

**G20 Anti-Corruption Working Group**  
**Accountability Report Questionnaire 2014**



**SUMMARY OF NATIONAL PROGRESS**

1. Please provide a high-level summary of the most significant Anti-Corruption measures or initiatives that your country has introduced or implemented since the last progress report. (maximum 1 paragraph).

The 2013 Progress Report can be accessed at [http://en.g20russia.ru/docs/g20\\_russia/materials.html](http://en.g20russia.ru/docs/g20_russia/materials.html)

Germany adopted legislation amending the offence of bribery of domestic, foreign and international parliamentarians and assembly members in line with UNCAC requirements. The new legislation entered into force on 1 September 2014.

In July 2014, the Federal Government decided to initiate Germany's application for EITI membership (cf. <http://www.d-eiti.de/was-ist-eiti/>).

UNCAC ratification is under preparation and is expected to take place ahead of the Brisbane summit.

The Federal Ministry of Justice and Consumer Protection presented a draft bill amending the criminal code and broadening inter alia the criminalization of bribery of foreign public officials and of bribery in the private sector for public consultation in June 2014.

In 2013 the Alliance for Integrity (AfIn) was officially launched at a kick-off conference in India. AfIn is a business driven multi-stakeholder initiative and promoting integrity in the economic system improving the framework conditions for compliant and clean business supported by the Federal Ministry for Economic Cooperation and Development (BMZ).

**UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)**

2. Has your country ratified the UNCAC?

YES  NO

If no, is there a process underway to ratify the Convention?

See above; Germany aims for ratification to take place before the G20 summit in November 2014

3. Since the last progress report, has your country proposed or implemented any changes to its legislation to comply with the UNCAC?

YES  NO

If yes, please provide details.

See question 1.

4. Has your country begun the UNCAC peer review process as a country under review?

YES  NO

*Not applicable*

If yes, please indicate what stage of review your country has completed and the date.

5. If yes, has your country made use of any of the UNCAC peer review voluntary options, or committed to do so (if the review is not already started)?

*Not applicable*

a. Publication of full report YES  NO  COMMITTED TO DO SO

b. Involvement of civil society YES  NO  COMMITTED TO DO SO

c. Involvement of business YES  NO  COMMITTED TO DO SO

d. Allowing country visits YES  NO  COMMITTED TO DO SO

If yes, please provide details (e.g., Web link for published report, how and when civil society / business was engaged during the review process, date of country visit)

6. Has your country taken steps to respond to recommendations identified in its UNCAC peer review report?

*Not applicable*

YES  YES TO SOME  NO  NOT YET RECEIVED THE REPORT

If yes, please indicate what steps your country has taken / is taking.

7. If you have responded to all or some of the recommendations, have you made those responses publicly available?

*Not applicable*

YES  NO  NOT YET

8. Has your country taken measures to promote, facilitate and support technical assistance in the prevention of and fight against corruption?

If yes, please provide a short overview indicating in which regions and topics you have provided technical assistance.

Anticorruption is a key concern in Germany's official development cooperation. German development cooperation therefore supports anticorruption and transparency efforts in more than sixty cooperation countries across the globe. In particular, the German Federal Ministry for Economic Cooperation and Development currently conducts anticorruption projects through long term bilateral programs in Afghanistan, Bangladesh, Indonesia, Kenya, Peru, South Africa and Yemen. These projects cooperate with ministries, the judiciary, anticorruption and supreme audit institutions as well as other administrative bodies. Germany's support to anticorruption reforms in cooperation countries focuses on implementing the United Nations Convention against Corruption, strengthening public sector integrity (especially within the administration and the judiciary), enhancing capacities to prevent and fight corruption as well as anticorruption in sectors (e.g. health, education, private sector).

On behalf of the German Government the German Foundation for international legal cooperation (IRZ) supports the prevention and the fight against corruption in partner states of IRZ:

IRZ is partner in a consortium led by JCI (France) for the EU-funded Grant Project: "Project to Support Justice Sector Reforms in Ukraine" (duration: 2013 – 2016). The long-term expert seconded by IRZ to the project is in charge for the project component: "Support to Prevention of and Fight against Corruption". This component aims to support to the Ukrainian State Programme for Preventing and Combating Corruption for the Period of 2011 – 2015 in the following fields i.a.:

- Improvement of anti-corruption expertise
- Improving the system of specially authorized entities in the field of combating corruption
- Reform of public administration and administrative procedures
- Implementing effective and preventive anti-corruption tools in the public service
- Taking measures on fulfilment by Ukraine of its obligation related to the ratification of the UN Convention against Corruption, the Criminal Law Convention on Corruption and the Civil Convention on Corruption
- Ensuring an effective system to protect whistle blowers
- Ensuring ethical behaviour in public authorities.

Additionally, as lead contractor for the EC funded Grant project "Support to the Criminal Judicial Reforms in Uzbekistan" IRZ has addressed anti-corruption matters in the frame of the project implementation. A study named: "Essential legal activities to implement the United Nations Convention against Corruption (UNCAC) as first step to improve the ranking in the Corruption Perception Index (CPI) of Transparency International" was submitted to the project beneficiaries (Ministry of Justice).

- Furthermore the following relevant activities are covered by the work plan of the aforementioned project: Synopsis of anti-corruption measures in legal drafting framework of selected EU countries, Support for specific legislative activities: Drafting a methodology of anti-corruption review of draft normative legal acts,
- EU best practices on the use of the confiscation regime and official misconduct.

## BRIBERY

Note - questions relating to implementation of the *G20 Principles on the Enforcement of the Foreign Bribery Offence* endorsed by Leaders in 2013 and the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* are included in a separate questionnaire. The questions below concern other aspects of bribery not covered by this set of principles.

9. Has your country criminalized the domestic offer or payment of bribes (active bribery)?

YES  NO

10. Has your country criminalized the domestic solicitation or acceptance of bribes (passive bribery)?

YES  NO

11. If no, is your country taking steps to criminalize active and/or passive bribery?

YES  NO

If yes, please provide details.

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12. Has your country instituted measures to discourage the solicitation of bribes?

YES  NO

If yes, please provide details.

Solicitation of bribes (i.e. demanding a bribe) by a public official is a criminal offence carrying a prison sentence of up to 5 years (in serious cases of up to 10 years). Criminal liability does not require that the bribe is demanded for an unlawful official activity, but also covers situations where the official demands a bribe for lawful "official activity" in general. The official activity does not need to relate to a specific official act.
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Furthermore, the Federal Ministry of the Interior provides written guidelines for public sector employees on how to deal with challenging situations. Employees are made aware of the legal consequences of soliciting a bribe and the federal government's position on personal integrity in general. Additionally, public sector employees are invited to properly document their work routine
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to enable effective supervision and to avoid wrongful accusations of bribery.  
It is a routine procedure to extensively inform all new employees about their legal duties regarding bribery and rules on personal integrity.  
The Federal Ministry of the Interior appointed a central contact person for all federal public employees for matters of awareness, bribery prevention and whistleblowing.

13. Does your country provide support for/work with business in resisting solicitation?

YES  NO

If yes, please provide details.

See question 8: The public/private sector forum initiated by the Federal Ministry of the Interior also deals with appropriate responses to solicitation.  
The federal government's central contact person may provide help for businesses on how to deal with solicitation.

14. Has your country instituted measures to discourage facilitation payments?

YES  NO

If yes, please provide details.

Under German criminal law, soliciting bribes or facilitation payments is a criminal offence (irrespective of their amount/value) and in addition entails disciplinary measures against the official; there are no exception for soliciting minor advantages and advantages accepted in return for lawful official activities are also covered.

#### **ANTI-MONEY LAUNDERING**

15. Since the 2013 progress report, has your country taken any measures to implement the revised FATF standards on anti-money laundering?

YES  NO

If yes, please provide details.

Germany has presented an amendment to the Stock Corporation Act which provides for the immobilization of bearer shares. Non-publicly listed stock corporations may only issue bearer shares if they are held by a regulated financial institution or a foreign professional depository. The amendment is expected to pass the legislative bodies by end 2015. With regard to transparency of the beneficial owner of corporate vehicles Germany has an automated data retrieval system in place which ensures a current and quick access to data on beneficial ownership gathered by obliged entities for supervisory and law enforcement authorities. Accompanying this already existent measure, GER is supporting recent legislative approaches on the EU-level to enhance the basis for data entered into the automated retrieval system by also requiring companies to obtain and hold

adequate, accurate and current information on their beneficial ownership. Among the possible measures offered by FATF-Recommendation 24 and its accompanying Interpretive Note, the automated data retrieval system is an equivalent or even deeper and more far reaching tool compared to central registries.

Please see below (No. 16)

16. Since the last progress report, have changes to your country's anti-money laundering legislation been proposed or implemented?

YES  NO

If yes, please provide details.

The Federal Ministry of Finance in collaboration with the Financial Supervisory Authority (BaFin), the German FIU and the law enforcement sector jointly developed and issued a guidance paper on suspicious transaction reporting. The paper was both published on the official website of the federal Ministry of Finance and of the Financial Supervisory Authority BaFin.

Moreover, several German Länder adopted the guidance paper and published it for the Designated Non-Financial Businesses and Professions under their supervision (casinos, online-gambling, real estate agents, persons trading in goods) on their own official websites.

The German Länder developed with the support of the Federal Ministry of Finance a joint guidance paper for real estate agents which is still in the process of consideration.

Currently the Ministry of Finance is assisting the German Länder in the elaboration of a guidance paper concerning online-gambling. The paper addresses both guidance for the obliged entities how to apply the special Customer Due Diligence regime for the online gambling sector as set out in sections 9a, 9b and 9c of the German Money Laundering Act; and guidance for the competent authorities how to grant exceptions and simplified measures according to section 16 par. 7 of the German Anti Money Laundering Act based on a case-by-case risk assessment.

Anticipating the outcome of the negotiations of the 4th EU Money Laundering Directive Germany is planning on a revision of a few AML-provisions such as non-face-to-face identification, legal definition of what is a "trader in goods" under the German Money Laundering Act, the fortification of the position of the compliance officer and the creation of secure communication channels for whistleblowers.

As a first step to introduce the risk based approach into German legislation the Federal Ministry of Finance mandated the elaboration of a so called "dark field study" in order to determine the volume of money laundering in Germany and the AML/CFT risk in specific business sectors and to draw an overarching picture of the current risk exposure of the German system.

#### **DENIAL OF ENTRY**

17. Have any changes to your country's legislation, regulations or powers to deny entry to foreign officials charged with or convicted of corruption offences been proposed/implemented since the last progress report?

YES  NO

If yes, please provide details.

The existing German / European visa law allows to reject a visa application – as result of a broader check of the individual application – because of the applicant’s conviction by a criminal court, e.g. of corruption or bribery.

One of the conditions for issuing a visa or for permission of entry is the absence of reasons for an expulsion. Foreigners can be expelled from Germany when they committed a not minor infringement of regulations or a criminal offence abroad that is considered also within Germany as a premeditated criminal act (art. 55 (2) no. 2 and art. 5 (1) no. 2 of the Law on Residence). Among those can also be offences in connection with corruption.

If no, is such legislation under consideration?

YES  NO

If yes, please provide details.

## INTERNATIONAL COOPERATION

18. Is your country’s administration of mutual legal assistance consistent with the G20 High Level Principles?

YES  NO

If your country’s approach is not yet consistent, are you taking steps to implement the Principles?

YES  NO

Those principles are included in the German Law on International Cooperation in Criminal Matters and in the German Guidelines for the Cooperation with Foreign States in Criminal Matters. The federal and the state ministries of Justice provide for regular training programs on mutual legal assistance. Germany has designated a central authority, the Federal Office of Justice, which cooperates and communicates with its foreign counterparts. Direct communication and consultations between practitioners are possible if necessary and useful in the specific circumstances of a case. A FIU has been established which shares information on a FIU level. The sharing of tax information is regulated by a great number of bilateral treaties.

Germany's legal system is already in line with the provisions on international cooperation laid down in the UNCAC.

If yes, please provide details.

19. Are you aware of your country having used one or more of the G20 country Guides to Mutual Legal Assistance?

If yes, please provide details.

The G20 Guide to Mutual Legal Assistance has been transmitted to the State Ministries of Justice and to the Prosecution Offices. The guide is one of multiple information sources for practitioners.

20. Are you aware of non-G20 members having used the G20 Guide to Mutual Legal Assistance to request mutual assistance from your country?

If yes, please provide details.

21. Have any changes to your country's legislation related to international cooperation been proposed since the last progress report?

YES  NO

If yes, please provide details.

22. Has your country either used UNCAC, or stated that it will allow the use of UNCAC, as the treaty basis for mutual legal assistance (MLA) and/or extradition?

- |   |                              |  |
|---|------------------------------|--|
| a. Has used as the treaty basis for MLA               | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> |
| b. Will allow use as the treaty basis for MLA         | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> |
| c. Has used as the treaty basis for extradition       | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> |
| d. Will allow use as the treaty basis for extradition | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> |

23. Do domestic authorities in your country cooperate and share information with the integrity offices of international organizations?

- a. Cooperate and share information



b. Could cooperate, but has not been asked

c. Cannot cooperate

If you cannot cooperate, please provide details.

Germany could cooperate to a certain extent with such offices, depending of the aim of the investigations and the structure of the specific office. The Federal Ministry of Justice and Consumer Protection has not been informed about any cases. Nevertheless there could have been direct contacts with German public prosecutor's offices or State Ministries of Justice

24. Has your country designated an appropriate authority responsible for mutual legal assistance and law enforcement requests relating to asset recovery (a point of contact)?

YES  NO

If yes, to which organizations:

a. UNODC

b. StAR/Interpol Focal Point Initiative

c. Camden Asset Recovery Network

d. Other(s)

If yes to 'Other(s)', please provide details.

- CARIN-Network
- Germany has designated an Asset Recovery Office within the EU framework

## ASSET RECOVERY

25. Does your country have legislation allowing for asset recovery by foreign authorities or is such legislation proposed?

YES  NO

If yes, please provide details.

Legislation is fully in place; reference is made to Germany's Asset Recovery Guide

26. Has your country established a specialist/dedicated unit for the recovery of the proceeds of corruption?

YES  NO

If yes, please provide the name of the specialist unit and contact details.

The Federal Republic of Germany has transferred all tasks relating to the tracing and

recovering of assets on the national level to the Federal Criminal Police Office, *Division SO 35 - Confiscation of assets as an integral part of investigations*. As regards investigations on the federal state level, the police forces of the 16 federal states have set up equivalent units on local as well as on federal state level.

As regards International Cooperation in the field of Asset Recovery on the European Level, one has to take into account a Decision adopted by the Council of the European Union of 6<sup>th</sup> December 2007 (Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States of the European Union in the field of tracing and identification of proceeds from, or other property related to, crime.) The aim of this decision is the direct cooperation of central national offices in the identification of property as well as illegally obtained proceeds from criminal offences.

The decision of the European Union provides that the Member States shall nominate a maximum of two offices for asset recovery, referred to as Asset Recovery Offices (ARO). The Federal Republic of Germany has transferred this task to the Federal Criminal Police Office, *Division SO 35 - Confiscation of assets as an integral part of investigations* - and the Federal Office of Justice, *Division III 1 - Extradition, Assistance in Enforcement and Mutual Legal Assistance, European Judicial Network in Criminal Matters*.

27. Does your country publish or otherwise make publicly available details of amounts frozen, seized, recovered or returned?

YES  NO

If yes, please provide details.

Annual National Report for Asset Recovery, published by Bundeskriminalamt (Restricted)

On the European level, the proposal for a directive on the freezing and confiscation of proceeds of crime in the European Union contains in its Article 11 the duty to regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their confiscation systems. The statistics collected shall include for all criminal offences: the number of freezing orders executed, the number of confiscation orders executed, the value of property frozen, the value of property recovered.

Germany is currently preparing measures to implement the directive's requirements.

28. Is your country providing technical assistance to developing countries aimed at helping the recovery and return of proceeds of corruption?

YES  NO

If yes, please provide details.

Germany provides technical assistance by organizing workshops for practitioners in foreign countries and participating in bilateral and multilateral conferences on asset recovery. Germany

established a guide to asset recovery and provided for translations into other languages.

Germany has moved asset recovery higher up on its development cooperation agenda, the support of partner countries in recovering illegally acquired assets is since 2012 being an essential part of its anticorruption strategy. On the bilateral level, Germany has supported capacity building for national authorities, which are responsible for asset recovering. For example, Germany provides technical assistance to the anticorruption agency of Bangladesh to develop its capacity for anti-money-laundering. Furthermore Germany is supporting the judiciary through technical assistance in developing countries.

Germany is currently preparing measures to implement the directive's requirements.

### TRANSPARENCY OF LEGAL ENTITIES

29. Does your country have transparency requirements for legal persons, including companies, bodies corporate, foundations and partnerships?

YES  NO

If yes, please provide details.

#### 1) Corporate Law

As for the limited liability company (Gesellschaft mit beschränkter Haftung, GmbH), the stock corporation (Aktiengesellschaft, AG), and the Societas Europaea (Europäische Aktiengesellschaft, SE), these corporations are registered in the commercial register. Registration is mandatory. Limited liability company, stock corporation, and Societas Europaea only acquire legal personality upon registration in the commercial register by court. The registration is published by the commercial register electronically. The publication includes the company's firm name, domicile, business purpose, amount of share capital, the date of execution of the articles of association, the identity of the managing directors including their signing authority and a domestic business address of the company. If the Societas Europaea results from merging companies the publication furthermore includes corporate forms, firm names, and domiciles of the companies involved. In the case of the GmbH the company is required to submit a list of shareholders to the registry and to keep it updated throughout the company's life-cycle. A stock corporation which issues registered shares is required to keep a share-register (Aktienregister) within the company. The holders of registered shares are by law required to provide the company with all information necessary to keep an accurate share register. The registration of a person authorised to exercise voting rights on behalf of the true holder of the shares can be limited by provisions of the articles of association. A person registered in the share register as the holder of registered shares shall notify the issuer upon request to which extent the shares belong to him or on whose behalf he holds the shares. All stock corporations are required to disclose publicly all enterprises which hold more than one fourth of the shares of that stock corporation (section 20 of the German Stock Corporation Act). To further enhance the transparency of non-listed stock-corporations who issue bearer-shares, the German Government has recently proposed an amendment to the German Stock Corporation Act (see Question 16 above). Listed stock corporations are additionally required to fulfil transparency requirements with regard to the German Securities Trading Act (Wertpapierhandelsgesetz). The significant thresholds, based on European Law requirements, amount to 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the shares.

The cooperative (Genossenschaft) and the SCE (Societas Cooperativa Europaea; Europäische Genossenschaft) are both registered in the cooperative registry. The register of cooperatives contains the following information: name; registered office and object; members' obligation to provide extra funds; management board Rule on representation; holders of general commercial powers of attorney; opening, cancellation or stay of insolvency proceedings; liquidation of the cooperative; termination of the cooperative. The registration is published by the register electronically. Also, partnerships are required to be registered in either the commercial register (Offene Handelsgesellschaft, Kommanditgesellschaft) or partnership register (Partnerschaftsgesellschaft). The information is, with some exceptions, similar to those listed for the cooperative. The registration is published by the register electronically. In the case of SCE and Genossenschaft, a list of members (Mitgliederliste) is kept within the cooperative. In the case of a partnership, all partners are registered in the commercial or partnership register with their full name, date of birth and domicile.

If a stock corporation, a Societas Europaea, or a limited liability company agrees by contract that its whole profit be transferred to another company ("Gewinnabführungsvertrag"), this contract has to be registered in the commercial register to become operative. The registered contract is published by the court in the Federal Gazette.

In addition, limited liability companies, stock corporations, cooperatives and certain partnerships (having limited liability partners only) are generally required to publish their annual accounts (single and consolidated, if applicable) in the Federal Gazette (Bundesanzeiger, which is available at: [www.bundesanzeiger.de](http://www.bundesanzeiger.de)).

An association (Verein) is listed in the register of associations. Registration is necessary to acquire legal personality. In the register of associations is entered the name and seat, the date of the execution of the articles, the members of the board and their powers of representation. The articles of the association which must be submitted with the notification for entry in the register of associations are kept by the competent Registration Court.

The creation of a foundation (Stiftung) with legal personality requires recognition of the foundation by the competent public authority of the Land in which the foundation is to have its seat. The endowment transaction must be submitted with the application for recognition of the foundation. The endowment must give the foundation a charter with provisions on the name, seat, objects and assets of the foundation and the composition of the foundation board. A foundation with legal personality is under the supervision of the competent authority. Every amendment of the charter of the foundation requires the permission of the supervisory authority.

## 2) Money Laundering Act:

Under the German Money Laundering Act legal entities and their ultimate beneficial owner have to be identified.

In order to identify the legal entity the obliged entity has to collect the following information (Section 4 par. 3 No.2):

"in the case of legal persons or partnerships, the company, partnership or trading name, legal form, commercial register number if available, the address of its registered office or head office, and the names of the members of its representative body or of its legal representative; if a member of its representative body or the legal representative is a legal person, information shall be collected on

that legal person's company, partnership or trading name, legal form, commercial register number if available, and the address of its registered office or head office”

For the purpose of verification of the customer information the obliged entity has to satisfy itself of the accuracy based on the following documents (Section 4 par. 4 No. 2):

“in the case of legal persons or partnerships, an extract from the commercial register or register of cooperative societies, or an extract from a similar official register, the documents of incorporation or documents of equivalent probative value, or by inspection of the entries in the register;”

Moreover, according to Section 3 par. 1 no. 2 and Article 4 par. 1, 5 and 6 the ultimate beneficial owner of the legal entity has to be identified. Therefore the obliged entity has to identify the beneficial owner by at least establishing his name and, where appropriate given the existing risk of money laundering or terrorist financing in the individual case, by collecting further identifying information. Details of the beneficial owner's date and place of birth and address may be collected irrespective of the ascertained risk. For the purposes of verifying the beneficial owner's identity the obliged entity shall always satisfy itself of the veracity of the information collected by taking risk-adequate measures.

According to Section 1 par. 6 No. 1 the beneficial owner of a legal entity is:

“1. in the case of corporate entities that are not listed on an organised market as defined in section 2 (5) of the Securities Trading Act (Wertpapierhandelsgesetz – WpHG) and are not subject to transparency requirements with regard to voting rights consistent with Community laws, or are not subject to equivalent international standards, any natural person who directly or indirectly holds more than 25% of the capital stock or controls more than 25% of the voting rights;

2. in the case of foundations with legal capacity and legal arrangements used to manage or distribute assets or property on “Treuhand”, or through which third parties are instructed with the management or distribution of assets or property, or similar legal constructs:

- a) any natural person acting as settlor or who otherwise exercises control over 25% or more of the assets or property;
- b) any natural person who has been designated as the beneficiary of 25% or more of the managed assets or property;
- c) where the natural person intended to be the beneficiary of the managed assets or property is yet to be designated, the group of natural persons for whose benefit the assets or property are primarily intended to be managed or distributed;
- d) any natural person who otherwise directly or indirectly exercises a controlling influence on the management of assets or property or the distribution of income.”

In case that the identity of the client and/or the beneficial owner cannot be established the business relationship must neither be established nor continued nor the requested transaction be executed. Existing business relationships must be cancelled (Section 3 par. 6)

If the identity of the beneficial owner cannot be established because the information is denied, the obliged entity must file additionally a suspicious transaction report with the FIU and the competent law enforcement agency according to Section 11 par. 1.

30. Does your country require that the beneficial ownership and company formation of all legal persons organized for profit be reported by the legal person?

YES  NO

If yes, to whom is it reported?

As stated in our answer to Question 29, extensive transparency of company formation and legal ownership is provided through national Company and Commercial Law as well as European transparency requirements. The German continental civil law system, in contrast to the common law system, has no legal concept of beneficial ownership. Rather, it is assumed that in general the legal owners are those who benefit from the company. In cases as dealt with by the AML-legislation, beneficial ownership as an aspect of control over the company outside the capacity of legal ownership is revealed primarily through obliged entities, such as notaries in the event of company formation or financial institutions when entering into a business relation with that company. Financial institutions are obliged to investigate their customers' ownership and control structure in accordance with AML Customer Due Diligence obligations and to keep this information. Through an automated bank data retrieval system, this information is accessible in a timely fashion by law enforcement, tax and other relevant authorities (see also Question 15).

#### Data Retrieval System

According to Section 24 c of the German Banking Act credit institutions shall maintain a data file in which they must promptly store the following data:

1. the number of any account which is subject to the obligation to verify proof of identity within the meaning of Section 154 par.2 sentence 1 of the Fiscal Code or of a safe custody account, as well as the dates on which the account was opened and closed,
2. the name and for natural persons the date of birth of the holder and of any party authorised to draw on the account, as well as in the cases specified in Section 3 par. 1 No. 3 of the Money Laundering Act the name and, if available, the address of any other economic beneficiary within the meaning of Section 1 par. 6 of the Money Laundering Act.

The Financial Supervisory Authority ( BaFin) may access individual data entered in the data file insofar as this is necessary to enable it to perform its prudential functions under this Act or the Money Laundering Act, in particular with respect to unauthorised banking business and financial services or the misuse of the institutions by means of money laundering or fraudulent activities to the detriment of the institutions, and if there is particular urgency in individual cases.

Upon request, the Financial Supervisory Authority (BaFin) provides information entered in the data file to other supervisory authorities – publicly entrusted with the supervision of financial institutions, investment companies, financial enterprises, insurance companies, of financial markets and payment systems or the prevention of money laundering - as this is necessary to enable them to perform their prudential functions, the authorities or courts responsible for providing international judicial assistance in criminal cases, and otherwise for the prosecution and punishment of criminal offences, insofar as this is necessary to enable them to perform their statutory functions, the national authority responsible for imposing restrictions on capital transfers and payment transactions pursuant to the Foreign Trade and Payments Act insofar as this is necessary to enable it to perform its functions ensuing from the Foreign Trade and Payments Act or from legal instruments of the European Communities in connection with restrictions on economic and financial relations.

31. If yes, is this information available to the public?

YES  NO

As stated in our answer to Question 29, the vast majority of legal ownership information is publicly available, except for the list of members of a cooperative or SCE, the Aktienregister and the endowment transaction in the case of a foundation, but these can be accessed by law enforcement. Data kept by obliged entities, such as financial institutions, on beneficial ownership of their customers is not available to the public but only to law enforcement, tax and other relevant authorities on state or federal level.

Information and data stored in the special files according to Section 24c of the German banking act are not available to the public but only to the competent authorities listed in the provision (see answer to question 30).

32. If this information is not available to the public, is it available to law enforcement?

YES  NO

### WHISTLE BLOWER PROTECTION

33. Does your country have legislation to protect whistleblowers:

a. In the public sector YES  NO

b. In the private sector YES  NO

In Germany, workers reporting real or suspected violations of law (whistleblowers) are protected by the general provisions on termination (section 626 of the Civil Code/Bürgerliches Gesetzbuch-BGB, section 1 of the Protection Against Unfair Dismissal Act/Kündigungsschutzgesetz), the prohibition of victimisation (section 612a of the Civil Code/BGB) and the provisions of constitutional law/Grundgesetz (Article 2, para. 1 of the Basic Law– personal freedoms, Article 5 of the Basic Law – freedom of expression and Article 20, para. 3 of the Basic Law – constitutional principles) together with the rulings of the Federal Constitutional Court/Bundesverfassungsgericht and the Federal Labour Court/Bundesarbeitsgericht. The protection of whistleblowers in Germany is increased by a decision of the European Court of Human Rights (RS 28274/08 Heinisch). German labour courts have to respect this decision.

Ensuring the provisions of the EU Capital Requirements Directive (CRD IV) Germany conducted the revision of its provisions on the special obligations of credit institutes governed under the German Banking Act.

The revised Section 25 a par. 1 Sentence 5 No. 3 obliges the institutions to establish processes and an adequate receiving position to enable members of the staff, safeguarding the confidentiality of their identity, to report breaches against the requirements of the EU Capital Requirements Regulation, the German banking Act, delegated acts or other criminal acts committed within the enterprise to a .

34. Have changes to whistle blower protection legislation been proposed or implemented since the last monitoring report?

YES  NO

If yes, please provide details.

The coalition agreement for the 18th legislative period (begin: Oct. 2013) contains the duty to examine, whether international provisions are sufficiently implemented with regard to the protection of whistleblowers.

Please see answer to question 33.

35. Since the last progress report, has your country implemented any measures to protect journalists reporting incidents of corruption?

If yes, please provide details

## PROCUREMENT

36. Does your country publish online any of the following?

a. Procurement laws and policies including any legislation defining the use of exceptions YES  NO

b. Selection and evaluation criteria YES  NO

c. Awards of contracts and modifications of contracts YES  NO

Please provide details.

Procurement laws and policies including the legislation defining the use of exceptions and the selection and evaluation criteria are published under <http://www.gesetze-im-internet.de/gwb/> and

<http://www.bmwi.de/DE/Service/gesetze.html>

The regions (Bundesländer) publish their procurement laws and policies for procurement underneath the thresholds in their own responsibility.

The awards of contracts above the EU-thresholds are published in <http://ted.europa.eu/TED/main/HomePage.do>

The awards of many contracts both above and underneath the thresholds are published in



[http://www.bund.de/DE/Ausschreibungen/Ausschreibungen-VergebeneAuftraege/ausschreibungen\\_node.html](http://www.bund.de/DE/Ausschreibungen/Ausschreibungen-VergebeneAuftraege/ausschreibungen_node.html)

37. Since the last progress report, have any new initiatives to promote public procurement transparency and integrity been proposed or implemented?

If yes, please provide details.

The European Union directives on public procurement have been modernised and three new procurement directives have entered into force in April 2014. The new directives promote transparency and integrity. They include inter alia provisions to govern conflicts of interests as well as provisions on the exclusion of bidders from future participation in public tenders in corruption cases and on the possibility of self cleaning. The new procurement directives have to be implemented into German law by April 2016.

38. Are there regulations and procedures for public procurement officials to govern conflicts of interest?

YES  NO

If yes, please provide details.

With regard to conflict of interest, German public procurement provisions stipulate that if a bidder has provided advise to or has in other ways supported the contracting authority before the beginning of the procurement procedure, then the contracting authority has to ensure that competition is not falsified by the participation of the bidder. In addition there are general rules on integrity - including a code of conduct for federal officials - which include procedures to govern conflict of interest and which also apply to public procurement officials.

39. Are companies that have been found to be involved in corrupt contracting practices excluded from future participation in public tenders?

YES  NO

If yes, please provide details.

Companies that have been found to be involved in corruption have to be excluded from participation in an procurement procedure according to German public procurement provisions. This mandatory ground for exclusion is applicable if a person whose actions can be imputed to the company has been convicted of corruption by final judgment.

40. If yes, is the debarment list of International Financial Institutions taken into account?

YES  NO

41. Are the names of companies excluded from future participation in public tenders made publicly available?

YES  NO

If yes, please provide details.

### DISCLOSURE BY PUBLIC OFFICIALS

42. Does your country require disclosure by public officials of:

- |                          |   |                             |
|--------------------------|---|-----------------------------|
| a. Income                | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| b. Assets                | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| c. Conflicts of interest | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| d. Gifts                 | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| e. Other                 | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |

If yes, please provide details.

Reference is made to the WB country profile

### PUBLIC OFFICIALS' IMMUNITIES

43. Does your country provide immunities from prosecution to individuals holding public offices for corruption related offences?

- |   |   |  |
|---|---|--|
| a. All public office holders                        | YES <input type="checkbox"/>            | NO <input checked="" type="checkbox"/> |
| b. Certain public office holders                    | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/>            |
| c. No immunities available to public office holders | YES <input type="checkbox"/>            | NO <input type="checkbox"/>            |
| d. While in office                                  | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/>            |
| e. Permanently                                      | YES <input type="checkbox"/>            | NO <input checked="" type="checkbox"/> |

If yes, which public office holders are immune and if immunity is limited, please explain.

Immunity protects Members of the Federal Parliament (Bundestag) while in office from prosecution and arrest, thereby ensuring that Parliament is able to conduct its business at all times. In accordance with Article 46 of the Basic Law, Members may only be called to account or arrested for a punishable offence with the permission of the Bundestag, unless they are apprehended in the act of committing the offence or in the course of the following day. The Bundestag's permission is also required for any other form of restriction of Members' personal liberty. If a Member is to be

called to account, the Public Prosecutors' Office must, therefore, request the President of the Bundestag to lift his or her immunity before it can initiate criminal proceedings. This request is passed on immediately to the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure.

Since 1969 it has been standard practice for the Bundestag, on the basis of a decision taken anew at the beginning of each electoral term, to grant general permission for preliminary investigations to be initiated against any of its Members for criminal offences, with the exception of insults of a political nature. However, before such investigations can commence the President of the Bundestag must be informed and, unless there are reasons to believe that this might obstruct efforts to ascertain the truth, so too must the Member concerned. In this way, the Bundestag in effect grants its permission for criminal proceedings to be initiated, not, however, for charges to be brought, arrests to be made or any other measure to be taken which might restrict the liberty of Members, such as, for instance, search and seizure operations in Members' residential or business premises outside the Parliament buildings.

In all other cases involving parliamentary immunity, the Committee submits a recommendation for a decision to the plenary, which adopts it without prior debate. Generally speaking, the Bundestag only refuses to waive a Member's immunity in the case of insults of a political nature. Requests for permission to search rooms used by a Member of the Bundestag present a particular problem. In one case, the Bundestag even had to be recalled from its summer recess. Should the Bundestag grant such permission, it does so only on the condition that a representative of the parliamentary group to which the Member in question belongs is present during the search.

The President of the Federal Republic of Germany, while in office, enjoys the same immunity rights as described above in relation to Members of the German Bundestag.

The members of the parliaments of the German states (Landesparlamente) also enjoy immunity rights while in office. Leaving aside diplomatic immunities, no other public officials are afforded immunity rights.

According to the Criminal Code, criminal limitation period shall be stayed as long as prosecution is not possible due to immunity.

## EDUCATIONAL INITIATIVES

44. Is your country involved in any of the following international anti-corruption educational initiatives?

International Anti-Corruption Academy YES  NO

UNODC Anti-Corruption Academic Initiative YES  NO

Other international anti-corruption educational initiative(s) YES  NO

If yes, please provide details.

45. Does your country provide anti-corruption educational/training programs for officials, including public office holders?

YES  NO

If yes, please provide details.

On behalf of the German Government the IRZ-Foundation, has conducted several anti-corruption educational programmes in foreign countries in the past. These involved conferences, seminars, workshops und study visits for representatives of various ministries of justice, judges and public prosecutors. These projects were funded either by the German Government or the EU and have also been executed within the framework of EU-Twinning projects.

In 2014 Kazakhstan, Moldova, the Russian Federation, the Ukraine, Macedonia, Romania, Uzbekistan and Vietnam are among the recipient countries.

Public sector employees receive regular anti-corruption training and are provided with anti-corruption e-learning tools.

46. Does your country or business associations in your country promote anti-corruption training for the private sector?

YES  NO

If yes, please provide details.

A number of German business associations actively promote anti-corruption measures. The following initiatives are named by way of example:

- Federation of German Industry (BDI): Dedicated website and hard-copy publication on anti-corruption  
(<http://www.bdi.eu/korruptionsbekaempfung.htm>)
  - The German Chambers of Commerce and Industry jointly with the International Chambers of Commerce published a code of conduct on anti-corruption  
(<http://www.dihk.de/themenfelder/recht-steuern/oeffentliches-wirtschaftsrecht/sicherheit-strafrecht/sicherheit-in-der-wirtschaft#korruption>)
  - Both the German Engineering Federation (VDMA) and the Association of the German Construction Industry (HDB) issued guidelines on the prevention of corruption “VDMA Leitfaden Korruptionsprävention“

([http://www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/VDMA\\_Leitfaden\\_Korruptionspraevention\\_2011\\_09\\_final.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/VDMA_Leitfaden_Korruptionspraevention_2011_09_final.pdf))  
and HDB's "Leitfaden zur Bekämpfung wettbewerbsbeschränkender Absprachen und korruptiver Verhaltensweisen"  
([http://www.bauindustrie.de/media/uploads/PDFs/Publikationen/korruptionsbekaempfung\\_03.pdf](http://www.bauindustrie.de/media/uploads/PDFs/Publikationen/korruptionsbekaempfung_03.pdf))

47. Has your country disseminated G20 products and documents developed by the group with relevant domestic authorities?

YES  NO

If yes, please provide details.

All relevant federal ministries are regularly informed about the ACWG work.

## JUDICIARY

48. Has your country taken any measures to promote and disseminate the Bangalore Principles for Judicial Integrity?

If yes, please provide details

The Bangalore Principles represent an important contribution by the judiciary towards the ongoing development of societal values. German law is consistent with most of the substantive content of these Principles. For example, just like the Bangalore Principles, German law provides that judges must accept certain personal restrictions on account of the office they hold. The Bangalore Principles focus to an even greater extent on the duties of judges in their non-official capacities. In Germany's constitutional understanding, this needs to be balanced with the civil rights of judges. Issues of professional ethics are the subject of frequent and broad-ranging debate among the German judiciary. The German Association of Judges supports this debate across all areas of the justice system with its nationwide Judicial Ethics Network and its discussion paper entitled "Judicial Ethics in Germany - Topics for debate on professional ethics for judges and public prosecutors." Furthermore, numerous advanced training courses are available throughout the country on the topic of judicial ethics. These courses are offered both at the regional level (by individual Länder) and at the national level (by the German Judicial Academy). All of these courses and discussions incorporate the sense and substance of the Bangalore Principles.

Germany has been supporting the international dissemination of the Bangalore Principles of Judicial Conduct since 2005, supports the Judicial Integrity Group (JIG), and has funded the development of the Commentary on the Bangalore Principles and the Measures for their Effective Implementation. The Bangalore Principles and the related documents form the basis of German development cooperation's support to partner countries' efforts to strengthen judicial integrity. Especially, Germany developed a tool to assess the level of implementation of the Bangalore Principles on the national level called Judicial Integrity Scan. The primary aim of the Scans is to identify major gaps and to provide entry points for reform efforts targeted at enhancing judicial integrity. Germany did pilot test the Scans in Georgia and Cote d'Ivoire. In Côte d'Ivoire the Judicial Integrity Scan resulted into a regional conference between decision makers of the judicial system, international judges and

representatives of civil society. The Judicial Integrity Scan was also introduced to a broader audience during a special event at the fifth session of the Conference of the States Parties to the United Nations Convention against Corruption in Panama in November 2013.

49. Has your country taken other measures to promote the accountability and independence of the Judiciary?

The Bangalore Principles represent an important contribution by the judiciary towards the ongoing development of societal values. German law is consistent with most of the substantive content of these Principles. For example, just like the Bangalore Principles, German law provides that judges must accept certain personal restrictions on account of the office they hold. However, the Bangalore Principles focus to an even greater extent on the duties of judges in their non-official capacities. In Germany's constitutional understanding, the ensuing restrictions on the civil rights of judges represent an area of tension.

Issues of professional ethics are the subject of frequent and broad-ranging debate among the German judiciary. The German Association of Judges supports this debate across all areas of the justice system with its nationwide Judicial Ethics Network and its discussion paper entitled "Judicial Ethics in Germany - Topics for debate on professional ethics for judges and public prosecutors." Furthermore, numerous advanced training courses are available throughout the country on the topic of judicial ethics. These courses are offered both at the regional level (by individual Länder) and at the national level (by the German Judicial Academy). All of these courses and discussions incorporate the sense and substance of the Bangalore Principles.

If yes, please provide details

**SECTOR-SPECIFIC TRANSPARENCY INITIATIVES**

50. Is your country supporting or implementing any sector-specific initiatives?

Extractive Industries Transparency Initiative (EITI)			
Implementing		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Support		YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Construction Sector Transparency Initiative (CoST)			
Implementing		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Support		YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Other (specify below)			
Implementing		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Support		YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please provide details on other sectoral initiatives supported by your country, or domestic measures taken in relation to specific sectors.

The Federal Ministry for Economic Cooperation and Development (BMZ) supports the Water Integrity Network (WIN) in its global advocacy work, regional networks and local action. Germany, together with WIN, supports water service providers in Kenya, Tunisia and Morocco in strengthening their integrity management systems.

In the health sector Germany supports the World Health Organisation's Good Governance for Medicines programme.

Additionally, the Federal Ministry for Economic Cooperation and Development (BMZ) supports the Open Contracting Partnership (OCP) and is – together with the World Bank Institute and other organisations - one of its founding members. OCP was formed at the end of 2012 and is seeking to enhance and promote disclosure and participation in public contracting. Priority sectors include, amongst others, the extractive industries. The OCP complements and builds upon ongoing efforts to increase transparency in public contracting and relies on collaborative approaches supported by a small core team for coordination. On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), the Gesellschaft für Internationale Zusammenarbeit (GIZ) plays an active role in the OCP and its core group.

The focus areas of OCP are the following:

- (a) Developing global norms and standard (e.g. the open contracting global principles)
- (b) Supporting the implementation of open contracting on the country level (i.e. organizing trainings in order to contribute to a better understanding of the content of contracts, capacity building for monitoring of contracts by NGOs etc.)
- (c) Coordinating a Community of Practice.

In Peru, BMZ has supported the Comptroller General in establishing the online platform that enables effective monitoring of public construction projects by citizens and administrative bodies. The IT-based system combines otherwise scattered information on investments, contracts, payments and physical progress. Public officials can now crosscheck the contractual arrangements before issuing a payment, citizens can see what has been spent on a road nearby their house and verify the reported physical progress.

51. Does your government have integrity pacts with the business sector?

YES  NO

If yes, please provide details.

Integrity Pact of Transparency International Germany and the company in charge of the project BER International Airport (Flughafen Berlin Brandenburg GmbH). The company is majority-owned by the Federal Government and the Land Brandenburg.

#### **FISCAL AND BUDGET TRANSPARENCY**

52. Has your country taken steps to implement the IMF Good Practices in Fiscal Transparency?

YES  NO

If yes, please provide details.

The variety and multitude of central, regional and local authorities prohibit a simple YES or NO answer to the question mentioned above. Nevertheless, the main points of the IMF Code of Good Practices on Fiscal Transparency – such as Clarity of Roles and Responsibilities, Open Budget Processes, Public Availability of Information and Assurances of Integrity – are covered by the national legal bases of central, regional and local authorities. In this context, we have to point out that Germany's fiscal management is fully compliant with the provisions of the European Union. In the year 2003 the IMF published the results of an assessment of fiscal transparency practices in Germany in relation to the requirements of the IMF Code of Good Practices on Fiscal Transparency. Since then no more such bilateral assessments have taken place.

53. Has your country taken steps to implement the OECD Best Practices on Budget Transparency?

YES  NO

If yes, please provide details.

The variety and multitude of central, regional and local authorities prohibit a simple YES or NO answer to the question mentioned above. Nevertheless the main points of the OECD Best Practices on Budget Transparency – such as Budget reports, Specific disclosures, Integrity, control and accountability – are covered by the national legal bases of central, regional and local authorities. In this context, we have to point out that Germany's fiscal management is fully compliant with the provisions of the European Union. Moreover, an OECD assessment of fiscal transparency in Germany is currently underway.

**Thank your for your time in completing this questionnaire.**