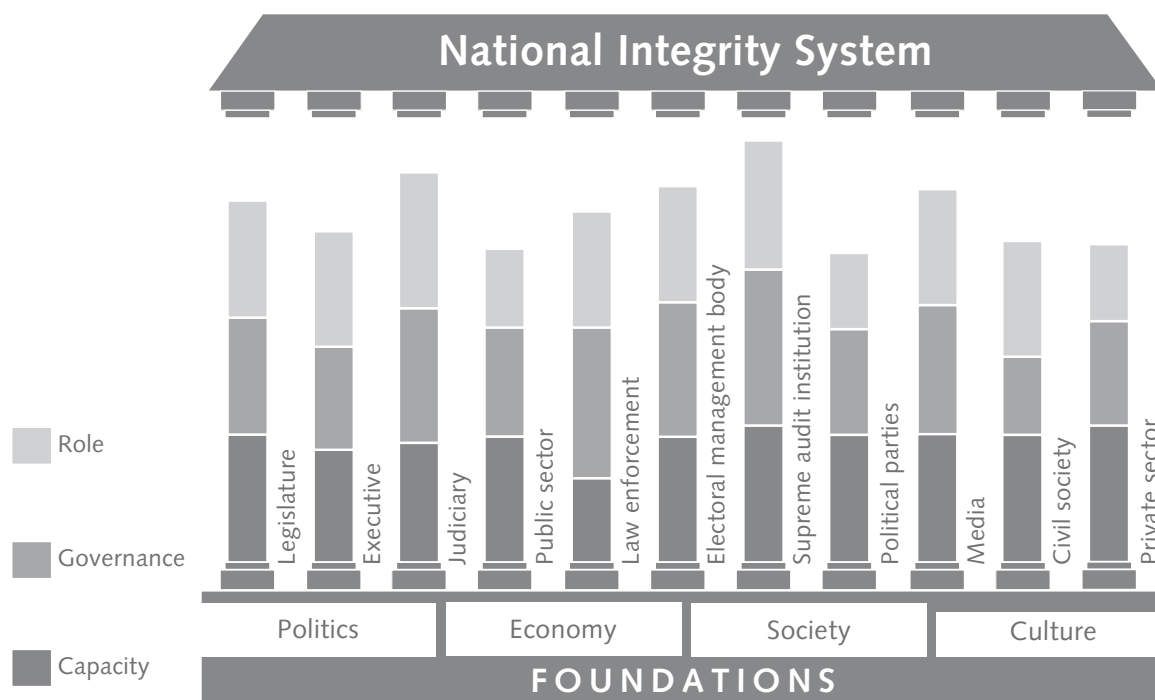
3.1 General remarks about the NIS report

The **National Integrity System (NIS)** concept was developed by Transparency International. It provides a broad overview of anti-corruption efforts in a given country. 13 areas or institutions ('pillars') are analysed in terms of their legal and de facto structures, resources and measures for preventing and repressing corruption: legislature, executive, judiciary, public sector, law enforcement, electoral management body, ombudsman, supreme audit institution, anti-corruption agency, political parties, media, civil society and private sector. The methodology does not aim to produce an in-depth analysis of each pillar; NIS reports are rather structured as broad analyses which initiate integrity promoting reforms as and where required. Qualitative analyses are at the centre and these are supplemented by quantitative assessments of the status quo of the individual pillars and their segments. The Executive Summary summarises the political recommendations derived from the report from the Transparency Germany perspective.

The NIS project is part of an EU-wide initiative in the fight against corruption. It is financially supported by the European Commission and being carried out in 26 European countries in parallel. The **National Integrity Report Germany** was produced subsequent to an invitation to tender by the *GP Forschungsgruppe* (Munich). The preparation of the report was supported by an NIS Advisory Group appointed for this purpose which acted in a consultancy capacity. In addition to this, a detailed examination of the draft report ensued among the Transparency Germany Working and Regional Groups. An external reviewer was consulted for the purpose of further ensuring the quality of the NIS report. Liability for the report, with the exception of the Executive Summary, lies with the *GP Forschungsgruppe*.

3.2 Integrity system in Germany generally positive

In the Federal Republic of Germany, all the analysed areas and institutions at government level and within society came out at the top end of the NIS assessment system. In accordance with the NIS methodology, **Germany is a country with an overall good to very good integrity system** for preventing and repressing corruption. Critical appraisals of the situation in Germany generally reflect a relatively high level of aspiration. Primarily the quantitative assessments are only partly comparable on an international basis, not least due to the specific features of the political system in Germany (e.g. complex federation, special role of administrative jurisdiction). For this reason, for example, the setting up of an independent **anti-corruption agency** is not considered necessary.



The diagram visualises the scores for the pillars and illustrates the relative strength of the pillars. The overall score for each pillar is made up of the quantitative assessment of the three dimensions, capacity, governance and role.¹ The foundations represent the country profile analysis (political-institutional foundations, socio-political foundations, socio-economic foundations and socio-cultural foundations).²

3.3 Need for action to improve prevention and repression of corruption

In spite of the overall good to very good situation, Transparency Germany sees **opportunities for improvement and requirements for action** in the sectors and institutions analysed. In addition to the various loopholes in provisions, there is quite often scope for optimisation in the implementation of applicable rules of law. Germany also only complies with its **international anti-corruption obligations** in part. The Federal Republic has not ratified the UN Convention against Corruption and two Council of Europe anti-corruption conventions (as well as a supplementary Additional Protocol) and has not made the necessary legal amendments in this respect. Some of the anti-corruption measures recommended by Council of Europe and OECD evaluation bodies have not been implemented to date either.

84 recommendations for more integrity

1. The prevention of corruption must be considered as an executive responsibility by leaders in all areas of society.
2. The UN Convention against Corruption, already signed in 2003, must finally be ratified.
3. The Council of Europe Criminal Law Convention on Corruption and the Civil Law Convention on Corruption must be ratified.
4. The Additional Protocol to the Criminal Law Convention on Corruption must be ratified.
5. The statutory offence of bribery in business transactions must be amended in accordance with the requirements of the EU Framework Decision on combating corruption in the private sector.

1 See Chapter 2 for further explanations regarding the methodology

2 See Chapter 4

Legislature

6. The wording of the statutory offence of bribery of delegates (Section 108e of the German Criminal Code) must be tightened and adapted to international parameters.
7. In the context of bribery of delegates, the acceptance of donations by individual delegates must be prohibited.
8. Details of delegates' secondary employment must be published accurately upwards of a threshold amount and not in three stages as to date.
9. If delegates accept 'lobbying mandates' as lawyers, the obligation to secrecy on the part of lawyers must not apply in terms of the disclosure of discretionary earnings.
10. A compulsory register of lobbyists with financial disclosures must be set up in the Bundestag. A code of conduct must be accepted on entry into the register of lobbyists.
11. The publication of committee bills must be anchored in law. The non-publication of committee bills must be justified separately.

Executive

12. The involvement of interest groups, enterprises and other private players in the preparation of legislation must be indicated ('legislative footprint').
13. The 'benchmarks for the cost-effective use of external consultants' published by the supreme audit institution in 2007 must be applied consistently in order to prevent such external consultants from being commissioned with core administrative tasks.
14. Reports on the use of external parties in the federal administration must be published in order to ensure vis-à-vis the general public that external parties 'delegated' into ministries are not involved in drawing up rules of law and draft legislation which affect the interests of their employers.
15. A hidden influence by interests must be minimised in the case of politically controversial issues, for example by obtaining several expert opinions.
16. The composition of all bodies advising the government must be published centrally.
17. A waiting period of three years must be stipulated for former ministers and parliamentary state secretaries if there is a connection between the activities performed to date and the intended activities following retirement from service.
18. Information and data published by ministries must be offered in machine-readable format in order to facilitate processing and display.

Judiciary

19. Remedial measures must be taken by increasing human and financial resources in order to alleviate the overloading of courts.
20. The increasing number of 'deals' (plea bargain) must be counteracted.
21. Statistics must be published regarding non-profit making institutions to which money has been paid as part of a condition for the suspension of proceedings (Section 153a of the German Code of Criminal Procedure) or a condition of probation (Section 56b of the German Criminal Code).

Public sector

22. A nationwide analysis of areas at risk of corruption in the public sector must be carried out and the result must be published.
23. Continuing anti-corruption training programmes must be rolled out regularly and broadly across the public sector.
24. The waiting period regulations in public service relating to a change in professional activities outside the public service, where conflicts of interest may arise, must be applied consistently.
25. Reports produced by the State Ministries of the Interior on the prevention of corruption in the framework of the IMK [Interior Ministers' Conference] concept must be designed in accordance with a standard format to facilitate comparison of the respective measures.
26. The protection of whistleblowers in the public sector must be supplemented by setting up whistleblower systems.
27. The protection of whistleblowers, which is anchored in civil service law, must be extended to salaried employees.

28. Efforts must be made to ensure that administrative bodies provide the general public with more information about the risks of corruption and measures taken to combat it.
29. Domestic and foreign companies, which have been convicted of bribery or where reasonable suspicion of bribery or other forms of corruption has arisen in public procurement or during the execution of a contract, must be entered in a nationwide central register for an appropriate period.
30. The old threshold values must be reverted to when awarding public procurement contracts.
31. Legal protection for contracts in the sub-threshold area must be strengthened.
32. Underlying data relating to any public procurement contracts must be published in full in one place and must also include details of the agent and the contractual amount.
33. The public sector is recommended to use integrity pacts in the case of large-scale construction projects.
34. Freedom of information acts for access to public sector documents must be introduced in all federal states.
35. The existing federal and state governments' freedom of information acts must be amended based on the Berlin Freedom of Information Act to the effect that exemptions (in particular business and trade secrets) must be weighed against the interests of the general public.
36. The use of freedom of information acts by citizens must be promoted by removing obstacles that make filing applications difficult, such as high fees and long processing times.
37. Public sector regulations must also apply to bodies under public law.

Law enforcement

38. As in the justice system, remedial measures must be taken by increasing human and financial resources in order to alleviate the overloading of law enforcement agencies.
39. Detailed statistics regarding suspensions and deals in criminal proceedings relating to white collar crime and corruption must be published.
40. Key area public prosecution departments for corruption and white collar crime must be set up in all federal states.
41. It must be ensured that public prosecution departments are not bound by instructions from the Ministries of Justice.
42. Vocational training and further training offered to the police and public prosecution departments must deal with issues of combating corruption in greater depth.
43. The various statistics relating to the criminal prosecution of corruption should be consolidated in an overall report.
44. The statutory limitation periods in the case of 'corruption offences' must be extended.

Electoral system

45. In terms of the electoral system, the recommendations of the OSCE for improved regulation of electoral registration must be implemented so that inter alia legal verification of decisions will become possible prior to polling day.
46. Efforts must be made to publish a detailed and comprehensive report on the Bundestag elections consolidating the previous individual documents and publications.
47. The publication of electoral campaign financing must be made more transparent particularly at election district level; this applies in particular to the handling of election district donations, direct donations and pecuniary advantages to individuals.
48. The regulations regarding the allocation of public service broadcasting institutions' air time must be published.

Courts of audit

49. The cooperation between Federal and State Courts of Audit and the respective parliaments, including budget management control by the parliaments, must be supplemented by increased self-monitoring (peer reviews).
50. The option to subject limited liability and public limited companies, which are publicly owned or in which there is a public interest, to an audit conducted by the courts of audit, must generally be made possible.
51. The publication of a larger proportion of audit notifications and reports of the courts of audit is desirable.

Political parties

52. Donations to political parties at all levels must be published in an even more transparent and detailed manner, and more quickly.
53. Donations of 2,000 euro/year and above (to date 10,000 euro/year) must be published.
54. Party donations and sponsoring must be limited to a maximum of 50,000 euro per annum and per group, enterprise, association or individual in order to remove the basis for any debate surrounding the unfair influence of large donations.
55. Clear publication requirements must be introduced for party sponsoring so that it is subject to the same regulations as party donations, including a limitation of the tax deductibility of sponsoring as operating expenditure.
56. An independent control body must be set up to verify party financing.
57. Political financing by the government must be made transparent on a regular basis in a comprehensive 'political financing report' thereby also providing information regarding pecuniary advantages to parliamentary groups and global grants to party-affiliated foundations.
58. The Parties' statements of account must be published on the Bundestag website within six months.
59. In the event of serious breaches of the Political Parties Act, provision must be made, as a sanction, for mandate holders to lose their passive right to vote.
60. The structures and processes of party apparatuses must be reviewed from the aspect of corruption prevention and compliance with statutory provisions and be adapted to modern compliance management systems.
61. Regulations and procedures must be improved in order to contain the problem of political patronage, a practice employed by political parties.
62. The political parties are requested to make stronger efforts and a clearer commitment against corruption in politics and society.

Media

63. The integrity of journalists must be protected through codes of conduct which make provisions inter alia for the prevention of conflicts of interest.
64. Public service broadcasting must provide information in a detailed and open annual report regarding how income from fees is used.
65. The required scope for development must be granted to investigative journalism.
66. The structures and processes of public service broadcasting institutions must be reviewed from the aspect of corruption prevention and compliance with statutory provisions and be adapted to modern compliance management systems.

Civil society

67. The nationwide introduction and use of voluntary standards of conduct and procedures for testing transparency, accountability and integrity (including the prevention of conflicts of interest) in civil society organisations (including economic associations, trade unions and sport and leisure associations) must be ensured.
68. Civil society associations and organisations are also recommended to take greater account of the subject of anti-corruption in their substantive work (e.g. in the areas of the environment, climate and human rights).
69. Standard legislation regulating house-to-house collection [Sammlungsgesetze] must be (re)introduced in the federal states in order to increase protection for donors.

70. Tax offices must be given the option to provide information about the charitable status of organisations.

Private sector

71. Corporate governance and compliance management systems for the prevention of corruption must be introduced both in major enterprises as well as in small and medium-sized enterprises (SMEs) and public enterprises.
72. The legislator must set minimum standards for the development of compliance management systems adapted in line with all legal forms of business.
73. The statutory offences of active and passive bribery in business transactions must be tightened by introducing the so-called 'Geschäftsherrenmodell' [principal-agent model] so that the interests of the 'Geschäftsherr' [principal] in the correct fulfilment of employees' obligations are also protected.
74. Stronger penalties must be imposed on German companies in cases of bribery, for example by introducing specific corporate criminal legislation or by increasing the punitive damages framework in the German Administrative Offences Act.
75. Facilitation payments also to foreign public officials must be prohibited.
76. Legal protection for whistleblowers must be strengthened in the private sector. This would create a central prerequisite for ratification of the Council of Europe Civil Law Convention on Corruption.
77. Companies are requested to set up whistleblower systems in order to give employees the option to report perceived grievances proficiently without incurring any disadvantages in this respect.
78. The OECD Guidelines for Multinational Enterprises must be implemented consistently in accordance with the current international convention.
79. The independence of the contact point responsible for the implementation and transparency of the OECD Guidelines for Multinational Enterprises must be ensured through corresponding institutional anchoring and parliamentary control of the implementation activities.
80. Measures for preventing corruption must be outlined in company reporting, in particular sustainability reporting.
81. Greater joint responsibility for corruption-free competition must be demanded from companies and lawyers, auditors and tax advisers commissioned by them.
82. Based on the provisions under stock corporation law, members of bodies under public law in public enterprises must be released from the obligation to confidentiality in respect of the corporate body nominating them.

Anti-corruption education

83. The profile of anti-corruption must be raised in training and further training in all areas. Schools too should make an early contribution to political education in anti-corruption matters and raise pupils' awareness of this subject. Universities and colleges are urged to integrate the topic of anti-corruption into the curriculum across all subjects.
84. Germany is requested to accede to the Agreement for the Establishment of IACA as an International Organization.

In 2012 and beyond, Transparency Germany will attempt to work towards the implementation of these recommendations in order to improve the integrity system in Germany across all sectors.

In addition to the catalogue of recommendations resulting from the pillars examined in the NIS report, Transparency Germany has compiled a long list of other recommendations, for example in the areas of health, financial market and development cooperation. For further information please visit www.transparency.de.

4. Country profile Germany

Political-institutional foundations

To what extent are the political institutions in the country supportive to an effective national integrity system?

Score (5)

The central political institutions (executive, judiciary, legislature) operate effectively, the political system is stable and civil rights in Germany are not compromised.

The German Basic Law assures people in Germany of their fundamental civil liberties. These include inter alia general freedom of action, the right to life and physical integrity, equality before the law, equal opportunities for men and women, freedom of opinion and religious freedom, freedom of assembly and association, privacy of correspondence, posts and telecommunications, freedom of occupation, the privacy of the home. Paramount here is the overriding basic principle formulated in Article 1 (1) that human dignity shall be inviolable.

Germany is classified as a free country in the Freedom House Report; the political liberties and the fundamental rights are awarded the highest freedom status possible.¹

In the event of an infringement of their fundamental rights, citizens have the option to lodge a constitutional complaint. Confidence in jurisdiction was awarded the highest score of three as part of the CIVICUS Civil Society Index Project in 2005.² The results of the Global Corruption Barometer survey of the population also allow the conclusion that there is a consistently high level of trust in the police and the justice system.³

Citizens in Germany are able to shape and develop their private and professional lives in the context of the free democratic basic order without constraint or controls. Privacy is not only protected through Article 19 of the German Basic Law, but also through comprehensive data protection regulations.⁴

According to the statistics of a survey conducted by the Federal Statistical Office in 2006/ 2007, the constitutional rule enjoys broad support. 89% of West Germans and 63% of East Germans agreed with the statement that democracy in Germany is the best form of government. However, on the basis of 2008 data, there was less satisfaction with constitutional reality, i.e. with the functioning of democracy. In West Germany, 62% of respondents said they were satisfied with the political system, in East Germany 38%.⁵

Overall, confidence in political institutions is at a level that is normal for modern democracies.⁶

1 Freedom in the World 2011: The authoritarian challenge to democracy, http://www.freedomhouse.org/images/File/fiw/Tables%2C%20Graphs%2C%20etc%2C%20FIW%202011_Revised%201_11_11.pdf

2 Reimer 2006: 58

3 Transparency Germany: Zum internationalen Antikorruptionstag am 09.12.2010, <http://transparency.de/2010-12-09-GCB-2010.1797.0.html>

4 See in this respect Federal Data Protection Act and amendment to the Federal Data Protection Act

5 Statistisches Bundesamt et al. 2008: 397

6 Rudzio 2011: 503

Socio-political foundations

To what extent are the relationships among social groups and between social groups and the political system supportive to an effective national integrity system?

Score (5)

Generally speaking, there have been no significant social conflicts in Germany for a number of years that have not been resolved in a democratic, consensual or mediatory manner. Civil society is vibrant and committed to and involved in political culture.

Approximately 82.2 million people live in Germany, 51% of which are women. Germany is a multi-cultural and multi-option society where people from different social strata and social environments live together in a largely peaceful fashion.

Germany is a secular state where there is institutional and mental separation of church and state even though church tax is levied in addition to income tax and wage tax, respectively. There are approximately 25.1 million Catholics living in Germany and 24.8 million Protestants. 1.5 million people belong to orthodox churches. 62.8% of the total population are therefore Christians.⁷ Approximately 3.2 million people are Muslims. 106,000 people belong to a Jewish community.⁸ In 2008, 16% of the population in West Germany and 74% in East Germany declare themselves as non-denominational.⁹ The church is integrated into general society and also performs intermediary roles.

According to Reimer (2006), there are no serious ethnic or religious conflicts.¹⁰ Roughly one third of German respondents in the European survey on quality of life conducted in 2009 perceive tensions between various ethnic (33%) and religious (31%) groups.¹¹

For 2009, the Federal Statistical Office recorded approximately 16 million nationals with a migration background, of which 7.2 million were foreign nationals.¹² Over two-thirds of the foreign nationals have been living in Germany for eight years or more.¹³ Numerous integration efforts are made. However, the 2010 Amnesty International Report entitled 'The State of the World's Human Rights' sets out events curtailing the economic, social and cultural rights of illegal migrants in Germany.¹⁴ Germany is not mentioned in the 'People Under Threat Report' produced by Minority Rights Group International.¹⁵

The political parties are representative of the breadth of society and the diversity of interest groups. The 5% threshold clause can be viewed as protection against fragmentation of the party system and as a guarantor of stable conditions. The party system is stable.¹⁶ The 5% clause does not apply to national minority parties.

7 Evangelische Kirche in Deutschland, Christen in Deutschland 2009, <http://www.ekd.de/kirchenfinanzen/statistik/791.php>

8 Statistisches Bundesamt et al. 2008: 389

9 Statistisches Bundesamt et al. 2011: 354 f.

10 Reimer 2006: 63

11 European Foundation for the Improvement of Living and Working Conditions (2009): Second European Quality of Life Survey: Overview, <http://www.eurofound.europa.eu/pubdocs/2009/02/en/2/EF0902EN.pdf>

12 Statistisches Bundesamt et al. 2011: 188

13 Statistisches Bundesamt et al. 2008: 18

14 Amnesty International: Amnesty International Report 2010: The state of the world's human rights, http://report2010.amnesty.org/sites/default/files/AIR2010_AZ_EN.pdf#page=96

15 Minority Rights Group International, People under threats 2010, <http://www.minorityrights.org/9885/peoples-under-threat/peoples-under-threat-2010.html#countries>

16 See pillar 10 'Political parties'

The political elite does not fully reflect the population in terms of social composition. A trend towards bourgeoisification is apparent; the dominance of legal practitioners and men is waning. People changing career have the option to enter the political elite.¹⁷

In addition to their interest intermediation function, interest organisations in the business and employment sectors and associations in the social sector perform functions that alleviate some of the pressure on the state. They enjoy a strong position¹⁸ in Germany's political system.¹⁹

Alongside this, political and ideational organisations cover a broad spectrum of social issues and interests. This is testimony to the political interest and flexibility of the population.²⁰ In the European Social Survey (2004), 59% of West Germans and 55% of East Germans express an interest in politics.²¹ Germany thus operates at a high level in spite of 'some' political dissatisfaction.²² Voluntary commitment to society is gaining increasing importance.²³

The change in interaction between established political parties, intermediate institutions, NGOs and the civil population, which has been observed since the 1990s, has often been described as 'political dissatisfaction'. The German Language Society declared 'political dissatisfaction' ['Politikverdrossenheit'] as the word of the year in 1992.²⁴ This term is generally used to paraphrase a reduction in voter turnout and in party membership, disappointment about unkept voting promises and a lack of interest in politics among young people. 83% of the population stated 'disappointment' in politicians as their reason for not voting.²⁵ The level of political interest shown by young people between the ages of 15 and 24 reached its lowest point in 2002 when only 34% said they were interested in politics. This number increased to 40% in 2010.²⁶

Political dissatisfaction is also based on the impression that the individual is powerless in relation to the power held by the privileged elite. "One of the central themes in current debates about post-democracy is that modern democracies are increasingly being controlled by privileged elites hiding behind a façade of formal democratic principles."²⁷ 'Colonisation of the state' by company and association interests is referred to in this connection. Having said that, the new forms of the 'participatory revolution' are interpreted as a new expression of unconventional forms of civil society participation at the expense of traditional representative institutions.²⁸

According to data from the Socio-Economic Panel (SOEP), political interest among the population is dependent on professional activity and financial situation. Affluent people (> 150% of the average income) and full-time workers are more interested in politics than poor (< 60% of the average income) and unemployed people.²⁹

17 Rudzio 2011: 487

18 See pillar 12 'Civil society'

19 According to Rudzio (2011: 98) their integration into the political system, on the one hand, cannot be identified as pluralism like in the USA or Great Britain. On the other hand, Germany is less corporatist than Austria or Sweden. Therefore reference can be made to a mixed system.

20 See pillar 12 "Civil society"

21 European Social Survey 2004

22 Rudzio 2011: 498

23 Rudzio 2011: 509

24 Gesellschaft für deutsche Sprache: Wort des Jahres, <http://www.gfds.de/aktionen/wort-des-jahres/>

25 Korczak et al. 2011: 42-45

26 Shell Deutschland Holding 2010

27 Mouffe 2011

28 See in this respect Beck 1993

29 Mouffe 2011

Socio-economic foundations

To what extent is the socio-economic situation of the country supportive of an effective national integrity system?

Score (5)

Germany is a wealthy country. The economic activities of its population and its companies have been able to establish sustainable prosperity and a high standard of living. A broad, functioning and stable network of social services and social assistance is available to people who suffer socially, financially or in terms of their health.

In 2010, Germany was ranked an excellent 10th place out of 169 countries on the United Nations Development Programme Human Development Index.³⁰ Germany has the fourth highest gross national product worldwide behind the USA, Japan and China. As an export nation, which is dependent upon the economic strength of other countries, Germany's economic position is, however, extremely vulnerable.³¹

The redistribution processes through taxes and social benefits lead to relatively egalitarian income levels after tax and with social benefits.³² On the GINI index, which measures income differences, Germany is ranked ninth out of the EU-27.³³ Income differences have increased slightly over the course of time (2000–2006).³⁴

Gross domestic product (GDP) amounted to 2,498 trillion euro in 2010. The nominal net household equivalent income for private households was 18,586 euro in 2008.³⁵ The upper quintile (20%) of the income brackets has 36.8% and the poorest 20% of the population has 9.3% of the real monthly equivalent income.³⁶ If the population is classified according to their monthly net household equivalent income, then 12.8% fall into the bracket with relative or a higher level of prosperity (> 150% of the average income), 25% fall into the bracket with a precarious level of prosperity (50% to below 75% of the average income) and 11.4% fall into the bracket in relative poverty (< 50% of the average income). Since 1985, both the prosperous as well as the poor and precarious percentages of the population in the stratification of income have increased and as a result of this the middle stratum has reduced from 56% to 51%.³⁷

There are certain areas of society, participation in financial services, for example, where groups of citizens are excluded. The federal and state governments try to counteract the exclusion of individual groups in society through numerous socio-political measures.³⁸ In 1958, the percentage of students studying for the Abitur [equivalent to A-levels] at the age of 19–20 was approximately 5%, in 2009 it is 32%.³⁹ There is, however, tier-specific selection in the German education system, which primarily affects children from socially weak strata of society and migrant children, as the international com-

30 Human Development Reports: International Human Development Indicators, <http://hdr.undp.org/en/statistics/>

31 Rudzio 2011: 525 f.

32 Rudzio 2011: 529, footnote

33 European Foundation for the Improvement of Living and Working Conditions (2009): Second European Quality of Life Survey: Overview, <http://www.eurofound.europa.eu/pubdocs/2009/02/en/2/EF0902EN.pdf>

34 Compared with 2000, the GINI coefficient for Germany fell slightly from 28.31 in 2000 to 27 in 2006, cf. NationMaster, Economy Statistics, GINI index (most recent) by country, http://www.nationmaster.com/graph/eco_gin_ind-economy-gini-index and Second European Quality of Life Survey 2009, <http://www.eurofound.europa.eu/pubdocs/2009/02/en/2/EF0902EN.pdf>

35 Statistisches Bundesamt et al. 2011: 74, 152

36 Statistisches Bundesamt et al. 2008: 164

37 Statistisches Bundesamt et al. 2008: 165

38 See in this respect 3rd Federal Government Poverty and Wealth Report; 2nd Bavarian State Government Social Report

39 Statistisches Bundesamt et al. 2011: 53

parative studies PISA, IGLU or TIMSS show.⁴⁰ Opportunities for children from the upper professional class (senior employees and civil servants, freelance professionals, larger-scale freelancers) to attend a grammar school are six times greater than for the children of skilled workers.⁴¹

The German population is well provided for in the fundamental areas of life within society. 42.8% of households in West Germany and 31.7% of households in East Germany own their own house or a freehold apartment in 2009.⁴² Compared with the rest of Europe, Germans were ranked in eighth place in terms of their satisfaction with their housing situation. In terms of satisfaction with life, Germany ranked 13th among the EU Member States.⁴³

An attempt is made through social legislation in Germany to ensure a humane existence for all citizens and to compensate for risks in life such as poverty, old age, illness, unemployment or disability.⁴⁴ Social budget expenses for pension insurance schemes, unemployment benefit, medical, nursing care and accident insurance, sick pay by employers and company pension schemes, retirement pensions, support and welfare systems (e.g. social assistance, youth welfare service) etc. amounted to 700 billion euro in 2006.⁴⁵ In 2006, the ratio of social benefits to gross domestic product (social benefits quota) was 30.3%.⁴⁶

Germany has a very good and efficient transport infrastructure. The length of the rail network is 37,900 kilometres in 2009; the road network is 231,000 kilometres long, of which 12,600 kilometres are motorways. The Federal waterways cover a distance of 7,700 kilometres.⁴⁷ 68% of private households use short-distance public transport and this was used approximately 11 billion times in 2009.⁴⁸

Socio-cultural foundations

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Score (4)

Germany is characterised by average scores for confidence, interest in public life and support for standards in terms of integrity and social ethics. The terms equal opportunities, fairness and social justice are known to over 80% of the population. The term social justice is primarily associated with equal opportunities.⁴⁹

Social participation, which is expressed through sociability, regular contacts with friends, acquaintances and personal networks, is average in Germany. 52% of Germans have stable social relationships with friends, relatives or colleagues.⁵⁰ Approximately 76% of men and women in Germany are able to

40 Korczak 2003: 7 et seq.

41 Geißler, R.; Weber-Menges, S. (2009): Soziale und ethnische Auslese im deutschen Bildungssystem – ein skandalöser Mechanismus sozialer Ausgrenzung, http://www.fb1.uni-siegen.de/soziologie/mitarbeiter/geissler/2009sozialeund_ethnischeauslese.pdf?m=e

42 Statistisches Bundesamt et al. 2008: 207

43 European Foundation for the Improvement of Living and Working Conditions (2009): Second European Quality of Life Survey, <http://www.eurofound.europa.eu/pubdocs/2009/02/en/2/EF0902EN.pdf>

44 Statistisches Bundesamt et al. 2008: 268

45 Statistisches Bundesamt et al. 2008: 269

46 Statistisches Bundesamt et al. 2008: 287

47 Statistisches Bundesamt et al. 2011: 305

48 Statistisches Bundesamt et al. 2011: 308

49 Korczak et al. 2011: 23-36

50 Statistisches Bundesamt et al. 2008: 376

rely on unpaid help from people outside their own household. Only approximately 6% of the population is socially isolated, without contact and without help.⁵¹

Compared with the other EU Member States, Germany is, however, only in 16th place with regard to this aspect of social cohesion. In the context of the CIVICUS Civil Society Index Project confidence among the population was given a score of two out of three.⁵² The basis for this assessment was provided by a survey conducted by the Federal Statistical Office in which 33% of the respondents answered the question “Would you say that you can trust most people or that you cannot be careful enough?” with an optimistic response.⁵³

“Voluntary commitment given without payment is an indispensable core element of civil society organisations... By developing democratic standards, social networks and relationships of trust it promotes cooperation, keeps friction losses to a minimum and thereby ultimately leads to a society functioning better.”⁵⁴ Civil commitment to clubs, associations, foundations or citizens’ initiatives has been high for many years and involves 36% of the population in 2009.⁵⁵ Also constant at approximately one third of the population is the desire for more influence by citizens on government decisions.⁵⁶

The question of the relative importance attached to integrity cannot be answered clearly. The 2010 Global Corruption Barometer survey of the population shows that the population in Germany is extremely aware of the issue of corruption.⁵⁷ Most of the population think that so-called ‘tax dodgers’ should be brought to justice.⁵⁸ This may allow the conclusion that integrity is regarded as an important value in Germany.

51 Statistisches Bundesamt et al. 2008: 378

52 Reimer 2006: 65

53 Statistisches Bundesamt 2003: 628. In: Reimer 2006: 65

54 Statistisches Bundesamt et al. 2011: 359

55 Statistisches Bundesamt et al. 2011: 361

56 Statistisches Bundesamt et al. 2011: 386

57 Transparency Germany: Zum internationalen Antikorruptionstag am 09.12.2010, <http://transparency.de/2010-12-09-GCB-2010.1797.0.html>

58 Korczak et al. 2011: 23-36

5. Corruption profile

This chapter was largely written by Dr. Sebastian Wolf.

The scope and structures of corruption in a country are notoriously difficult to determine and this determination cannot be any more than approximate. The most important methods for measuring corruption are criminal statistics as well as perceptions and victimisation indexes. They each have specific strengths and weaknesses.¹ The following brief overview of the corruption situation in Germany works largely with quantitative data² on account of the size of the country and although it deals with different sectors of the economy and public institutions at various points, it does not generally deal with different administrative levels. This chapter contains the following sections: (1) General remarks on the level of corruption in Germany, (2) corruption in various sectors, (3) corruption situation in the German economy as well as (4) foreign corruption.

(1) The Corruption Perceptions Index, which aggregates various international comparative perceptions surveys, sees Germany relatively consistent with approximately eight out of ten possible points as one of the 20 countries in the world least affected by corruption in the public sector.

Table 1: Germany in the TI Corruption Perceptions Index

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Score | 7,3 | 7,7 | 8,2 | 8,2 | 8,0 | 7,8 | 7,9 | 8,0 | 7,9 |
| Rank | 18/102 | 16/133 | 15/145 | 16/158 | 16/163 | 16/179 | 14/180 | 14/180 | 15/178 |

Source: Transparency International, Corruption Perceptions Index 2002-2010.³

The German population, however, predominantly views the level of corruption in the Federal Republic as relatively high. In representative surveys, a majority regularly indicates that corruption in Germany has increased or will increase in the future.

Table 2: Trends in the level of corruption from the perspective of the population over the ...

| | has decreased/ will decrease | has stayed/will stay the same | has increased/ will increase |
|-------------------------|---------------------------------|----------------------------------|---------------------------------|
| (2010) past three years | 6% | 24% | 70% |
| (2007) next three years | 16% | 15% | 69% |
| (2005) past three years | 7% | 25% | 66% |
| (2005) next three years | 10% | 30% | 57% |
| (2004) next three years | 7% | 32% | 60% |
| (2003) next three years | 18,7% | 35,4% | 42,5% |

Source: Transparency International, Global Corruption Barometer 2003-2005, 2007, 2010.⁴

1 Cf. the various articles in Sampford et al. 2006

2 For a qualitative study, see for example Bannenberg 2002

3 Transparency International: Corruption Perceptions Index, http://www.transparency.org/policy_research/surveys_indices/cpi

4 Transparency International: Global Corruption Barometer, http://www.transparency.org/policy_research/surveys_indices/gcb

This majority perspective of the population, possibly influenced by media reporting about a few prominent corruption cases is not supported either by victimisation surveys or by criminal statistics.⁵ For example, consistently only very few respondents in Germany indicate that they had made bribe payments.

Table 3: Percentage of respondents in Germany who made a facilitation payment over the past 12 months

| 2004 | 2005 | 2006 | 2010 |
|------|------|------|------|
| 1% | 2% | 2% | 2% |

Source: Transparency International, Global Corruption Barometer 2004, 2005, 2006, 2010.

A look at the (alleged) corruption offences recorded by the police provides no indication either of a general increase in the level of corruption in the Federal Republic.

Table 4: Corruption offences identified by the police

| 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|-------|-------|-------|-------|-------|--------|-------|-------|-------|-------|
| 9.348 | 7.962 | 8.283 | 7.232 | 7.610 | 14.689 | 6.895 | 9.563 | 8.569 | 6.354 |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2000-2009.⁶

Aside from the tendency towards more investigations into bribery cases in the private sector and, at a low level, corruption actions with respect to foreign and international public officials, no clear trends can be seen in terms of the various statutory offences of bribery. The strong fluctuations are generally attributable to individually uncovered local or regional webs of corruption.

Table 5: Corruption offences identified by the police according to respective statutory offence (German Criminal Code)

| | 2006 | 2007 | 2008 | 2009 |
|---|-------|-------|-------|-------|
| Section 108b Active and passive bribery of voters | 0 | 2 | 0 | 0 |
| Section 108e Active and passive bribery of delegates | 0 | 37* | 8 | 6 |
| Section 299 Active and passive bribery in business transactions | 1.032 | 1.025 | 1.530 | 1.833 |
| Section 300 Aggravated cases of active and passive bribery in business transactions | 809 | 455 | 699 | 610 |
| Section 331 Taking advantages (public officials) | 1.277 | 963 | 962 | 1.376 |
| Section 332 Passive bribery of public officials | 949 | 1.221 | 626 | 632 |
| Section 333 Giving advantages (public officials) | 1.322 | 684 | 1.041 | 973 |
| Section 334 Active bribery of public officials | 912 | 1.222 | 725 | 721 |
| Section 335 Aggravated cases of active and passive bribery of public officials | 570 | 3.945 | 2.937 | 94 |
| Act Against International Corruption; bribery of foreign/international public officials | 4 | 8 | 31 | 69 |
| EU Anti-Corruption Act; bribery of EU officials/public officials of EU countries | 3 | 1 | 10 | 40 |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2006-2009.

* 34 of the offences concern proceedings against an individual

5 Cf. in general with respect to this phenomenon Moulin 2010: 125-135

6 Bundeskriminalamt: Korruption, Bundeslagebild 2009, http://www.bka.de/nn_193360/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruption__node.html?__nnn=true

Ultimately, the figures relating to persons sentenced on account of corruption offences barely support the statement that corruption is a growth sector in Germany⁷, primarily because the framework conditions for successful law enforcement inter alia on the basis of awareness-raising campaigns, civil society initiatives and organisational measures (e.g. key area public prosecution departments) have improved rather than deteriorated in many areas in recent years (see also (3)). However, it must be assumed that there are large numbers of unreported cases. Experts assume that approximately 95% of all corruption cases are not discovered.⁸

Table 6: Convictions on account of corruption offences

| | 2004* | 2007 | 2008 | 2009 |
|---|-------|------|------|------|
| Section 108e Active and passive bribery of delegates | – | 0 | 2 | 0 |
| Section 299 Active and passive bribery in business transactions | 16 | 64 | 72 | 60 |
| Section 300 Aggravated cases of active and passive bribery in business transactions | – | 41 | 35 | 52 |
| Section 331 Taking advantages (public officials) | 33 | 43 | 62 | 80 |
| Section 332 Passive bribery of public officials | 50 | 44 | 67 | 56 |
| Section 333 Giving advantages (public officials) | 91 | 37 | 54 | 41 |
| Section 334 Active bribery of public officials | 149 | 224 | 185 | 160 |
| Section 335 Aggravated cases of active and passive bribery of public officials | 32 | 46 | 33 | 36 |

Source: Statistisches Bundesamt, Fachserie 10 Reihe 3, Rechtspflege – Strafverfolgung 2004, 2007-2009.⁹

* Taken from Dölling 2007: 5

(2) Both perception surveys and police criminal statistics permit the assumption that the degree of corruption varies in different areas of German society. According to citizens' opinion, political parties and the private sector are most corrupt, the police, the justice system and the education system least.

Table 7: Sector-related levels of corruption

| | Political parties | Parliament | Police | Private sector | Media | Public sector |
|------|-------------------|------------|--------|----------------|-------|---------------|
| 2010 | 3,7 | 3,1 | 2,3 | 3,3 | 3,0 | 3,2 |
| 2007 | 3,5 | 3,0 | 2,3 | 3,5 | 3,1 | 2,5(a) |
| 2006 | 3,7 | 3,1 | 2,3 | 3,5 | 3,1 | 2,4(a) |
| 2005 | 3,7 | 3,2 | 2,4 | 3,2 | 3,3 | 2,6 (b) |
| 2004 | 3,9 | 3,2 | 2,5 | 3,3 | 3,1 | 2,5 (b) |

7 According to Bannenberg & Schauensteiner 2004

8 Bannenberg & Schauensteiner 2007

9 Statistisches Bundesamt: Strafverfolgungsstatistiken 2007-2009, <http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Publikationen/Fachveroeffentlichungen/Rechtspflege/StrafverfolgungVollzug/Strafverfolgung,templateId=renderPrint.psml>

| | Justice system | NGOs | Churches | Federal Armed Forces | Education system |
|------|----------------|------|----------|----------------------|------------------|
| 2010 | 2,4 | 2,6 | 2,9 | 2,6 | 2,3 |
| 2007 | 2,5 | 2,8 | 2,5 | 2,4 | 2,2 |
| 2006 | 2,5 | 2,8 | 2,6 | 2,5 | 2,2 |
| 2005 | 2,7 | 2,6 | 2,4 | 2,5 | 2,3 |
| 2004 | 2,8 | 2,7 | 2,5 | 2,5 | 2,5 |

Source: Transparency International, Global Corruption Barometer 2004-2007, 2010 (1: not at all corrupt, 5: extremely corrupt; (a) average from registry and permit services, utilities and tax revenue; (b) average from registry and permit services, utilities, customs and tax revenue).

The recipients of undue advantages are often to be found in local authorities, health institutions, educational institutions and building authorities, more frequently too in private businesses.

Table 8: Breakdown of the demand side (bribe takers)

| | 2007 | 2008 | 2009 |
|--|-------|-------|-------|
| Private companies/businesses | 14,0% | 26,0% | 39,0% |
| Local authorities | 18,0% | 27,8% | 20,0% |
| Public health sector | 8,0% | 6,0% | 9,0% |
| Military | | | 5,0% |
| University/Education | 10,0% | 7,0% | 5,0% |
| Building authorities | 4,0% | 11,1% | 4% |
| Water supply/sewage | 9,0% | 1,5% | 3,0% |
| Police | 7,0% | 4,1% | 2,0% |
| Federal/state authorities | | | 2,0% |
| Financial sector (insurance companies/banks) | | | 2,0% |
| Other | 30,0% | 16,5% | 9,0% |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2006-2009.

Bribe givers are often private individuals or are employed in the automobile or building industry, in skilled craft businesses or the service industry. Often there are long-standing relationships between the demand and supply side (bribe takers and givers) prior to the initiation of corruption activities.

Table 9: Breakdown of the supply side (bribe givers)

| | 2006 | 2007 | 2008 | 2009 |
|--------------------------|-------|-------|-------|-------|
| Private individuals | 45,0% | 21,0% | 12,5% | 21,0% |
| Automobile industry | 3,0% | 3,0% | 5,8% | 16,0% |
| Building industry | 12,0% | 16,0% | 18,9% | 12,0% |
| Skilled craft businesses | 3,0% | 4,0% | 5,1% | 10,0% |
| Service industry | 12,0% | 15,0% | 15,0% | 8,0% |
| Commerce | 4,0% | 3,0% | 4,2% | 4,0% |

| | | | | |
|--------------------------------|-------|-------|-------|-------|
| Consumer goods industry | | | | 4,0% |
| Pharmaceutical/Health industry | 4,0% | 5,0% | 7,8% | 3,0% |
| Transport/Logistics industry | 4,0% | 1,0% | 4,9% | 3,0% |
| Property sector | | | | 2,0% |
| Other sectors | 16,0% | 32,0% | 25,8% | 17,0% |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2006-2009.

Ordinary employees seem to engage less in bribing than the senior personnel in a business such as managing directors, company owners and managerial staff.

Table 10: Position of the supply side (bribe givers)

| | 2007 | 2008 | 2009 |
|---------------------|-------|-------|-------|
| Managing directors | 21,0% | 32,3% | 28,0% |
| Private individuals | 21,0% | 14,7% | 24,0% |
| Company owners | 16,0% | 14,4% | 19,0% |
| Employees | 5,0% | 17,2% | 14,0% |
| Managerial staff | 14,0% | 16,8% | 10,0% |
| Other | 23,0% | 4,6% | 5,0% |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2006-2009.

According to police statistics, corruption takes place in Germany primarily in order to secure contracts. This is followed by efforts to gain miscellaneous competitive advantages. In contrast to this, obtaining official licences plays a fairly minor part.

Table 11: Advantages for the supply side (bribe givers)

| | 2007 | 2008 | 2009 |
|--|-------|-------|-------|
| Securing of contracts | 40,0% | 45,0% | 57,0% |
| Obtaining official licences | 6,0% | 13,0% | 8,0% |
| Miscellaneous competitive advantages | 15,0% | 14,0% | 8,0% |
| Obtaining a driving licence | | | 6,0% |
| Influencing criminal prosecution | 4,0% | 4,0% | 4,0% |
| Payment of fictitious/falsified invoices | 17,0% | 4,0% | 4,0% |
| Residency/Work permit | 4,0% | 2,0% | 3,0% |
| Saving of fees | 4,0% | 6,0% | 2,0% |
| Obtaining inside information | 2,0% | 3,0% | 1,0% |
| Sale of medication | | | 1,0% |
| Other | 8,0% | 9,0% | 6,0% |

Source: Bundeskriminalamt, Bundeslagebild Korruption 2006-2009.

(3) The subject of 'corruption in the private sector' has taken on increasing significance in recent years. It has already been indicated above that bribery in the private sector has tended in recent years to be prosecuted more often by the law enforcement agencies. In a representative study conducted in 2009¹⁰

10 PricewaterhouseCoopers & Martin-Luther-Universität Halle-Wittenberg (Hg.) 2009

13% of major enterprises in Germany stated that they had already been involved in cases of corruption. 29% of the companies interviewed reported that they had lost at least one contract due to bribery on the part of a competing company. The study concludes that the prevalence of corruption in Germany appeared relatively stable, but that the costs of dealing with cases of corruption had increased considerably. Several major enterprises had increasingly introduced anti-corruption programmes, special compliance measures or whistleblower systems. According to a further study, which deals specifically with small and medium-sized businesses,¹¹ 37% of the companies had been affected by white collar crime in the past three years. It is also emphasised here that although cases of corruption are fairly rare, they are associated with high costs. Precautionary measures against white collar crime among small and medium-sized businesses were, however, mainly individual measures. According to another study, which deals specifically with companies operating internationally,¹² as far as the employees interviewed were aware, there had been a case of corruption in the past two years in only 6% of the companies established in Germany. Nevertheless, corruption was seen by most as a challenge, and the companies record an increase in investigations into corruption in Germany in recent years.

(4) As proved by various sources, Germany has been able to improve its position of combating cross-border bribery in recent times and has thus consistently improved its score, for example, in the perception-based Bribe Payers Index.

Table 12: Germany in the TI Bribe Payers Index

| | 2002 | 2006 | 2008 |
|-------|------|------|------|
| Score | 6,3 | 7,3 | 8,6 |
| Rank | 9/21 | 7/30 | 5/22 |

Source: Transparency International, Bribe Payers Index 2002, 2006, 2008¹³ (Scores – 1: German companies engage in bribery on many occasions when doing business abroad; 10: German companies never engage in bribery when doing business abroad)

Transparency International also places Germany in the ‘active enforcement’ category in the context of its progress reports concerning the enforcement of the OECD Anti-Bribery Convention.¹⁴ Although the OECD criticises various German anti-corruption regulations as suboptimal,¹⁵ in its table too, the Federal Republic ranks among the countries demonstrating the most active law enforcement in cases of transnational corruption.¹⁶ As a country with a strong export economy, Germany is exposed at least in part to specific corruption risks, but it seems to be dealing with these increasingly better in recent years.

11 KPMG: Wirtschaftskriminalität in Deutschland 2010. Fokus Mittelstand, http://www.kpmg.de/docs/20091220_Wirtschaftskriminalitaet.pdf

12 Ernst & Young (2008): Korruption – Das Risiko der Anderen. 10th Global Fraud Survey, [http://www.ey.com/Publication/vwLUAssets/Korruption_10th_Global_Fraud_Survey/\\$FILE/Studie_Korruption_Das%20Risiko%20der%20Anderen.pdf](http://www.ey.com/Publication/vwLUAssets/Korruption_10th_Global_Fraud_Survey/$FILE/Studie_Korruption_Das%20Risiko%20der%20Anderen.pdf)

13 Transparency International: Bribe Payers Index, http://www.transparency.org/policy_research/surveys_indices/bpi

14 Transparency International: Progress Report 2010. Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, http://www.transparency.org/global_priorities/international_conventions

15 OECD: Working Group on Bribery, Germany Phase 3 Report, <http://www.oecd.org/dataoecd/5/45/47416623.pdf>

16 OECD: Working Group on Bribery, 2010 Data on Enforcement of the Anti-Bribery Convention, <http://www.oecd.org/dataoecd/47/39/47637707.pdf>

6. Anti-corruption measures

This chapter was largely written by Dr. Sebastian Wolf

This chapter aims to briefly present and discuss important positive measures for combating corruption in Germany, which have been decided upon or initiated over the past five years. The intention is to identify the triggers and key players in these reform activities wherever possible. If a national anti-corruption strategy exists in Germany, this must be addressed. The presentation aims to focus on central government measures; in addition to this, international anti-corruption efforts and initiatives in the private sector and civil society must be addressed. The chapter contains the following sections: (1) Nationwide anti-corruption strategy, (2) anti-corruption criminal law, (3) other selected public measures, (4) Germany and the international fight against corruption, (5) anti-corruption efforts in the private sector and (6) civil society and combating corruption.

(1) Highly diverse measures have by now been put in place in Germany by public institutions to combat corruption at local, state and federal level, which are based on the 'Concept of Corruption Prevention and Combating' developed by the Standing Conference of Federal State Ministers and Senators of the Interior (IMK) held on 18/19 May 1995. This nationwide anti-corruption strategy is mandatory for supervisory bodies in federal state administrative departments; the Federal Government enforces it without this obligation to do so, as do the local authorities encouraged by local umbrella organisations. Implementation of the concept is monitored via regular reports to the IMK. In terms of the inclusion of the private sector, politics and civil society in the fight against corruption also set out in the principles of the IMK concept, acceptance by the private sector in particular has proved unsatisfactory.¹

(2) The most important steps towards the reform of the German anti-corruption criminal law were not taken in the last five years, but essentially in the 1990s.² The most important stages will be outlined briefly below. The criminal offence of bribery of delegates was reintroduced in 1994, however in a very narrow version.³ The 1998 Anti-Corruption Act tightened up inter alia the criminal offences of taking and giving advantages involving public officials.⁴ In 1999, the Act Against International Corruption and the EU Anti-Corruption Act extended the criminal offences of active and (in part) passive bribery to a varying extent to foreign public officials, members of international assemblies and officials in international organisations.⁵ In 2002, the criminal offence of bribery in business transactions was extended to foreign competition.⁶

Various initiatives have been presented over the last five years, which were intended to tighten up or expand various statutory offences of corruption. These aimed to eliminate inconsistencies in applicable legislation and primarily comply with the requirements of international anti-corruption conventions. The draft bills introduced by Alliance '90/The Greens (Bundestag printed paper No. 16/6726) and The LEFT (Bundestag printed paper No. 16/8979) in 2007 and 2008 designed to tighten up the criminal offence of bribery of delegates were unsuccessful. The intention was particularly to extend criminal liability to all mandate-related actions in parliament. The Bundestag also did not pass the draft bill to amend criminal law introduced by the Federal Government in 2007 (Bundestag printed paper No. 16/6558). This draft bill essentially suggested the following improvements: (a) transfer of the supplementary penal provisions outside the German Criminal Code created by the Act Against International Corruption and the EU Anti-Corruption Act into the German Criminal Code; (b) an extension of certain statutory offences of active and passive bribery of foreign and international public officials; (c) a tigh-

1 See pillar 13 'Private sector'

2 Comprehensive details of German anti-corruption criminal law with various other further evidence: Möhrenschlager 2007: 377-561

3 Barton 1994: 1098-1101

4 Korte 1997: 513-518

5 Zieschang 1999: 105-107

6 Randt 2002: 2252-2256

tening up of the statutory offence of active and passive bribery in the private sector (clear introduction of the so-called ‘Geschäftsherrenmodell’ – principal-agent model).⁷

Several initiatives for partial reforms of the German anti-corruption criminal law have also already been introduced in the current legislative period, which in view of the current majorities in the Bundestag have little chances of success. For example, a new draft bill introduced by the parliamentary group The LEFT (Bundestag printed paper No. 17/1412) and Alliance ‘90/The Greens (Bundestag printed paper No. 17/5933) to tighten up the criminal offence of bribery of delegates must be mentioned. The SPD calls in a motion for the relevant provisions in the German Criminal Code to be supplemented such that resident statutory health insurance doctors are clearly covered by Sections 331 et seq. of the German Criminal Code or Section 299 of the German Criminal Code (Bundestag printed paper No. 17/3685).

Since the end of the 1990s, reforms of the German anti-corruption criminal law have essentially been attributable to international anti-corruption conventions (see also in this respect (4)). Pressure from civil society has played an important supplementary role here. Nevertheless, neither international nor civil society efforts over the last five years have been able to achieve successful reforms in the parts of criminal law referred to above or in the sanctioning of legal persons.

(3) Public institutions at all administrative levels in Germany have taken or continued with numerous legal and organisational steps in recent years to combat corruption; a comprehensive overview in this context is not possible in particular due to the large number of local authorities.⁸ Therefore, several particularly significant measures taken in recent years, without this list being exhaustive, will be indicated below and primarily those at federal level will be considered in greater detail. In contrast to the corruption criminal law, no clear triggers can be identified for the most part here. Some key anti-corruption instruments were passed more than five years ago, such as the abolition of tax deductibility of bribe payments abroad in 1999 and the completely revised 2004 Federal Government version of the guidelines for preventing corruption within the federal administration.

The act to improve the fight against corruption and to set up and keep a public procurement register in North Rhine-Westphalia of 16.12.2004 (North Rhine-Westphalian Prevention of Corruption Act [KorruptionsbG NRW]) not only contains provisions for procedures and the binding nature of the public procurement register, but also provisions regarding disclosure, briefing, advisory and information requirements, instructions for establishing transparency inter alia for Federal State Government Members and key administration officers (including disclosure of secondary employment and incidental earnings) as well as instructions on prevention.

The Federal Government’s Freedom of Information Act entered into force in 2006. Alongside this there are freedom of information acts in 11 federal states (Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony-Anhalt, Schleswig-Holstein and Thuringia) and comparable provisions in some local authorities. As pleasing as the various freedom of information acts are because they represent a certain shift away from the principle of official secrecy in Germany dominating to date, they do, however, to varying extents, also demonstrate weaknesses such as extensive exemptions.⁹ In addition, five non-city states have still not passed freedom of information legislation.

Provisions designed to protect whistleblowers in the public sector have been in place since 2009 in the Act on Federal Civil Servants [Bundesbeamtenengesetz] and the Act on the Status of Federal Civil Ser-

7 Wolf 2007b: 44-46

8 Details of public sector anti-corruption measures at federal and state level with various other further evidence: Korte 2007: 289-350

9 Transparency Germany/ Hüsgen, D; Martiny, A.; Hammacher, P. (2009): Deutschland braucht ein besseres Informationsfreiheitsgesetz, <http://www.transparency.de/Deutschland-braucht-ein-besser.1536.0.html>

vants [Beamtenstatusgesetz], which specify that civil servants shall not be in breach of their official duties if they report justified cases of suspected corruption directly to the law enforcement agencies.¹⁰

Registers of companies suspected of or convicted on account of corruption ('black lists') have only been introduced sporadically at federal state level in Germany to date.¹¹ Statutory provisions exist in Berlin and North Rhine-Westphalia. Berlin has recently extended its Corruption Register Act passed in 2006;¹² the North Rhine-Westphalian Prevention of Corruption Act is currently being evaluated. The federal central register called for by civil society (linked with order blocks in respect of companies suspected of corruption)¹³ still cannot be expected soon. After a corresponding initiative by the former Federal Government of the Greens and Socialdemocrats fell through in the upper house [Bundesrat] in 2002, a relevant draft bill from Alliance '90/The Greens (Bundestag printed paper No. 16/9780) was rejected by the Bundestag in 2009.

The Members of the Bundestag Act and the code of conduct for Members of the Bundestag were amended in 2005 in particular to introduce new publication requirements regarding delegates' secondary employment (details of monthly/one-off earnings in three stages).¹⁴ Due to court proceedings between governmental bodies before the Federal Constitutional Court, the provisions have only been applied since 2007. Transparency Germany spoke out strongly against a recently proposed modification of the publication requirements (greater differentiation of the stages when introducing an annual minimal level) and rather calls for the exact disclosure of incidental earnings.¹⁵

(4) Germany has been actively involved in various international anti-corruption regimes since the mid-1990s. Particularly important are the EU, the Council of Europe (Group of States Against Corruption – GRECO), the OECD (Working Group on Bribery in Business Transactions), the United Nations and as of recently the G20. The Federal Republic has ratified various anti-corruption conventions that have arisen in the context of the international organisations referred to above, such as the two EU Conventions against Corruption and the OECD Anti-Bribery Convention. However, to date Germany has only signed the two Council of Europe Conventions on Corruption and the UN Convention against Corruption.¹⁶

Germany could probably ratify the Council of Europe Criminal Law Convention on Corruption without legal amendments if it filed various reservations. Whistleblower protection in the private sector should be improved for ratification of the Council of Europe Civil Law Convention on Corruption.¹⁷ Ratification of the UN Convention against Corruption primarily requires a tightening up of the criminal offence of bribery of delegates.¹⁸ The German statutory offence of bribery in business transactions does not comply with all requirements of the EU Framework Decision on combating corruption in the private sector.¹⁹ However, overall it can be stated that the international anti-corruption provisions represent very strong impulses for anti-corruption reform in Germany even though not all recommendations of

10 GRECO 2009

11 Transparency Germany: Korruptionsregister auf Bundesebene (Stand Februar 2010), http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/Informationen%20zu%20L%C3%A4ndern%2C%20Bund%20und%20EU_Stand%20Feb%202010.pdf

12 Senatsverwaltung für Stadtentwicklung Berlin: Register über korruptionsauffällige Unternehmen (Korruptionsregister), <http://www.stadtentwicklung.berlin.de/service/korruptionsregister>

13 Transparency Germany: Anti-Korruptionsregister: Vorschläge für eine wirksame Gestaltung, <http://www.transparency.de/Stellungnahme-Antikorruptionsr.77.0.html>

14 Korte 2007: 343-350

15 Transparency Germany: Transparency kritisiert Änderungsvorschläge zur Nebeneinkünfteregelung des Deutschen Bundestages (15.04.2011), <http://www.transparency.de/2011-04-15-Aenderungsvorschlaege.1886.0.html?&contUId=3922>

16 See Androulakis 2007 on Germany in the international anti-corruption regimes from a legal perspective and Wolf 2007a from a political science viewpoint

17 Marsch 2009

18 van Aaken 2005: 407-446

19 Kommission der Europäischen Gemeinschaften (2007): Bericht der Kommission an den Rat gemäß Artikel 9 des Rahmenbeschlusses 2003/568/JI des Rates vom 22. Juli 2003 zur Bekämpfung der Bestechung im privaten Sektor. KOM(2007) 328 endgültig, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0328:FIN:DE:PDF>

the Council of Europe and OECD evaluation bodies have been implemented by German politics to date. Germany is not yet able to participate in the anti-corruption monitoring mechanism at UN level due to the outstanding ratification of the UN Convention against Corruption.

(5) As a reaction to cases of corruption uncovered inter alia at Siemens, VW, MAN and Ferrostaal, awareness of the problem of corruption has perceptibly increased in recent years at least in major German companies. In the last five years several multinational companies with their (head) offices in Germany have expanded their compliance departments, tightened up their codes of conduct and internal control mechanisms, set up contact points for cases of suspected corruption and provided more intensive training for their employees in relation to prohibited practices. In addition, there have been occasional associations between companies to date in order to prevent corruption such as the German-Russian Chamber of Commerce Compliance Abroad Initiative.²⁰ Transparency Germany by now sees the greatest need for action in terms of containing corruption as being in small and medium-sized companies.²¹ Anti-corruption reforms in the private sector in recent years are relatively clearly attributable to the increasing success of the law enforcement agencies. Protection for whistleblowers in the private sector is somewhat lacking.²² The SPD parliamentary group has recently announced a not very promising (on account of its current role in opposition) initiative in relation to this.²³

(6) Civil society has a keen interest in the fight against corruption. Transparency Germany is the NGO with the highest visibility in the fight against corruption. In addition to Transparency Germany there are a number of political and ideational associations that deal with subject-specific issues relating to anti-corruption. Numerous positive developments in terms of transparency can also be attributed to the activities of large organisations, such as consumer associations and social organisations. Over the last 20 years a series of voluntary measures ('codes of conduct') and voluntary testing procedures have been introduced to improve standards in relation to transparency, accountability and integrity.

20 Deutsch-Russische Auslandshandelskammer: Mehr als 50 AHK-Mitgliedsfirmen unterzeichnen Compliance-Initiative (Pressemitteilung 21.04.2010), http://russland.ahk.de/fileadmin/ahk_russland/Dokumente/Veranstaltungen/2010/Compliance/2010_04_21Compliance_de.pdf

21 Transparency Germany: Wirtschaft – Standpunkte, <http://www.transparency.de/Wirtschaft.64.0.html>

22 Transparency Germany/ Hammacher, P. (2009): Forderungen für die 17. Legislaturperiode – Thema: Hinweisgeber, <http://www.transparency.de/Forderungen-fuer-die-17-Legis.1534.0.html>

23 SPD-Bundestagsfraktion: SPD wird Gesetz zum Schutz von Whistleblowern einbringen (24.02.2011), http://www.spdfraktion.de/cnt/rs/rs_dok/0,,55801,00.html

7. National Integrity System

Pillar 1: Legislature

Summary

The statutory provisions, which serve to safeguard the independence, transparency and integrity of the legislature and the Members of the Bundestag respectively, are comprehensive. In practice, however, they still have loopholes, which can lead to abuse. Outstanding provisions are currently primarily the revised wording of the criminal offence of bribery of delegates, Section 108e of the German Criminal Code, so that the UN Convention against Corruption can be ratified¹, and the provisions regarding the acceptance of donations by individual delegates. Moreover, it must be clarified that the obligation to secrecy on the part of delegates does not apply if they accept lobbying mandates as lawyers. The setting up of a detailed, compulsory public register of lobbyists is recommended.

In Germany's parliamentary democracy, the Federal Chancellor is elected by the Federal Parliament. Government office and Bundestag mandate are compatible and consequently the large majority of ministers are Members of the Bundestag. Parliamentary state secretaries are always, as the name suggests, Members of the German Bundestag. The line of conflict runs between government and parliamentary majority on the one hand and parliamentary opposition on the other. Official control mechanisms such as minor and major interpellations are used almost exclusively by the opposition. Delegates from the parliamentary groups in government address grievances via direct and informal routes.

The Bundestag has a well-equipped parliamentary administration on its side. However, compared with the executive, the legislature has fewer human and financial resources.² Draft bills are generally prepared by the government and the ministerial administration. Changes may occur in the parliamentary procedure also due to frequent federal state consent requirements in the Bundesrat in spite of the political proximity of government and parliamentary majority.

The parliamentary units of action are the parliamentary groups. They mostly vote as one following an internal debate. A quorum, i.e. a certain number of supporting votes is required in order to exercise individual rights of control, such as the submission of major or minor interpellations. Independent delegates therefore generally have fewer opportunities to play an active part. They do, however, have the right of petition in committees and the right to speak in plenary sessions.

| Legislature | | | |
|------------------------|---------------------|-----|----------|
| Total score: 81 / 100 | | | |
| | Indicator | Law | Practice |
| Capacity 94 / 100 | Resources | 100 | 100 |
| | Independence | 100 | 75 |
| Governance 75 / 100 | Transparency | 75 | 75 |
| | Accountability | 100 | 75 |
| | Integrity | 50 | 75 |
| Role 75 / 100 | Executive oversight | 100 | |
| | Legislative reforms | 50 | |

1 Cf. Transparency Germany: Eckpunkte zur Anpassung des § 108e StGB (Abgeordnetenbestechung) (11.03.2008), http://www.transparency.de/fileadmin/pdfs/Themen/Politik/Eckpunktepapier_Abgeordnetenbestechung_08-03-11.pdf

2 See pillar 2 'Executive'

Pillar 2: Executive

Summary

In terms of the separation of powers, the state power is divided via mutual control opportunities among legislature, executive and judiciary. The executive referred to below is considered to consist of the members of the government and the ministerial administrations. The executive generally has adequate personnel and resources. In individual areas, the lack of specialists may increase the risk of the influence of lobby interests. The Freedom of Information Act forms the legal basis for the general right of access to public information. However, the exemptions under most freedom of information acts are too comprehensive.

All legislation and the processes for its creation are accessible to the general public. The involvement of stakeholders must be indicated in the context of a so-called 'legislative footprint'. There are no publication requirements regarding the composition of government advisory bodies. The reports on the use of external parties in the federal administration are not published.

Article 66 of the German Basic Law regulates incompatibilities of government offices and, for example, commercial activity. The lacking waiting period regulations applicable to former members of the government and parliamentary state secretaries are a weak element of the current legal situation.

Although the Federal Government has issued guidelines and recommendations for the prevention of corruption in recent years, this does, however, not necessarily mean that the subject of combating corruption always takes priority. For example, the Federal Government is apparently not campaigning strongly enough for the ratification of the United Nations Convention against Corruption (UNCAC) that is still outstanding.

The individual scores which lead to the overall assessment are shown in the table below.

| Executive Total score: 75/ 100 | | | |
|-----------------------------------|--------------------------|---------------|----------|
| | Indicator | Law | Practice |
| Capacity 83 / 100 | Resources | Not collected | 75 |
| | Independence | 100 | 75 |
| Governance 67 / 100 | Transparency | 75 | 50 |
| | Accountability | 100 | 75 |
| | Integrity | 50 | 50 |
| Role 75 / 100 | Public sector management | 100 | |
| | Legal system | 50 | |

Pillar 3: Judiciary

Summary

The principle of the separation of powers laid down in the German Basic Law means independence and an organisational detachment of the judiciary from the executive. As the supreme court, the Federal Constitutional Court has a control function vis-à-vis the executive, legislature and judiciary. The other federal courts and appellate courts at federal state level contribute to a differentiated jurisdictional control density.

The material and human resource infrastructure of the judiciary in Germany is largely satisfactory; however, an increasing lack of human resources is identifiable.

The fact that Germany has professional judges and judges for life ensures a high level of continuity and security. The personal independence of judges offers protection against sanctions. Independence is, however, affected by appointment and promotion practices.

Overall, the independence and competence of legal practice in Germany is assessed as good. Increasing human and financial resources is recommended in order to improve their work and the additional tasks in relation to transnational corruption.

| Judiciary Total score: 88/ 100 | | | |
|-----------------------------------|----------------------|-----|----------|
| | Indicator | Law | Practice |
| Capacity 88 / 100 | Resources | 100 | 75 |
| | Independence | 100 | 75 |
| Governance 88 / 100 | Transparency | 75 | 75 |
| | Accountability | 100 | 100 |
| | Integrity | 100 | 75 |
| Role 88 / 100 | Executive oversight | 100 | |
| | Combating corruption | 75 | |

Pillar 4: Public sector

Summary

In this pillar, the public sector is interpreted as federal, state and local administration not including the Federal and State Ministries.

The German public sector is bound by law and justice (Article 20 of the German Basic Law). This also applies to its (salaried) employees. The basic obligations on the part of civil servants are cited as an example. These include the precepts of neutrality and objectivity and the principle of serving the whole nation and the general good (Article 33 of the German Act on the Status of Federal Civil Servants, Article 60 of the German Act on Federal Civil Servants). Defining elements of the German public sector are the specific federal structure and the different devolvement of legislative and administrative competences to the individual levels. This leads to most administrative tasks being performed at federal state and local authority level.

All administrations have been reformed to varying degrees in recent years accompanied by job cuts on the one hand and modernisation on the other. The push for reform was strongest at local authority level followed by the federal states.³ Staff cutbacks occasionally lead to quality losses, but these have been cushioned by efficiency gains resulting from increased use of information technology (IT). Overall the public sector in Germany is functional.

In practice, the attempt to achieve transparency through administrative action and administrative decisions, in which one is not legally affected in person, represents a difficult, laborious and long-winded process.

The public sector selectively carries out PR work and provides information about the significance and the risks of corruption.

The table below shows the individual scores leading to the overall assessment.

| Public sector Total score: 71 / 100 | | | |
|--|---------------------------------|---------------|----------|
| | Indicator | Law | Practice |
| Capacity 92 / 100 | Resources | Not collected | 75 |
| | Independence | 100 | 100 |
| Governance 71 / 100 | Transparency | 75 | 75 |
| | Accountability | 75 | 75 |
| | Integrity | 75 | 50 |
| Role 50 / 100 | Education of the general public | 25 | |
| | Forms of cooperation | 50 | |
| | Public procurement practice | 75 | |

Pillar 5: Law enforcement

Summary

The work done by the law enforcement agencies (public prosecution departments and investigating officers) in Germany is essentially good and efficient.

As with the judiciary, the melange of lacking resources and overloading of work onto the law enforcement agencies along with increasing length and complexity of proceedings represents a problem. In addition to this, there is a need for professional specialisation due to the increased complexity of offences and the extension of criminal law. The training and further training offered to law enforcement agency employees always needs to be adapted in line with current challenges. The personnel requirement calculation system PEBBSY has only limited suitability for large-scale criminal cases (white collar proceedings and proceedings in the areas of organised crime).

The fact that public prosecution departments are bound by instructions has long been critically discussed from the aspect of the independence of the justice system and is often seen as a risk.

Key area public prosecution departments and the like should be introduced on a nationwide basis.

| Law enforcement Total score: 79/ 100 | | | |
|---|---------------------------|---------------|----------|
| | Indicator | Law | Practice |
| Capacity 67/ 100 | Resources | Not collected | 75 |
| | Independence | 50 | 75 |
| Governance 96/100 | Transparency | 100 | 100 |
| | Accountability | 100 | 75 |
| | Integrity | 100 | 100 |
| Role 75/100 | Prosecution of corruption | 75 | |

Pillar 6: Electoral management body

Summary

The statutory framework of the electoral system ensures that the electoral bodies work largely independently. From an administrative and operational perspective the electoral system is supported by existing administrative authorities. The use of the existing infrastructure, the division of responsibilities among existing administrative authorities and voluntary election workers as well as the financing of the electoral system through the Federal budget create very good conditions for the practical conduct of elections. The German electoral system largely regulates and controls itself. It appears to all intents and purposes to function in a responsible and reliable manner.

The judgment of the Organisation for Security and Co-operation in Europe (OSCE) on the 2009 Bundestag elections was that the electoral process ran efficiently and in line with legislation. However, the OSCE considers it questionable that no statutory provision is made for a legal review of decisions by the electoral bodies in the period prior to an election day. Moreover, it suggests for the electoral registration of political parties by the Federal Election Committee the drawing up of a series of precise, objective and measurable criteria for the registration of parties, party lists and candidates.⁴ The Federal Minister of the Interior has indicated to the OSCE that these OSCE/ODIHR report proposals will be included in the considerations for an electoral law amendment, which is required on account of a decision by the Federal Constitutional Court in 2008.⁵

The financing of electoral campaigns at election district level is problematic. Although the financing of parties is tightly regulated and the parties are required to account for their finances, the financing of electoral campaigns at election district level is not published separately. In practice, primarily financing through election district level donations appears prone to corruption. Furthermore, the handling of direct donations and pecuniary advantages to individuals during electoral campaigns is also non-transparent.

The allocation of air time by public service broadcasting institutions, which is regulated by a non-public document of these institutions, is intransparent.

The table below shows the individual scores leading to the overall assessment.

| Electoral management body Total score: 85 / 100 | | | |
|--|--------------------------|---------------|----------|
| | Indicator | Law | Practice |
| Capacity 92 / 100 | Resources | Not collected | 100 |
| | Independence | 75 | 100 |
| Governance 88 / 100 | Transparency | 100 | 100 |
| | Accountability | 75 | 75 |
| | Integrity | 75 | 100 |
| Role 75 / 100 | Campaign regulations | 50 | |
| | Electoral administration | 100 | |

4 OSCE/ODIHR: Wahl zum Deutschen Bundestag. 27. September 2009. Bericht der OSZE/ODIHR-Wahlbewertungsmission, <http://www.osce.org/node/40879>

5 Ständige Vertretung der Bundesrepublik Deutschland bei der OSZE: Erklärung von Botschafter Heiner Horsten vor dem Ständigen Rat der OSZE am 21. Januar 2010, <http://www.osce.org/de/pc/41217>

Pillar 7: Ombudsman

An ombudsman is an independent institution who deals with general complaints from the general public relating to state action and has the instruments necessary for clarifying the facts, arranging for clarification and taking remedial measures where appropriate. There is no such central institution in Germany and consequently comparability with structures existing in other countries cannot be made and the outlined guiding questions on capacity, governance and role cannot be answered. A nationwide contact point would encounter practical limits against the backdrop of the German federal system alone. Depending on competence, complaints in the federal system must be addressed to local institutions or institutions at federal or state level, e.g. petitions committees. Citizens can call the national citizens' service line 115 to make enquiries regarding the competence of the large number of public authorities. The lack of a central ombudsman institution does not represent a deficiency in the German system owing to the distinctive justice system in conjunction with diverse contact points.

According to Article 19 (4) of the German Basic Law, citizens whose rights have been violated by a public authority may have recourse to the courts. Administrative, financial and social jurisdiction has been developed robustly for this purpose. Citizens have the option to defend themselves against state action through the courts. In addition to this, various contact points form an easy-access service. There is a wide range of contact points for specific areas, such as migration, equality, social issues or corruption and for specific groups of people such as the disabled or health care patients, respectively. Legislation or administrative regulations on all administrative levels (federal/state/local) form the basis for their appointment. Popular titles are ombudsman, counsel of choice, commissioner for citizens' affairs or commissioner. In the four federal states, Rhineland-Palatinate (since 1974),⁶ Schleswig-Holstein (since 1988),⁷ Mecklenburg-Western Pomerania (since 1995)⁸ and Thuringia (since 2007)⁹ for example, there are commissioners for citizens' affairs whose tasks are conceived in the same way as the ombudsman model and are anchored in law. They were elected by the respective federal state parliaments which results in close collaboration with the respective petitions committees. There is obviously no need to introduce commissioners for citizens' affairs in the other 12 federal states which speaks in favour of the existing structure, in particular the administrative, financial and social jurisdiction.

6 See Der Bürgerbeauftragte des Landes Rheinland-Pfalz, <http://www.derbuengerbeauftragte.rlp.de>

7 The Commissioner for Citizens' Affairs in Schleswig-Holstein has an area of competence restricted to social affairs. See Der Bürgerbeauftragte für soziale Angelegenheiten des Landes Schleswig-Holstein, <http://www.landtag.ltsh.de/beauftragte/bb/>

8 See Der Bürgerbeauftragte des Landes Mecklenburg-Vorpommern, http://www.buergerbeauftragter-mv.de/upload/1/1285829054_4861_12492.pdf

9 See Der Bürgerbeauftragte des Freistaats Thüringen, <http://www.thueringen.de/de/bueeb/>

Pillar 8: Supreme audit institution

Summary

The Federal Court of Audit Bundesrechnungshof and the State Courts of Audit are stand-alone independent federal and state authorities. Their human and financial resource infrastructure is appropriate for their tasks and duties and their governance can be assessed as excellent. Their audits are effective. There are only few suggestions for further improving the work of the courts of audit. To date, reviewing the work of the Federal Court of Audit and the State Courts of Audit has been reserved solely for the parliaments. Efforts are being made to increasingly introduce a self-monitoring in the form of peer reviews.

At federal state level there is some desire to expand the auditing options to the extent that courses of business in publicly owned limited liability companies and public limited companies or companies with a public interest can also be subjected to auditing processes. It would therefore be necessary to create the legal conditions for this.

The statutory regulations regarding the publication requirement in respect of audit notifications from the Federal Court of Audit and the State Courts of Audit should be reviewed to see whether they comply with modern requirements in terms of transparency as defined by public interest.

| Supreme audit institution Total score: 94 / 100 | | | |
|--|------------------------------------|---------------|----------|
| | Indicator | Law | Practice |
| Capacity 100 / 100 | Resources | Not collected | 100 |
| | Independence | 100 | 100 |
| Governance 100 / 100 | Transparency | 100 | 100 |
| | Accountability | 100 | 100 |
| | Integrity | 100 | 100 |
| Role 83 / 100 | Effective financial auditing | 100 | |
| | Revealing of irregularities | 75 | |
| | Improvement in governmental action | 75 | |

Pillar 9: Anti-corruption agency

According to Transparency International's definition, an anti-corruption agency is a specialised, independent body under public law. Its specific mission is to fight corruption through preventative and/or repressive mechanisms and to scale down social structures that favour the occurrence of corruption.¹⁰ In the sense of this definition, there is no central anti-corruption agency in Germany as is the case in many other Western European countries and consequently the outlined guiding questions on capacity, governance and role cannot be answered.

Against the background of Germany's federal structure, setting up a central agency with genuine executive functions would face large obstacles. There would be numerous overlapping competences or far-reaching legislative amendments would be required in order to enable intervention in state sovereignty, the department principle or the right to local self-administration, where appropriate.¹¹

Moreover, an anti-corruption approach has been selected in Germany, which enhances and reinforces existing resources without creating more or new red tape at the same time. The basis for the structure of the intensified fight against corruption is the resolution of the Conference of Federal State Ministers and Senators of the Interior (IMK) on 18/19 May 1995, which sees prevention primarily as the task of the supervisory bodies and repression as the task of the law enforcement agencies. The IMK concept describes guidelines and individual measures, which have led in the following years, for example, to changes in criminal law and the concentration of prosecution at the levels of the police, State Offices of Criminal Investigation and public prosecution departments as well as improved forms of cooperation with other branches fighting white collar crime, such as tax investigators. On the prevention side, internal audits designed to prevent corruption have been set up virtually nationwide, integrity mechanisms implemented and the leadership responsibility of superiors strengthened. The IMK concept pursues an integrated approach to combating corruption which, in addition to the public sector, includes the private sector, politics and the population.¹²

The Federal State Ministers of the Interior regularly produce reports relating to the implementation status of the Concept of Corruption Prevention and Combating.¹³ In a statement issued in 2000, Transparency Germany welcomed the 2nd Implementation Report on the IMK concept¹⁴ as a "very interesting roundup of the situation in the federal states". Criticism is given in that the report did not convey the impression that there is an overall concept and that the federal and state governments are jointly striving for and preparing a powerful programme. It went on to say: "We very much regret that, although the 'various approaches' by the federal states are noted and described, beyond this, however, there is hardly any evaluation and no attempt to draw up model provisions on the basis of successful practical experience, which would allow better coordinated implementation and thus more effective mutual administrative assistance and ultimately a more successful overall strategy. With all due consideration of the federal state competences, when combating and preventing corruption, one should at least strive for a better coordinated, if not standard provision. (...)"¹⁵

10 Definition taken from the Transparency International NIS Tool Kit. The United States Agency for International Development (USAID) provides a similar definition: "An ACA is defined here as a separate, permanent government agency whose primary function is to provide centralized leadership in core areas of anti-corruption activity." (USAID: Anticorruption agencies, June 2006, http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ACA_508c.pdf)

11 Statement made by Bernd Kehrberg, member of the NIS Advisory Group

12 Statement made by Bernd Kehrberg, member of the NIS Advisory Group

13 Transparency Germany: Korruptionsprävention in der Verwaltung, <http://www.transparency.de/Verwaltung.63.0.html>

14 Ständige Konferenz der Innenminister und -senatoren der Länder: Präventions- und Bekämpfungskonzept Korruption, 2. Bericht über die Umsetzung, http://www.antikorruption.brandenburg.de/sixcms/media.php/4055/2.Umsetzungsbericht_1999.pdf

15 Transparency Germany (2000): Stellungnahme zum 2. Bericht der IMK über die Umsetzung des Präventions- und Bekämpfungskonzepts Korruption in der öffentlichen Verwaltung, <http://www.transparency.de/Stellungnahme-2-Bericht-IMK.1796.0.html>

Against this background the creation of an anti-corruption agency would be counterproductive even though the UN Convention against Corruption (Article 6 and 36) and the Council of Europe Criminal Law Convention on Corruption (Article 20) recommends the setting up of one or more anti-corruption agencies.¹⁶ A new organisational body would not produce any improvement in the situation if the underlying problems in terms of corruption prevention are essentially based on a lack of political priority setting in all areas and also a lack of interest on the part of most leading ministries. The prevention of corruption is still not seen as an executive function in all areas.

The setting up of a central agency should also be refrained from in the private sector and above all, awareness-raising efforts by the police and public prosecution departments strengthened in terms of personnel and expertise. Since the focus of the problem lies with multinational enterprises here, centralisation would also not represent progress here. In order to increase the pressure for more preventative measures, more thought should be given to extended liability provisions comparable with the provisions for public limited companies.

16 Body or bodies are referred to.

Pillar 10: Political parties

Summary

The political parties in Germany have an exceedingly strong position. Primarily the larger parties represented in the Bundestag have widespread influence and a good financial infrastructure; consequently they are able to act for the most part independently. Starting points for improvement are primarily the financing and recruitment of political personnel. For example, the transparency of party donations is, after repeated scandals, still in need of improvement. The sponsoring of political parties will also have to be subject to clear regulations. The internal selection of party candidates in elections is not always traceable externally. The decision regarding the (non-) registration of smaller parties during the 2009 Bundestag elections has led to criticism from the OSCE. There are insufficient opportunities for taking legal action against negative decisions and such action is not possible until after the election. The deploying of political patronage by the parties represents an additional problem. The commitment on the part of the political parties in the fight against corruption is too weak.

It must be noted that these weaknesses in the German political party system, compared internationally, are criticised even bearing in mind that it is a highly developed system. Nevertheless, it would be desirable for corruption to become an issue that is tackled in a more substantial manner also by the political parties and for compliance to find its way also into the political parties as is the case in companies.

The table below shows the individual scores leading to the overall assessment.

| Political parties Total score: 70 / 100 | | | |
|--|---|-----|----------|
| | Indicator | Law | Practice |
| Capacity 94 / 100 | Resources | 100 | 100 |
| | Independence | 100 | 75 |
| Governance 67 / 100 | Transparency | 50 | 50 |
| | Accountability | 75 | 75 |
| | Integrity | 75 | 75 |
| Role 50 / 100 | Interest aggregation and representation | 75 | |
| | Anti-corruption commitment | 25 | |

Pillar 11: Media

Summary

Freedom of opinion, the press and information are guaranteed in Germany through the Constitution.

Overall, there is a well-functioning critical public opinion in Germany, the effectiveness of which is characterised particularly by competition among the transregional press. The media plays an important role in combating corruption. Most cases of corruption have been made public in particular through attentive and critical reporting by the printed media and public service broadcasting magazine programmes.

The in part tense economic situation in publishing companies and media houses leads to considerable staff cutbacks in editorial departments. Self-censorship may increase as a result because, for example, editors do not want to jeopardise their own jobs.

How the fees for public service broadcasting institutions are used is not transparent. Information about which fee income is used for what purpose should be given in a detailed annual executive producer report.

The Press Council's Press Code demands ethically correct conduct from journalists. Debates regarding conduct with integrity by journalists have increased in the past years due to negative examples. Some publishing companies abide by an individual extended code of conduct. Due to increasing financial problems, particularly for the printed media, cutbacks of journalists with safe employment contracts and the dependency on advertising customers is, in practice, however, repeatedly resulting in conflicts of interest which are capable of jeopardising the independence and quality of the German media landscape in the long term.

Self-control mechanisms in the form of codes and guidelines for journalistic conduct or on conduct when dealing with journalists should be increasingly introduced and linked with effective sanctions in the event of breaches.

The media play an important role in combating corruption. Exclusively investigative journalism is comparatively less distinct. The statutory framework conditions and those under constitutional law relating to journalism must also remain protected in the future. Investigative research should be given greater weight during training.

| Media | | | |
|------------------------|------------------------------|-----|----------|
| Total score: 84 / 100 | | | |
| | Indicator | Law | Practice |
| Capacity 94 / 100 | Resources | 100 | 100 |
| | Independence | 100 | 75 |
| Governance 83 / 100 | Transparency | 100 | 75 |
| | Accountability | 100 | 75 |
| | Integrity | 75 | 75 |
| Role 75 / 100 | Investigative journalism | 75 | |
| | Public information | 75 | |
| | Information about government | 75 | |

Pillar 12: Civil society

Summary

German civil society is diverse. Its organisations and actions range from local, regional and federal political level right up to EU supranational level and international politics. Overall, the framework conditions of civil society in Germany can be assessed as good. Political rights and the independence of political parameters are particularly excellent.

The establishment of civil society organisations is unproblematic.¹⁷ Political control and censure does not take place. There is constitutionally guaranteed freedom of association. The role of the state is restricted to a purely formal audit of regularity. However, in view of experiences from German history, extremist associations, which actively fight against the free democratic basic order and represent a risk to international understanding, can be banned.

The financial and human resource infrastructure of organisations is as diverse as the variety of organisational forms and the purposes of the organisations.¹⁸ A special feature of German civil society is that a number of organisations, such as welfare and consumer associations, have assumed governmental tasks and therefore are financed virtually exclusively from government funds. In addition, primarily associations with strong membership figures in the area of environmental protection or strongly service-orientated organisations such as tenant associations have substantial resources of their own. However, as a rule, German civil society organisations are dependent upon government grants and donations.¹⁹ A number of civil society organisations struggle to cope with financial problems in their practical work. Organisations in the areas of culture, education and social services are more often affected by financial problems than organisations in the areas of sport and the environment.²⁰

Independent protection of donors should be strengthened in order to promote the development of the sector through measured and targeted regulation.

There are few statutory transparency regulations relating to civil society organisations. The law of association rules ensure that within associations all members are given an opportunity on an annual basis to control the financial position and business activity of its executive committee and sanction possible misconduct. In terms of external transparency, there are no statutory provisions; however, the sector has strived for over 20 years to strengthen transparency efforts and initiatives. A positive trend has become apparent although considerable reservations in this respect still exist in some organisations and awareness-raising efforts are needed.

Due to a lack of empirical research it is difficult to assess the integrity of the civil society sector. Gross misconduct has been observed in individual cases. The fact that these have come to light, are discussed in public and prosecuted under criminal law, is testimony to the sensitivity to this issue. It is assessed as positive that a series of voluntary codes of conduct and voluntary testing procedures were introduced approximately 20 years ago, which aim to substantiate conduct with integrity by organisations and individual players using specific factors such as the disclosure of secondary employment and possible conflicts of interest.

Civil society organisations fulfil a watchdog role which is effective primarily when supported by the media and public opinion. Measured against the influence of significant economic interests, the opportunities for influencing government policy are limited.²¹ In the area of combating corruption, in addition to Transparency Germany there are several organisations such as consumer associations,

17 Interviews with civil society representatives, Berlin, 02.02.2011 and 09.02.2011

18 Interviews with civil society representatives, Berlin, 09.02.2011 and 16.02.2011

19 Kraus & Stegarescu 2005: 12

20 Zimmer & Priller 2007: 84, 112

21 Reimer 2005: 49, http://www.civicus.org/media/CSI_Germany_Country_Report_English.pdf

development organisations and organisations for controlling lobbying, which can combine their influence in common alliances on a case-by-case basis.

| Civil society Total score: 73/ 100 | | | |
|--|--------------------|---------------|-----------------|
| | Indicator | Law | Practice |
| Capacity 94 / 100 | Resources | 100 | 75 |
| | Independence | 100 | 100 |
| Governance 50 / 100 | Transparency | Not collected | 50 |
| | Accountability | Not collected | 50 |
| | Integrity | Not collected | 50 |
| Role 75 / 100 | Government control | 75 | |
| | Policy reform | 75 | |

Pillar 13: Private sector

Summary

Freedom of trade is a constitutionally protected basic right (Article 12 of the German Basic Law) in Germany. There are widely varying company forms. Company set-ups are transparent in Germany, can be done quickly and cost-effectively. Companies are largely free of illegitimate interference. Thanks to this situation, Germany also has a high ranking on the 'Index of Economic Freedom'.²²

Statutory accounting regulations are well-developed and transparency in terms of financial information is high.

Although the ban on corruption in business transactions and in relation to public officials is essentially adequately regulated under law, corruption still continues to take place both in major enterprises and in small and medium-sized enterprises (SMEs). The estimated number of unreported cases is still high even though awareness-raising has increased due to greater efforts by the investigating authorities.

Compared internationally, sanctions in the case of foreign corruption and active and passive bribery in business transactions need to be tightened. Statutory protection of whistleblowers in the private sector also needs to be improved.

The institution of Chief Compliance Officer (CCO) which is not explicitly regulated under law is finding its way rather slowly into major enterprises.

How widespread corruption is in SMEs and the extent of the fight against corruption in these enterprises (compliance) is not well-known and rarely investigated.

Corporate governance and/or compliance structures for preventing corruption have not yet established themselves on a nationwide basis apart from in an increasing number of major enterprises.

In practice, only little (voluntary) sustainability reporting takes place and in terms of content relating to the fight against corruption has been fairly insignificant to date.

The attitude of the German private sector towards the fight against corruption is traditionally a defensive one. It prefers to prevent rather than promote the tightening of statutory framework conditions for combating corruption or to call for better enforcement of existing legislation.

However, after the scandals in commercial enterprises in Germany, major enterprises and associations are clearly taking 'compliance' more seriously, organising it from the top down, providing training and implementing it worldwide.

Primarily SMEs and public enterprises need to catch up.

22 Ranked 23 out of 180 countries worldwide: The Heritage Foundation: 2011 Index of Economic Freedom, <http://www.heritage.org/index>

| Private sector Total score 72 / 100 | | | |
|--|-----------------------------------|-----|----------|
| | Indicator | Law | Practice |
| Kapazität 100 / 100 | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| Governance 67 / 100 | Transparency | 75 | 75 |
| | Accountability | 75 | 75 |
| | Integrity | 50 | 50 |
| Role 50 / 100 | Anti-corruption policy engagement | 50 | |
| | Engagement with civil society | 50 | |

8. Conclusion

The federal structure of the Federal Republic of Germany with the horizontal separation of powers between executive, legislature and judiciary as well as the vertical separation of powers between the federal and state governments apparently provides the conditions for an integrity system that functions very well. The NIS report describes Germany as a country which largely has a comprehensive legal framework at its disposal and therefore effectively implements and applies rights in practice. Five of the eleven pillars assessed achieve a total score ranging between 81 and up to 94 points (legislature, judiciary, electoral management body, supreme audit institution and media). As a result, they are in the uppermost section of the NIS grid.

The executive, public sector, law enforcement, political parties, civil society and private sector pillars are awarded a total score of between 70 and 79 points and therefore also still fall into the top section of the NIS grid. It must be noted that none of the pillars is assessed as having clear gaps or being ineffective in the overall assessment.

In spite of the overall very positive results, a closer look, however, also reveals a number of dimensions or indicators that require increased efforts in the future in order to improve the fight against corruption.

There are comprehensive statutory provisions in the legislature which ensure the independence, transparency and integrity of the Members of the *Bundestag* and the federal state parliaments. The legislature has powerful tools for monitoring the executive. This applies primarily to budgetary law. The presentation of the budget and parliamentary debate surrounding it in principle ensures the transparency of government planning. The *Bundestag* has a functioning parliamentary administration on its side. The provisions on bribery of delegates (Section 108e of the German Criminal Code) and receiving private donations are insufficient. These should be adapted in line with the standards set out in international conventions. A meaningful register of lobbyists is lacking in which all types of stakeholders must make compulsory statements about the respective range of interests and financial dependencies.

The executive has adequate personnel and resources even though increasing staff cutbacks are weakening the independent advisory function of the civil service and increasing the risk of the influence of purely interest-led external and party political considerations. The supreme audit institution criticises the improper control and use of external participation, also in the case of core administrative tasks. Furthermore, it is problematic that again and again leading politicians after retiring from governmental office seamlessly move to management positions in private sectors or associations for whose tasks they were previously responsible. Waiting period regulations applicable to former members of the government and parliamentary state secretaries are lacking.

The principle of the separation of powers enshrined in German Basic Law means independence and an organisational detachment of the **judiciary** from the executive. As the supreme court, the Federal Constitutional Court has a control function vis-à-vis the executive, legislature and judiciary. The other federal courts and appellate courts at federal state level contribute to a differentiated jurisdictional control density. The material and human resource infrastructure of the judiciary in Germany is largely satisfactory; however, an increasing lack of resources is identifiable. The fact that Germany has professional judges and judges for life ensures a high level of continuity and security. Independence is affected by appointment and promotion practices. Overall, the independence and competence of legal practice and law enforcement is assessed as good.

The **public sector** is bound by law and justice. The basic obligations on the part of civil servants include the precepts of neutrality and objectivity and the principle of serving the whole nation and the general good. Generally speaking, the public sector in Germany is efficient. Its self-concept does not differ from its basic obligations. Bans on taking advantages have been tightened and put into concrete

form in all administrative departments in recent years. The protection of whistleblowers is ensured. Public procurement and public service invitation to tender provisions are intended to eliminate the risk of corruption. However, primarily large-scale construction projects are consistently proving to be prone to corruption. Interdependencies between political players at local authority level and local commercial enterprises play a crucial role in this. Measures for effectively combating corruption must therefore primarily also be determined at local authority and local government level. Consistent training programmes in the area of anti-corruption are lacking. It has also been observed that in parts of the public sector a mentality still reigns which hampers the effective active implementation of the Freedom of Information Act.

Law enforcement by public prosecution departments and police investigating authorities is good and efficient. However, there are also areas where the conditions for uncovering and fighting corruption by the law enforcement agencies need to be improved. Challenges present themselves to the law enforcement agencies as a result of pressure of work, the increasing complexity of proceedings and the need to undertake further training on a range of different issues. The personnel requirement calculation system PEBBSY has limited suitability for large-scale criminal cases (white collar proceedings and proceedings in the areas of organised crime). Specialised anti-corruption offices should be introduced nationwide. The fact that public prosecution departments are bound by instructions externally has long been critically discussed and is often seen as a risk.

The statutory framework of the electoral system ensures that the electoral bodies work independently. The OSCE suggests improvements in the electoral registration of political parties and in the option to review electoral register data. The regulations relating to the financing of electoral campaigns are in need of reform as this is not published separately at election district level. The handling of direct donations and pecuniary advantages to individuals during electoral campaigns is unclear. The allocation of free air time by public service broadcasting institutions to political parties which stand for election is also non-transparent. The relevant decisions should be published.

The term **ombudsman** has not been introduced in Germany. This function is performed firstly by administrative, financial and social jurisdiction. Secondly, there are so-called commissioners at federal and state level who deal with the concerns of individual citizens, for example, commissioners for patients' rights or the rights of the disabled as well as commissioners for data protection and freedom of information. Commissioners for citizens' affairs exist in four federal states, whose tasks are conceived in the same way as the ombudsman model and are anchored in law.

The Federal Court of Audit *Bundesrechnungshof* and the State Courts of Audit are stand-alone, independent bodies providing assistance to the parliaments. They are anchored in German Basic Law. Their human and financial resource infrastructure is appropriate for their tasks and duties. Their governance can be assessed as excellent. Audits are effective even though the courts of audit have no direct authority to issue instructions to the administrative departments. As bodies providing assistance to the parliaments, the Federal Court of Audit and the State Courts of Audit have effective powers to control the execution of the budget and in general to review the adequacy and effectiveness of administrative action. There are only few suggestions for further improving the work of the courts of audit. Efforts are being made, for example, to increasingly introduce a self-monitoring of the work of the Federal Court of Audit and the State Courts of Audit in the form of peer reviews.

Since there is no central **anti-corruption agency** in Germany, no statements will be made regarding capacity, governance and role.

The **political parties** organise the formation of political will and the recruitment of political staff. Their function is constitutionally anchored in Article 21 of the German Basic Law. Some aspects of the Party Financing Law are problematic and in need of reform. This law regulates party financing by the government and is intended to ensure the independence of the parties from external backers and equal opportunities between the parties. The transparency of donations to political parties is in need of improvement. In particular, clear regulations on party sponsoring are lacking. The deploying of political

patronage in the public sector by the parties also represents a problem. In general, not least the still inadequate provision on bribery of delegates and the non-ratification of the UN Convention against Corruption shows that the commitment, at least of most of the parties in the German *Bundestag* to the fight against corruption, leaves much to be desired.

Freedom of opinion, the press and information in Germany is anchored in the Constitution. Censure is prohibited. There is a large diversity of media where the transregional press landscape in particular, as well as political magazine programmes broadcast by TV and radio broadcasting institutions, stand out through their high quality and critical distance. Their reporting has in the past made a significant contribution to the uncovering and effective prosecution of corruption cases. In contrast, the regional press landscape is largely in the hands of regional monopolists. In general, the tense economic situation in publishing companies and media houses has led to considerable staff cutbacks in editorial departments and to dependencies on advertising income and audience rating figures. The professional ethos of journalists is exposed to considerable strain as a result of this. Professional organisations and a few publishing companies react to this by adopting codes of conduct. Generally it will be necessary to critically discuss and reflect on the role of the media and the conduct of journalists also in the context of new digital media and increased personalised scandal journalism.

Civil society is well-positioned in Germany and is generally able to enjoy the support of the media and public opinion. However, it is precisely this generally high level of sympathy that is a fragile commodity. For example, news of incidents of corruption and irregularities in civil society organisations can very quickly lead to a huge loss of reputation and the drying up of donations. It can also damage the reputation of non-governmental organisations of good standing, if too little dissociation from economic interests or even venality can be attributed to them. Most civil society organisations have recognised this risk and are working on relevant codes and rules of conduct. In general, it is about increasing transparency.

Statutory accounting regulations for the private sector are well-developed. The ban on corruption in business transactions is adequately regulated under law. However, the effective implementation of the ban on corruption is not ensured in equal measure in all areas of the private sector. Corporate governance and/or compliance structures for preventing corruption have not yet established themselves nationwide apart from in an increasing number of major enterprises. The attitude of German companies towards the fight against corruption is traditionally a defensive one. The same applies to greater transparency and accountability to their customers. The need for amendments to the Consumer Information Act and the Freedom of Information Act in terms of the protection of business and trade secrets must be stated.

Statutory and practical activities can be derived from the analysis of the strengths and weaknesses of the pillars, which can form the basic framework for a comprehensive Federal Government anti-corruption strategy.¹ It has become clear that German institutions have great strengths in terms of ensuring integrity, but at the same time Germany must also make considerable efforts to implement an effective anti-corruption strategy.

1 See also in this respect the catalogue of measures in the Executive Summary

Table 1: Analysis of strengths and weaknesses

| | Main strengths | Main weaknesses |
|---------------------------|--|--|
| Legislature | Independence, immunity, transparency, integrity | Lack of a revised wording of Article 108e of the German Criminal Code, lack of provisions regarding the acceptance of donations by delegates, lack of a meaningful register of lobbyists, lack of a neutral control body |
| Executive | Strong ability to act, high level of transparency and accountability obligations | Extensive exemptions in the Freedom of Information Act, non-transparent use of external parties, lack of waiting period regulations applicable to former members of the government and parliamentary state secretaries |
| Judiciary | Independence, judges for life, competence, differentiated control density, comprehensive reasons given for judgments | Shortage of judges and public prosecutors, appointment and promotion practices |
| Public sector | Neutrality and objectivity precepts, tried and tested public procurement regulations | Transparency in need of improvement, lack of a central register, inadequate PR work and efforts to provide of information |
| Law enforcement | Uncovering of large-scale corruption cases, high level of competence, numerous key area public prosecution departments | Lack of resource infrastructure, overloading of work, external power to give instructions |
| Electoral management body | Independence, resources, self-regulation | Electoral registration procedures, non-transparency of electoral campaign financing |
| Ombudsman | Does not exist in Germany | Does not exist in Germany |
| Supreme audit institution | Stand-alone, independent federal and state authorities, long term of office of senior authority officials, effective control institution | Reviews conducted solely by the parliaments |
| Anti-corruption agency | Does not exist in Germany | Does not exist in Germany |
| Political parties | Broad political spectrum, independence, partly state-financed, comprehensive Law on Political Parties | Transparency of party donations, lack of regulations regarding party sponsoring, political patronage, inadequate commitment against corruption |
| Media | Free expression of opinion, media independence, ban on censure, broad media landscape, successful investigative journalism | Tense economic situation in part, small number of investigative journalists, regional monopolies |
| Civil society | Freedom of association, watchdog role | Critical financial situation in part, gaps in reporting obligations and accountability, insufficient use of integrity codes |
| Private sector | Unproblematic company set-up, slowly increasing introduction of CCO, primarily in groups strong awareness of the need for anti-corruption measures | Corruption in SMEs rarely investigated, defensive attitude towards combating corruption and transparency precepts |



Die Koalition gegen Korruption.

Transparency International Deutschland e.V.
Geschäftsstelle
Alte Schönhauser Straße 44
10119 Berlin, Germany

Phone: +49 (0)30-549898-0
Fax: +49 (0)30-549898-22
office@transparency.de
www.transparency.de

