

**SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD  
COUNTRIES: GERMANY**

**1. What anti-corruption mechanisms exist for the public sector in your country?**

**a) *Legislation proscribing corrupt activities and establishing sanctions***

The German Penal Code provides imprisonment or fines for corrupt activities in the context of the offences of “bribery”, “receiving a bribe” and “granting of advantages” and “acceptance of advantages”. On 26 June 1997 the German Parliament adopted the “Anti-corruption Act”, which increases penalties, makes attempts to persuade a civil servant into doing or refraining from doing anything in his official capacity for a consideration a punishable offence and provides the possibility of issuing judicial orders for extended forfeiture or the imposition of property penalties in order to confiscate illegal proceeds (see Appendix 1).

**b) *Other anti-corruption regulations or orders***

It is forbidden for civil servants as well as for employees and workers in the federal public service to accept rewards or gifts in connection with the execution of their official duties. A violation of this rule constitutes a breach of official duty which can be sanctioned by disciplinary action (see Appendix 2).

**c) *Oversight by the legislature or parliament (directly or through scrutiny committees)***

At any time the parliaments are entitled to satisfy themselves of the lawfulness of the action taken by the administration. They also have the right to appoint committees of inquiry.

Permanent oversight instruments exist in the form of audit offices which in addition to checking the lawful use of budget funds also take care of cases of corruption. The audit offices submit their reports to the parliaments' audit committee.

**d) *Investigation systems or bodies with powers to investigate corrupt activity***

The parliaments' audit committees referred to under item c) are charged with the examination of each individual case by the respective parliament, are vested with adequate powers - also to make investigations - and completely independent of the executive.

In some branches of the administration or bodies, which are independent of the administrative organisation to be examined, have been established for clarifying any suspicion of corruption.

**e) *Supreme financial audit authority***

Both the Federal Government and the *Länder* have audit offices/courts of auditors for monitoring and ensuring a lawfully and properly managed system of public finance. When carrying out their reviews, they also pay attention to cases of suspected corruption. They are vested with adequate powers, are independent of the executive and accountable to the respective parliament. The members of the audit offices are independent of the judiciary. As a rule, reports of the audit offices are published.

**f) *Ombudsman***

The German Parliament has set up a committee on petitions, though, to which any citizen can address his requests and complaints. Similar bodies exist in the *Länder* Rhineland-Palatinate, for instance, has a “citizens’ commissioner” and Mecklenburg-Western-Pomerania a “commissioner for petitions and citizens”. Such commissioners have also been appointed in many municipalities.

**g) *Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors, investigators, courts, tribunals, etc.***

The prosecution of corrupt activity just like the prosecution of other criminal offences, is up to the public prosecutors and the criminal police. The prosecution of criminal offences on principle is the responsibility of the *Länder*, if need be, they may set up specialised prosecutor’s offices for the investigation of corrupt practices. Public prosecutors and the criminal police are bound by the law, but are subject to the supervision of the respective *Land* Ministry of Justice.

**h) *Human resources management procedures intended to prevent corruption***

See answer to *Question 4*.

**i) *Financial management controls intended to prevent or deter corrupt practices***

See answer to *Question 4*.

**j) *Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity***

See answer to *Question 4*.

**k) *Transparency mechanisms e.g. independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity***

See answer to *Question 4*.

**l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)**

See answer to *Question 4*.

**m) Other measures intended to control, detect or deter corruption.**

See answer to *Question 4*.

**2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?**

See answer to *Question 4*.

**3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?**

The effectiveness of all anti-corruption measures, but also of punishment of corrupt activities can only be evaluated in the long term. Such evaluation is based on the criminal statistics of the police which records all cases of corruption, i.e. the four types of offences listed in the answer to *Question 1(a)*.

**4. What if any new actions against corruption in the public sector is your country currently considering?**

We think that the most effective action against corruption is raising the awareness of all staff in the public service and increasing the level of control, e.g. by having matters that would lend themselves to corruption processed by more than one official, or through increased vigilance on the part of superiors. Together with these measures of central importance the Federal Government has presented a comprehensive catalogue of additional measures to prevent corruption:

- Exacting standards should be applied already when *selecting* personnel for organisational units particularly exposed to corruption.
- The issue of corruption should be given more emphasis in *basic and further training*. The staff should regularly be provided with relevant information.
- In areas *particularly exposed* to corruption and their supervisory bodies *personnel rotation* is considered to be an indispensable element of personnel management.
- *Organisational arrangements* with regard to both the structure and procedure of authorities are to ensure working processes designed to rule out corruption.
- Planning, placement and accounting of public orders should on principle be *separate* processes. Experience of the procurement unit of the Federal Ministry of the Interior has

shown that it is easier to implement such principles if there is only one central procurement unit.

- With regard to working areas exposed to corruption, e.g. with the following characteristics
  - frequent external contacts,
  - large-scale management of budget funds,
  - cost-intensive individual projects,
  - far-reaching authority to grant permissions,

the authorities should continuously carry out *risk analyses*. Especially in these working areas it is necessary to lay down working processes and specify responsibilities in detail.

- A *central contact agency* should be available to which both staff members and citizens may turn if they have any corruption-related questions or come across problematic situations.
- Depending on the size and tasks of an administration, an organisational unit should be assigned for carrying out *internal accounting controls and audits*. This unit should in particular make random checks on matters currently processed, and on decisions taken on the placement of orders, appropriations or the granting of permissions and licences. In case of complaints, it develops recommendations on how deficiencies can be made up.
- A generally applicable *code of conduct* should be made available to the heads of authorities and other superiors as well as public service personnel, which helps them to respond adequately to incidents and practices where the suspicion of corruption exists.
- Particular emphasis should be on a consistent *supervisory control*. Superiors and heads of authorities should undergo training to make them acquainted with ways of exercising control and supervisory functions. Concrete guidance on anti-corruption measures should be made available to them so that they can respond in a competent way in the individual case.
- Corruption must be *punished* uncompromisingly. Every staff member found guilty of corrupt practices must *be held liable for the damage incurred*.
- The *legal provisions on the awarding of contracts* have to be complied with strictly. The following practices must be mandatory:
  - public invitation to tender before any awarding of contracts,
  - in the event of other types of awarding of contracts, e.g. limited invitation to tender or discretionary award of contracts, substantive reasons should be stated and checks should be carried out on whether inadmissible factors have influenced a decision,
  - a corruption register is to prevent firms which have become suspicious for corrupt practices from unhindered participation in the competition for public contracts; the circumstances of the individual case should be taken into account when excluding a firm from competition.

The federal administration has started to implement these measures. The *Länder* are discussing or in different stages of introducing similar action.

**5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?**

Against the background of cases of corruption that have alarmed the public, the following areas are of most concern in terms of corrupt or questionable activities:

- the award of contracts by the public administration, especially regarding building projects
- the granting of licences and permits;
- the fixing and levying of fees;
- the appropriation of public funds and subsidies;
- supervisory activities.

Regarding the offenders, i.e. those who offer unlawful advantages, there is the concern that organised crime could try to gain more influence on the public administration by attempts to persuade civil servants into accepting bribes for doing or refraining from doing, anything in their official capacity. However, only relatively few cases of this kind have so far been uncovered in Germany so that it would premature early to assume an imminent danger.

**Excerpts from the Penal Code**  
(in the version of the “Anti-Corruption Act”)

**Section 331:**

- (1) A holder of public office or a person especially engaged in civil service who demands, allows himself to be promised or accepts an advantage in return for the performance of an official act, shall be punished by imprisonment not exceeding 3 years or by a fine.
- (2) A judge or arbitrator who demands, allows himself to be promised or accepts an advantage in return for a judicial act taken or to be taken in the future, shall be punished by imprisonment not exceeding 3 years or by a fine. The attempt shall be punishable.
- (3) The act shall not be punishable pursuant to paragraph 1 if the perpetrator allows himself to be promised or accepts an -advantage not demanded by him and the competent governmental agency within the framework of its powers, has either previously approved the acceptance or the perpetrator has immediately notified the authority, which then has approved the acceptance.

**Section 332:**

- (1) A holder of public office or a person especially engaged in civil service who demands, always himself to be promised or accepts an advantage in return for an official act performed or for future performance and thereby violates or would violate his official duties, shall be punished by imprisonment from 6 months up to 5 years, in less severe cases by imprisonment not exceeding 3 years or by a fine. The attempt shall be punishable.
- (2) A judge or arbitrator who demands, allows himself to be promised or accepts an advantage in return for a judicial act taken or to be taken in the future and thereby violates or would violate his judicial duties, shall be punished by imprisonment from 1 year up to 10 years, in less severe cases by imprisonment from 6 months up to 5 years.
- (3) If the perpetrator demands, allows himself to be promised or accepts the advantage in return for a future performance, paragraphs 1 and 2 shall even be applied if he indicated his readiness to the other
  1. to violate his duties by the act or,
  2. insofar as the act is in his discretion, to have himself influenced by the advantage in exercising his discretion.

**Section 333:**

- (1) Whoever offers, promises or grants an advantage to a holder of public office, to a person especially engaged in civil service or to a soldier of the Federal Armed Forces in return for an official act to be taken in his discretion in the future, shall be punished by imprisonment not exceeding 2 years or by a fine.
- (2) Whoever offers, promises or grants an advantage to a judge or arbitrator in return for a judicial act to be taken in the future, shall be punished by imprisonment not exceeding 3 years or by a fine.
- (3) The act shall not be punishable pursuant to paragraph 1 if the competent governmental agency within the framework of its powers either previously approved the acceptance of the advantage by the recipient or approves it upon immediate notification by the recipient.

**Section 334:**

(1) Whoever offers, promises or grants an advantage to a holder of public office, to a person especially engaged in civil service or to a soldier of the Federal Armed Forces in return for an official act taken to be taken in the future and thereby violates or would violate his official duties, shall be punished by imprisonment from 3 months up to 5 years, in less severe cases by imprisonment not exceeding 2 years or by a fine.

(2) Whoever offers, promises or grants to a judge or arbitrator an advantage in return for a judicial act

- taken and thereby violated his judicial duties or
- to be taken in the future and would thereby violate his judicial duties,

shall be punished in the cases of number 1 by imprisonment from 3 months up to 5 years, in the cases of number 2 by imprisonment from 6 months up to 5 years. The attempt shall be punishable.

(3) If the perpetrator offers, promises or grants the advantage in return for a future performance, paragraphs 1 and 2 are even to be applied if he attempts to induce the other

1. to- violate his duties by the act, or
2. insofar as the act is in his discretion, to have himself influenced by the advantage in exercising the discretion.

**Section 335:**

(1) In particularly severe cases,

1. an offence pursuant to
  - a) Sect. 332 para 1 sentence 1, also in combination with para 3, and
  - b) Sect. 334 para 1 sentence 1 and para 2, both also in combination with para 3 shall be punished by imprisonment from 1 year up to 10 years, and
2. an offence pursuant to Sect. 332 para 2, also in combination with para 3 shall be punished by imprisonment of a minimum of 2 years.

(2) A particular severe case within the meaning of para 1 is deemed to be a case where

1. the offence involves an advantage of considerable value,
2. the perpetrator accepts advantages on a continued basis, which he demands in return for the future performance of an official act, or
3. the perpetrator acts for gain or as the member of a gang which has formed for the continued commitment of such crimes.

**Section 338:**

(1) In the cases referred to in Sect. 332, also in combination with Sects. 336 and 337, Sect. 73d shall be applicable where the perpetrator acts for gain or as a member of a gang which has formed for the continued commitment of such crimes.

(2) In the cases referred to in Sect. 334, also in combination with Sects. 336 and 337, Sects. 43a and 73d shall be applicable where the perpetrator acts as a member of a gang which has formed the continued commitment of such crimes. Sect. 73d shall also be applicable where the perpetrator acts for gain.

**Section 357:**

(1) A superior who induces or undertakes to induce his subordinates to commit an illegal act in the performance of duty or who allows such illegal act of subordinates to be committed, is subject to punishment provided for the illegal act.

(2) The same provision applies to a holder of public office to whom supervision or control of the official functions of another holder of public office has been assigned, insofar as the illegal act committed by the latter holder of public office concerns the functions subject to his supervision or control.

**Federal Civil Service Act**

**Section 70**

Also after the termination of his employment in the civil service, the civil servant shall not accept any rewards or gifts with regard to his office unless he has the consent of the supreme service authority, or the last superior service authority. The power to give the consent may be delegated to other authorities.

**Federal Disciplinary Rules**

**Section 2**

(1) Pursuant to this law, the following persons shall be liable to prosecution:

1. A civil servant for a breach of official duty committed while having the status of a civil servant
2. a civil servant on retirement
  - a) for a breach of official duty while having the status of a civil servant
  - b) for an act committed upon retirement which may be deemed to be a breach of official duty (Sect. 77 para 2 of the Federal Civil Service Act).

(2) A civil servant or a retired civil servant who at an earlier time was subject to another employment contract under public law as a civil servant, judge, permanent or temporary member of the Armed Forces, or a permanent or temporary member of the civil defence corps shall be liable to prosecution for breaches of official duty or acts deemed to be breaches of official duty which he has committed in the context of his former employment contract under public law or as a person entitled to a public the acts referred to in Sect. 77 para 2 of the Civil Service Act shall be deemed to be breaches of official duty also with regard to persons retired or dismissed from such employment contract under public law. The assignment to another public employer shall not prevent prosecution pursuant to the disciplinary rules.

**Section 3**

The competent authority shall determine freely after a due assessment of the circumstances whether measures have to be taken on grounds of a breach of official duty pursuant to this law. In this context, the competent authority shall take into consideration the civil servant's overall conduct both in and away from his duties.

**Section 5**

(1) Disciplinary measures shall include

- a reprimand
- a fine
- reduction of salary
- transfer to a post in the same career structure with a lower final basic salary
- removal from office
- reduction of retirement pension
- deprivation of retirement pension

(2) In the case of pensioners, only reduction or deprivation of retirement pension are admissible.