



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

GERMANY: PHASE 2

**FOLLOW-UP REPORT ON THE IMPLEMENTATION
OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATION OF
THE CONVENTION AND THE 1997 RECOMMENDATION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN
INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 8th December 2005.

TABLE OF CONTENTS

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY	3
GERMANY: WRITTEN FOLLOW-UP TO PHASE 2 REPORT	5

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. The Working Group welcomed information provided by the Federal Ministry of Justice of Germany on proceedings and preliminary investigations of foreign bribery offences for the period 2004-2005. At Länder level, Police and Prosecutors have been investigating a total of 21 cases involving violations of the Act on Combating Bribery of Foreign Public Officials (ACIB); 2 investigations were based on reporting by the tax authorities; 1 investigation was based on a suspicious transaction reported by a financial institution to Lander prosecutor. Furthermore, in 7 cases Länder prosecutors have submitted requests for MLA to foreign countries. Overall, the Working Group found that although cases are evolving and one has not seen a lot of convictions yet, the number of investigations is impressive and commendable.

2. Since the evaluation of Germany under Phase 2, the Federal Republic of Germany has taken numerous initiatives to raise the level of awareness of the foreign bribery offences and of the OECD Convention either through public measures or private activities. However, it does not appear that Germany has taken any comparable initiative to foster the adoption of corporate compliance programmes by Small and Medium Enterprises (SMEs).

3. With respect to tax audits the Working Group notes that Germany has not taken any significant steps to reduce the time-lag with regard to the performance of tax audits of largest companies. German authorities indicated that there were no cases in which preliminary investigations of foreign bribery were statute-barred due to the time lag for performing tax audits. They also indicated that a working group tasked with examining the criteria applied to companies audited had been recently established.

4. The Working Group recognises that Germany has created mechanisms both at national and Länder level to facilitate the reporting of suspicion of corruption. German auditors are legally obliged to notify legal representative or supervisory board of the audited company of “any irregularities and violations of statutory provisions or facts that constitute serious violation of law”. However, neither auditors nor statutory bodies have an obligation to report suspicion of corruption to prosecutorial authorities. The German authorities indicate that they have considered this issue and they have concluded to not introduce a legal obligation for auditors and statutory bodies to report suspicion of corruption to prosecutorial authorities. The Working Group holds the opinion that the system of reporting might work more effectively by providing civil servant, employees and auditors with the possibility of directly reporting to the prosecutorial authorities. Similarly, the protection of whistle-blowers can be significantly improved by the enactment of specific legislative protection under German law.

5. Since the evaluation of Germany under Phase 2, the maximum level of monetary sanctions for legal persons has not been increased. The issue of a further increase of the monetary sanctions has recently been re-examined and the German authorities have concluded that the statutory maximum of 1 million Euros is sufficient and proportionate. Furthermore, Germany noted that, in practice, the pecuniary sanction could exceed the statutory maximum of 1 million Euros in cases where prosecutors and courts could establish the “skimming off” of the benefits of offence exceeding this amount. The Working Group still has doubts whether the statutory maximum of 1 million Euros for monetary sanctions represents an

adequate deterrent especially for large companies when considering also the difficulty of assessing in practice the “skimming off” of benefits of offences.

6. Public prosecutors have not been provided with any specific guidelines for exercising prosecutorial discretion for legal persons. German authorities indicate that the Federal Ministry of Justice has elaborated an Amendment to the Guidelines for Criminal Proceedings and Administrative Fines Proceedings (RiStBV) which provides public prosecutors with additional practical help in applying the rules relating to the responsibility of legal persons. The draft has been submitted to the Standing Conference of the Justice Ministers of the Länder for approval.

7. Germany has not issued any guidelines for uniform application of Sections 153a and 153c of the Code of Criminal Procedure (StPO) on dismissal of charges. The Federal Ministry of Justice has re-examined the question and concluded that Sections 153a and 153c of StPO have an important compensatory function within the system of mandatory prosecution as they ensure that the proportionality of criminal prosecution is maintained in each case. This compensatory function limits the permissibility of guidelines on the uniform exercise of discretion. The Working Group recognises that Germany has considered this issue, as requested. However, the Working Group believes that guidelines can help provide that prosecutorial discretion is applied impartially.

8. The bribery of a foreign Member of Parliament (MP) still does not constitute a predicate offence of the crime of money laundering. Germany indicates that this exception has not created any negative impact on the effective detection of foreign bribery. The German authorities have also stated that they intend to make legal changes to include the bribery of national, foreign and international MPs in the list of predicate offences of money laundering.

9. Given the absence of convictions for foreign bribery offences, the Working Group is unfortunately not in a position to assess whether sanctions against natural and legal persons for the foreign bribery offence are effective, dissuasive and proportionate. The Working Group notes that the five-year threshold of the statute of limitations for bribery of foreign public officials is adequate and in line with that of other OECD countries. The Federal Ministry of Justice was not aware of any cases in which preliminary investigations of foreign bribery were statute-barred.

b) Conclusions

10. Based on the findings of the Working Group with respect to Germany’s implementation of the Phase 2 Recommendations, the Working Group reached the overall conclusion that Recommendations 2, 4, 5(2) and 6 have been implemented satisfactorily or dealt with in a satisfactory manner. Germany has considered Recommendations 5(1) and 8, as requested. Recommendation 1 has been partially implemented. Recommendations 3 and 7 have not been implemented.

11. The Working Group on bribery invites the German authorities to report orally on the implementation of Recommendations 1, 3, 7 within one year, i.e. by 31 June 2006.

GERMANY: WRITTEN FOLLOW-UP TO PHASE 2 REPORT

Name of country: Germany

Date of approval of Phase 2 Report: June 2003

Date of information: June 2005

Part I: Recommendations for Action

1) Recommendations for ensuring effective measures for preventing and detecting foreign bribery

Text of recommendation 1:

The Working Group recommends that Germany increase its efforts to raise the level of general awareness of the foreign bribery offence and the Convention. With respect to the private sector, the Working Group recommends that Germany encourage the continued development and adoption of adequate corporate compliance programmes including for small and medium sized enterprises doing business internationally [Revised Recommendation, Articles I and V.C(i)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Federal Republic of Germany has in the past taken various statutory and non-statutory measures to raise the level of awareness of the foreign bribery offences and of the OECD Convention. Further efforts will be made in the future to increase the general level of awareness of the issue involved. The number of ongoing investigation proceedings can be seen as a measurable success of previous efforts. More specifically:

a. Raising awareness through legislative measures

- (1.) The Federal Ministry of Justice is currently preparing a **Draft Second Act on Combating Bribery** with which the Criminal Law Convention on Corruption of the Council of Europe of 27 January 1999 and the Council of the European Union Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector are to be transposed into national law. Although the

United Nations Convention against Corruption of 31 October 2003 has not yet come into force, the substantive rules contained therein will also be taken into account in the Draft Act.

Furthermore, the Draft Act is to repeal the Act on Combating International Bribery, with which the OECD Convention on the Combating of Bribery of Foreign Public Officials in International Business Transactions was transposed into German law. The corruption offences previously incorporated in the Act on Combating International Bribery will be transferred to the Criminal Code (StGB). The EU Bribery Act is also to be repealed. The corruption offences which this law contains will likewise be transferred to the Criminal Code. Drawing these corruption offences together under the core criminal law will create a uniform and solid set of rules for combating domestic and foreign corruption. This fact and the public relations work that will accompany the legislative procedure will serve to further raise the level of awareness of corruption in general and of bribery of foreign public officials in particular. The legislative procedure is to be completed by the end of 2006.

- (2.) Within the context of the **reform of the law on public procurement**, the Federal Ministry of Economics and Labour is currently preparing a regulation to exclude enterprises from competition for public contracts on the grounds of unreliability if employees whose activities are to be ascribed to the enterprise are found guilty of a corruption offence. Bribery of foreign public officials shall also constitute an offence leading to suspension from competition for public contracts.
- (3.) In addition to these substantive rules on public procurement, there are plans to **create a federal corruption register**. The main purpose of such a register will be to provide public agencies with information on those enterprises which have been excluded from competition for public contracts for corruption-related reasons. The corruption register will also list those enterprises excluded from competition for public contracts for bribery of foreign public officials. The public agencies are obligated to report such exclusions to the register. They are also under the obligation to enquire with the register whether the company to whom they intend to award a particular contract is listed in the register. This makes it considerably easier for the public agency to check the reliability of the prospective contractor.

The corruption register is to be introduced in early 2006. It will make a significant contribution to the combating of corruption and further raise the level of awareness of the punishability of corruption in general and of bribery of foreign public officials in particular.

b. Raising awareness through administrative measures

Furthermore, the Federal Republic of Germany has taken steps to raise the level of awareness of bribery offences among members of public administration. Members of public administration will thereby be further sensitised as regards the issue of bribery of foreign public officials:

(1.) In July 2004 the German government adopted **the Revised Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration**, thereby amending the Directive which came into force in 1998. The Revised Directive provides employees on all hierarchical levels of administration with better guiding principles, ensuring that public administration acts with integrity and transparency. The key new regulations:

- Tighten rules on staff rotation (generally a maximum of five years in the same job in a high-risk area; written justification of exceptions; compensatory measures);
- Determine that the contact persons for the prevention of corruption in the federal ministries are not bound by any instructions;
- Specify more clearly the rules on sensitising and instructing employees;
- Further step up training and further training measures;
- Place more emphasis on the responsibility of management staff.

The changes already take into account the targets and recommendations regarding preventive measures set out in the United Nations Convention against Corruption of 31 October 2003.

(2.) Each **federal ministry submits annual reports** to the Federal Ministry of the Interior, which has overall responsibility in the matter, on the **level of implementation of the Directive and on suspected corruption cases** (the first such reports were submitted in January 2005 and covered the year 2004). In turn, the Federal Ministry of the Interior submits an annual report on 30 April (the first such report was submitted in 2005) to the Bundestag concerning developments and the results of corruption prevention in the federal administration. In addition, measures to determine areas which are particularly at risk of corruption will be initiated in all line ministries within the framework of implementing the Directive. As a result it may be necessary to introduce internal preventive measures such as, for example, staff rotation or to reorganise in-house work processes.

(3.) **Embassies** are required regularly to submit summary reports on the political situation in their respective host country and especially on relevant domestic problems, including the issue of

corruption. Agencies abroad may also submit individual reports on important corruption cases. Furthermore, they may report on ways to support the combating of corruption in the respective host country. These reports may lead to the identification and design of projects to promote the combating of corruption in high-risk countries. All agencies abroad are also informed annually in a circular directive of their obligations pursuant to the Federal Government Directive Concerning the Prevention of Corruption (latterly as per circular of 25 January 2005).

The reports submitted by the Länder regarding investigation proceedings and preliminary investigations show that staff in the agencies abroad have been successfully sensitised to this issue: For example, one Land reported in March 2005 on a case in which a tip-off from a member of staff in an agency in South America has resulted in investigations into whether investigation proceedings could be initiated.

c. Measures to raise awareness through public relations work by the German government

- (1.) In March 2005 the **Federal Ministry of Economics and Labour** added a reference on its external economic policy **website** (www.bmwa.bund.de): *Navigation/Unternehmer/Auslandsgeschaeft*) making it clear that the bribing of foreign and international public officials and MPs is a punishable offence pursuant to the Act on Combating International Bribery (with which the OECD Convention was transposed into national law). A link to the Convention and the legal text was also added.
- (2.) The Federal Ministry of Economics and Labour has compiled a **leaflet on the OECD Guidelines for Multinational Enterprises** which outlines the OECD's guiding principles on fighting corruption. The leaflet was widely distributed in autumn 2003 by the German ministries, in particular the Foreign Office and the Federal Ministry of Economic Cooperation and Development, as well as by organisations such as the Association of German Chambers of Industry and Commerce (DIHK), the Confederation of German Employer Associations (BDA) and non-governmental organisations (NGOs) such as Germanwatch. For example, the leaflet was distributed within the context of economic co-operation and development and projects or at workshops run by private sector enterprises. As the leaflet was in great demand, the campaign was repeated in autumn 2004. The OECD Guidelines for Multinational Enterprises are also available on the Federal Ministry of Economics and Labour's website (www.bmwa.bund.de). There are links to the guiding principles as well as to the aforementioned leaflet.

(3.) Information on the OECD Corruption Convention is also available on the **website of iXpos** (www.ixpos.de): *Services/Finanzierung und Recht/rechtliche Informationen für das Auslandsgeschäft*). The iXPOS portal brings together the most important players involved in the promotion of German foreign trade. As well as the Federal Ministry of Economics and Labour, the Foreign Office and other federal ministries, the economics ministries and promotion organisations of the Länder, and leading public sector organisations in Germany, organisations implementing specific supportive measures for the Federal Republic of Germany are involved, too. All the members can present their activities in the field of promotion of foreign trade along with links to their own websites.

d. Measures taken by the private sector

(1.) Numerous **chambers of commerce** have held **events on the issue of corruption** at which information was also provided on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Examples are the events held by the Berlin Chamber of Commerce at the end of 2003 and in April 2005, by the Stuttgart Chamber of Commerce in January 2003, Hanover Chamber of Commerce in March 2003, Cologne Chamber of Commerce (three events since May 2003) and Frankfurt/Main Chamber of Commerce in March 2005. The target group for these events includes, in particular, small and medium-sized companies (SMEs). The Hamburg Chamber of Commerce in conjunction with other regional associations has, in addition, appointed what is known as a **lawyer of trust** to whom **witnesses and victims of corruption offences** can turn. Nearly all the 81 German chambers of commerce have published **articles** in their journals on the issue of corruption in which the OECD Convention is also discussed.

(2.) The umbrella organisation of the German chambers of commerce, the **Association of German Chambers of Commerce (DIHK)**, publishes relevant **articles** in its news service for individual chambers of commerce and on its website. The DIHK's website (www.dihk.de) also provides explanations on the OECD Convention. At the DIHK's first event in its **2005 series** on "The law – a locational advantage" the **Federal Minister of Justice** gave a speech on 10 February 2005 on the combating of corruption, among other things. Particular emphasis was given to the especial importance of preventive measures taken by enterprises (the speech is available on the Federal Ministry of Justice's website: www.bmj.bund.de *Reden&Vorträge/Februar2005*). Furthermore, a

panel discussion was held on the topic of "Law and Ethics in the Public Sector" during which the issues of corruption and combating corruption were debated. The Chairman of Transparency International, Peter Eigen, took part in the event. Finally, legal developments as regards the combating of corruption at national and international level are regularly on the agenda of meetings of the DIHK's Committee on Legal Affairs and of expert meetings.

- (3.) In late 2002 the **Federation of German Industry (BDI)** published its **Recommendations for Combating Corruption** in a brochure entitled "Preventing Corruption" (available online at www.bdi-online.de; an English version is available from the BDI). The BDI regularly draws attention to these recommendations, which also touch on the OECD Convention and in particular provides recommendations regarding in-house preventive measures, at its own events or during panel discussions on the topic of corruption/corporate social responsibility. An example is an event held at the Chamber of Foreign Trade in Johannesburg in November 2004 on "Corporate Social Responsibility: Challenges for International Business in South Africa". In addition, the BDI's **homepage** provides information on the OECD Convention and the Act on Combating International Bribery with which the Convention was transposed into German law.

In December 2004 the BDI also set up an **internet portal** called Corporate Social Responsibility (www.csrgermany.de) in conjunction with the Confederation of German Employer Associations (BDA). The portal in particular serves SMEs as a network and as a tool for exchanging experience. The issue of combating corruption is an integral element of the internet portal. A website dedicated to this issue provides information on the activities of the OECD and of Transparency International and on the aforementioned BDI brochure, among other things.

- (4.) Attention should also be drawn to the activities of the **Value Management Council (AfW)**, which was founded on the initiative of the Centre for Business Ethics (ZfW). The Value Management Council is a voluntary amalgamation of private sector enterprises and associations which deals with the issues of corporate ethics, compliance management, anti-corruption and corporate social responsibility. The goal of the Value Management Council is to promote what is called a Value Management System – practical instructions on developing and implementing ethics and compliance programmes published by the members of the Value Management Council and the Centre for Business Ethics. In order for companies to be accepted as members of the Council they need to have already set up ethics and compliance management systems. The Value Management Council regularly organises **events** to exchange experience on best practices in the field of ethics

and compliance management and organises **conferences** on ethics and compliance management, anti-corruption and corporate social responsibility. Furthermore, the Value Management Council is involved in international research projects. For further information on the Value Management Council, please go to: www.zfw-online.de.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 2:

With respect to the police and the prosecutorial authorities, the Working Group recommends that Germany:

1. Ensure that the issue of foreign bribery is adequately addressed within training programmes (Revised Recommendation, Article I);
2. Evaluate whether sufficient resources are being allocated for the purpose of investigating and prosecuting foreign bribery cases (Commentary, 27; Revised Recommendation, Article I; Annex to the Revised Recommendation, paragraph 6).

Actions taken as of the date of the follow-up report to implement this recommendation:Re 1.

The Federal Republic of Germany ensures that bribery of foreign public officials is adequately addressed within training programmes.

a. Training of judges and public prosecutors (across Germany)

(1.) Generally speaking the topic of combating corruption has been a fixed component of training programmes of the Federal Academy of Public Administration (BaköV) since 2000. Seminars are held on basic issues regarding the allocation of public contracts and regarding disciplinary law.

In October 2004 the BaköV held its first training course for management staff in public administration that dealt exclusively with the topic of preventing and combating corruption. Two similar courses will be held in May and June 2005. The number of participants at all these events will be around 20. In addition, two seminars will be held for employees in high-risk departments. All these events also deal with international regulations pertaining to the combating of corruption.

Corruption prevention is also dealt with in the context of general training courses. In addition, the topic has been dealt with separately in training courses held since 2004 for members of federal administration being promoted to a higher grade of civil servant in administration.

Furthermore, every six months corruption contact persons in the highest-level federal

authorities meet to exchange experience and ideas (cf. response to recommendation 160 no 2). On these occasions external experts (e. g. public prosecutors) discuss on preventing and combating corruption.

- (2.) Every year the German Academy of Judges organises several conferences lasting several days that provide training specifically for judges and public prosecutors. The conferences are held at the Academy's centres in Trier and Wustrau and deal with the issue of corruption in international business transactions. For example, in 2005 conferences will be held covering the issues of "International Co-operation in Criminal Law Affairs", "Organised Crime", "Forms of Corruption and Combating Corruption", as well as other conferences on criminal law looking at, among other things, bribery. These further training courses are open to all judges and public prosecutors working in Germany. They deal with issues regarding the manifestations of corruption, providing instruction and in-depth analysis of both legal aspects and practical procedures at international level.

Similar events were held in 2003 and 2004. In total nine conferences lasting several days covered national and international developments in criminal law in the field of corruption. A total of 180 judges and public prosecutors took part in both years.

Further, German judges and public prosecutors take part in international training courses, for example those organised by the Academy of European Law in Trier, on co-operation between the police and judiciary in the field of corruption at European level.

b. Training courses at Länder level

In addition to those courses organised at national level, numerous courses are held at Länder level for the police and prosecutorial authorities, as well as for employees in public administration.

A Central Office for Combating Corruption was set up in **Berlin** in 1998 at the Berlin Prosecutor General. It regularly organises training measures for participants from across Berlin.

The Land Academy for Public Administration in **Brandenburg** has been organising special seminars on corruption prevention for Land administration employees, specifically management

staff, since 1999. The topic of corruption is regularly a component of police training and further training courses.

In **Hamburg** the Central Advisory Service for the Combating of Corruption was set up in 1997 and is responsible for holding training and further training courses on corruption in public administration. The Central Advisory Service is integrated into the training and further training programmes of the authorities and is open to all citizens and employees of authorities who have questions regarding preventive and repressive corruption prevention. Twice a year the Central Advisory Service holds a seminar lasting several days on recognising and preventing corruption in public administration.

Training courses on corruption geared to public prosecutors are also held in **Mecklenburg-Western Pomerania**. For example, a training course is to be held in autumn 2005 looking at manifestations of corruption and strategies for combating corruption as well as special forms of corruption, in particular within the context of public calls for tender and allocating public contracts.

In **Lower Saxony** training seminars on preventing and combating corruption are organised every year. They are geared to the authorities' corruption contact persons and employees involved in public procurement procedures. Training courses to raise an awareness for the issue are regularly held within the authorities. In accordance with regulations concerning the combating of corruption in Land administration, the topic of corruption is to be dealt with at meetings on a regular basis or when the need arises.

Two two-day training events are held for judges and public prosecutors in Lower Saxony every year. For example, the "Introductory Course on Corruption" was held in February 2004 and the course entitled "Corruption – Select Problems in Practice" in September 2004.

Additionally, the Central Office for Organised Crime and Corruption, which has its offices with the Celle Prosecutor General, regularly holds an inter-departmental event to exchange experience on co-operation in prosecuting corruption offences. All the public prosecution offices' anti-corruption departments, top civil servants in the police and financial authorities, the Land anti-trust offices, local government associations, the Lower Saxony Land Audit Office and the Land interior and justice ministries take part.

The **Free State of Saxony** held its own training event for criminal judges and public prosecutors on the topic of corruption and economic crime in July 2003. The Academy of Public Administration of the Free State of Saxony regularly organises seminars on combating corruption in public administrations for employees in Land authorities.

In **Saxony-Anhalt** the Prosecutor General holds meetings every year at which the topic of bribery in international business transactions is addressed, among other things. In addition, the Ministry of the Interior of Saxony-Anhalt organises seminars on corruption in conjunction with the public prosecution office and the Land Office of Criminal Investigation. In 2005 an additional three seminars will be held at the Academy for Public Administration of the Free State of Saxony – in co-operation with the Land of Saxony. They will be geared specifically to managers and corruption contacts.

Re 2.

None of the Länder has reported that insufficient resources were allocated for the investigation and prosecution of foreign corruption cases. Rather, they supplied information on investigation proceedings. In addition:

In **Berlin** a special unit with offices in the public prosecution office and staffed with 11 public prosecutors plus three offices at the Land Office of Criminal Investigation have responsibility for investigating matters relating to corruption. The offices co-operate closely. Close contacts have been established over several years to employees of the Land anti-trust office and the Senate Administration. This intensive co-operation guarantees a high standard of expertise at all levels.

In **Brandenburg** a joint investigation group on combating corruption offences was set up in March 2005. The group comprises the public prosecutors in the priority area on combating corruption at the Neuruppin Public Prosecution Office and investigators from the Brandenburg Land Office of Criminal Investigation. The joint investigation group also receives support from external experts.

In the **Free State of Saxony** an Integrated Investigation Unit for Saxony was set up in March 2004 following a decision by the Saxony Land government. The Unit is responsible for combating serious corruption offences across Saxony and currently has nine public prosecutors, 32 police employees as

well as economic and accounting experts, specialists in tax law, public procurement law and the building and construction industry.

In **Schleswig-Holstein** the Prosecutor General and the Land Office of Criminal Investigation agreed to establish a Corruption Investigation Unit with effect from 1 January 2002. The Unit encompasses various authorities and has responsibility for the entire federal Land. It is entrusted with further improving the prosecution of corruption offences. The Investigation Unit has its headquarters in the offices of the Land Office of Criminal Investigation in Kiel. It deals with all corruption proceedings across the whole Land of Schleswig-Holstein. Experience gained to date has shown that the Investigation Unit has proved its worth overall.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 3:

With respect to the tax authorities, the Working Group recommends that Germany undertake to reduce the time-lag with regard to the performance of tax audits of the largest companies (Revised Recommendation, Articles I and IV);

Actions taken as of the date of the follow-up report to implement this recommendation:

The federal administration and the Länder are in constant contact so as to guarantee the effective and timely performance of tax audits. With a view to analysing and, if necessary, improving the situation, they recently commissioned a working group with examining the criteria applied to companies audited. The working group has not yet submitted its results.

A federal administration/Land working group has now revised the OECD Manual on Bribery as regards matters relating to tax audits. The relevant federal administration/Land committee will shortly make a decision on the revised version, which is entitled "A Manual for tax investigators – Bribery". It will thereafter be circulated to all tax investigators.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 4:

The Working Group recommends that Germany continue to keep under review whether the existing mechanisms for the inter-Land communication and co-operation for criminal investigations and prosecutions are effective, including the sharing of experience in prosecuting foreign bribery cases (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:

- a. Based on Sections 492 et seq. of the Criminal Procedure Code (StPO), a Central Public Prosecution Proceedings Register (ZStV) has been established which gives public prosecutors access to data on suspects and proceedings in all criminal actions brought by the criminal prosecution offices. This guarantees effective co-operation and communication between the public prosecution offices in the various federal states. The technical prerequisites for accessing the Register have now been put in

place across Germany.

The Act on the More Effective Use of Data Files by Public Prosecution Offices of 10 September 2004 came into force on 1 March 2005 and also significantly improved the exchange of data between the public prosecution offices and police authorities. Among other things, the police and specialised police authorities now have access to the Central Public Prosecution Proceedings Register if they are involved in criminal prosecution cases. The German Eurojust member also has access. Furthermore, the legal preconditions have been established allowing those offices which have access to the database to submit on-line queries on procedural data. Details regarding operation of the Register will be set out in the new Operating Regulation for the Central Public Prosecution Proceedings Register, which is currently in preparation and which is to supersede the previous Establishment Order some time before the end of 2005.

- b. The investigation and prosecution of foreign bribery offences is a matter for the federal states. The Federal Criminal Police Office (BKA) does not have original investigative competency. However, the BKA may, upon the request of a particular Land, take on responsibility for individual cases. The exchange of information between various Länder is promoted within the context of annual working meetings on corruption offences. This conference is organised by the BKA in co-operation with the Länder and provides management staff in the anti-corruption offices with a tried and tested communication platform. Furthermore, the Länder report to the BKA on any corruption proceedings they are handling via the Land Office of Criminal Investigations as part of what is called the Corruption Reporting Service. These reports form the basis for the BKA's annual Status Report on Corruption Offences in Germany (cf. Response to recommendation 6, under point b)).

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 5:

With respect to the reporting of suspected bribery or money laundering to the appropriate authorities, the Working Group recommends that Germany:

1. Consider clarifying the obligation to report suspicious transactions for auditors and tax consultants, for example, by issuing guidelines (Revised Recommendation, Article I);
2. Consider the establishment of mechanisms such as an Ombudsman, anti-corruption unit or hotline in order to facilitate reporting of suspicion of bribery by members of public administration (Revised Recommendation, Article I).

Actions taken as of the date of the follow-up report to implement this recommendation:Re 1.

- a. In accordance with the requirements of Article 2a of the Second EC Money Laundering Directive and Recommendations 12 and 16 of the Financial Action Task Force (FATF), lawyers, legal advisors, who are member of any chamber of lawyers, patent lawyers and notaries, accountants (*Wirtschaftsprüfer*), sworn auditors, tax advisors, tax consultants and real estate agents have now come under the sphere of responsibility of the Money Laundering Act (GwG). The Money Laundering Act makes use of the possibility provided for in Article 6 para. 2 of the Directive, according to which legal counsellors and legal representatives in court can be excluded from the duty to report suspicions of offences. The confidential relationship between advisor and client, a core aspect of these professions, is thereby still protected. However, pursuant to Section 11 subsection 3 sentence 2 of the Money Laundering Act the duty to report suspicions of an offence still applies to legal counselling if the obligor positively knows that the involved person is taking advantage of the legal counselling for the purpose of laundering money. In such cases there is no reason to protect the relationship of trust.
- b. As regards the occupational groups subsumed under the Money Laundering Act, the Act consciously provides for the increased involvement of the respective occupational chamber representatives in order to be able to do justice to the peculiarities specific to the occupations. The chamber representatives and the Federal Criminal Police Office (BKA) have taken numerous measures to provide the affected occupational groups with information and to raise their level of awareness of their duties pursuant to the Money Laundering Act:
 - Professional groups and their self-governing bodies have published extensive

recommendations on how to apply the Money Laundering Act. Examples are the instructions published by the Federal Chamber of Tax Advisors of 15 August 2003, by the Federal Chamber of Notaries of 19 November 2003 and by the Chamber of Accountants of 15 November 2004. These instructions were published in circulars sent out by the chambers and additionally in publications such as, for example, the Chamber of Accountants' magazine. In addition, they have been posted on the internet (cf. e.g. the Federal Chamber of Tax Advisors at www.bstbk.de (*Bekämpfung der Geldwäsche*) and the Chamber of Accountants at www.wpk.de (*Bekämpfung der Geldwäsche/ Anwendungshinweise der WPK*)).

- In conjunction with the chambers of the legal advisory, tax advisory and accountancy professions and various Land offices of criminal investigation and the Land ministries of justice, the BKA has produced a **list of indications** of a possible illegal act of money laundering. This list has been available to those professions under the obligations of the Money Laundering Act since February 2004. It was publicised by the chambers in their own magazines and posted on the internet (cf. e.g. www.wpk.de and www.bstbk.de).
 - To further raise the professionals' awareness the BKA, in co-operation with the affected chambers, is preparing a **central website**. The website is to include, in particular, typologies and methods of laundering money and is to be made available sometime in 2005 via the BKA's website – with corresponding links to the chambers' websites.
 - **Discussions** between the chambers and the BKA **are to continue**, so that potential risks which become known from the investigative authorities' everyday practice can be passed on to those professions which have now been brought within the scope of the Money Laundering Act.
 - The Federal Chamber of Notaries, the Federal Chamber of Lawyers, the Federal Chamber of Tax Consultants and the Chamber of Accountants now have **regular meetings to exchange experience** in order to co-ordinate parallel procedures. These meetings are held when the need arises, but at least once per year.
- c. As regards other infringements of the law, including bribery cases, the auditors' duty to examine and report to the corporate management organs is sufficiently regulated by law and professional codes of law (*Berufsrecht*). The Federal Republic of Germany therefore does not see the need to publish additional guidelines in this field.

Re 2.

The Federal Republic of Germany has taken numerous measures and created mechanisms and facilities both at national and Länder level to facilitate the reporting and uncovering of bribery.

a. Improving mechanisms in public administration for recording cases of corruption

- (1.) As regards the **federal administration**, the post of **contact persons for the prevention of corruption** has been created in each line ministry and their operational units based on the Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration. Employees who would like to report a suspicion of bribery can, for example, turn to these internal corruption contacts without having to reveal this to their immediate superiors. The contact person informs the head of department and makes suggestions regarding internal investigations, taking measures to prevent the matter being covered up and informing the criminal prosecution authorities. The contact persons from various ministries meet regularly to exchange experience and ideas (cf. Response to recommendation 157 no 1).
- (2.) Some of the **Länder** have also adopted comparable directives and appointed contact persons for the prevention of corruption.

Based on the Administrative Regulations on Preventing Illegal and Dishonest Influence on Administrative Activities of July 1997, **Baden-Württemberg** has set up operational units in each ministry to co-ordinate the prevention and combating of corruption across an entire ministry. The duties of these units include following up information on suspected cases of corruptive influence. The administrative regulations are currently under review. One aspect being examined is whether it may be advisable to appoint what is known as a lawyer of trust to whom employees may turn if they have information regarding a suspicion of corruption. The regulations are to be revised some time in 2005.

A Directive for Preventing and Combating Corruption in Public Administration was adopted in **Bavaria** at the beginning of 2004. The contents of the Directive are similar to that of the federal government; it is available on-line at the Bavarian State Government's website (www.stmi.bayern.de).

Large parts of the **Brandenburg** Land government, its subordinate operational units and the local authorities have employed anti-corruption representatives and contacts. Furthermore, a Directive on the Combating of Corruption is currently in preparation.

In **Berlin** Anti-Corruption Guidelines were drawn up in 1998 and evaluated in 2004. The evaluation showed that the recommendations the Guidelines contained (e.g. prohibiting the accepting of gifts and advantages, carrying out regular internal examinations, drawing up codes of conduct) have been implemented practically across the whole of the Berlin administration.

In **Hamburg** the General Administrative Regulations on Measures for Combating Corruption – In Particular Preventing Corruption were passed in August 2001. Based on these administrative regulations central anti-corruption offices were established in all specialist authorities in Hamburg in 2002. Any employee who has a suspicion of corruption to report can and must turn to these offices – possibly also circumventing the standard hierarchy.

In **Mecklenburg-Western Pomerania** Administrative Regulations on Combating Corruption in the Mecklenburg-Western Pomerania Land Administration are currently in preparation. They closely follow the Federal Government Directive Concerning the Prevention of Corruption. However, contact persons for the prevention of corruption are already employed in many administrative departments in Mecklenburg-Western Pomerania based on the Anti-Corruption Code of Conduct for Members of the Mecklenburg-Western Pomeranian Land Administration of 9 June 2001.

In **Lower Saxony** contact persons for the prevention of corruption are to be appointed in the administrative departments of the Land administration in accordance with Land regulations. Pursuant to the Regulations on Combating Corruption in the Land Administration, all employees are obligated to report to their superior officials or to the contact person if they become party to well-founded information regarding corruptive behaviour.

A new Act on Combating Corruption came into effect in **North Rhine-Westphalia** on 1 March 2005. As well as establishing a corruption register the legislation, which applies to

all Land and municipal institutions, also contains the duties to publish and report cases of corruption. Pursuant to Section 12 of the Act on Combating Corruption, all heads of authorities and all chief administrative officials in the municipalities are under the obligation to report any suspicions of criminal offences, including corruption (to a special department with offices with the Land Office of Criminal Investigation, or to the public prosecution office). The same applies to all employees of the Land Audit Office and of control units at the municipal level.

This legislation is supplemented in North Rhine-Westphalia in the field of Land administration by a corresponding circular directive, according to which the head of an authority must be immediately informed of a suspected case of corruption. The suspicion can also be directly reported to an office appointed by the highest regional authority for the respective operational unit, usually the Internal Administrative Audit Department or an organisational unit in the Ministry.

In **Rhineland-Palatinate** each of the highest-level regional authorities has appointed an office for its respective area of responsibility to which employees can turn if they have a concrete suspicion of corruption to report. Furthermore, the ministries' central contact persons have been drawn together in an intra-division working group which meets at regular intervals to exchange experience.

In the **Saarland** existing guidelines on combating corruption are currently being examined and will presumably be elevated to the level of Land law. The aim is to highlight the importance of the combating of corruption and to guarantee the far-reaching and binding nature of the regulations. Anti-corruption representatives are being appointed in the highest-level regional authorities to work within the respective authorities. However, the number of regular meetings and co-operation on combating corruption between the anti-corruption representatives from various line ministries is to be increased overall.

Administrative Regulations on Preventing Corruption in State Administration were adopted in **Saxony**, according to which, depending on the area of responsibility and the size of the authority, special contact persons for the prevention of corruption are to be appointed. To give these administrative regulations more concrete form, a code of conduct against corruption was compiled for the authorities in Saxony.

In **Saxony-Anhalt** contact persons for the prevention of corruption have been appointed to provide advice and information in all line ministries and subordinate departments based on the Administrative Regulations for Preventing and Combating Corruption of March 1998. The contact persons in the ministries have been meeting regularly since 1996 to exchange experience and to co-ordinate preventive measures against corruption that involve various ministries.

In **Schleswig-Holstein** the Directive on the Prevention and Combating of Corruption in the Schleswig-Holstein Administration recommends that each ministry and subordinate offices appoint contact persons to whom the suspicion of corruption may be directly reported.

b. Special anti-corruption units, hotlines etc at Land level

In addition to the above-mentioned measures, the following facilities have been created at Land level to make it easier for members of public administration to report a suspicion of corruption:

Some of the Länder have anti-corruption units to which anyone – including those employed in Land authorities – can turn to provide information and to receive advice (**Berlin, Hamburg, Lower Saxony**). **Schleswig-Holstein** has set up a Central Anti-Corruption Office in the offices of the Land Prosecutor General, providing a contact for all administrative authorities involved in the prosecution and uncovering of corrupt behaviour.

In some cases facilities have been established to make it easier for authority employees and citizens in general to report such cases: For example, people can report information anonymously by telephone to a (free) hotline in **Hamburg, North Rhine-Westphalia** and **Saxony**.

In **Hamburg** a lawyer of trust has also been employed who can, based on his/her professional obligation to secrecy, keep the identity of the person providing information confidential. **Rhineland-Palatinate** has also appointed a lawyer of trust who is responsible for the entire Land administration and who is available as an external contact for members of the administration and business partners. In the **Saarland** a lawyer of trust has been appointed initially for a period of two years. Once the two-year project phase ends and based on the experience gathered, a decision will be made regarding whether to retain or modify the role of

the lawyer of trust.

Furthermore, a web-based business keeper monitoring system has been installed at the **Lower Saxony** Land Office of Criminal Investigation. The system allows people to report to the investigation authority without having to reveal their identity. The system also guarantees absolute anonymity in any dialogue between the person providing the information and the person handling the information throughout the investigations. This system is also open to all members of the public. **Baden-Württemberg** is currently examining whether to introduce a similar system. Additionally, a federal administration/Land project group (including the BKA and several Land offices of criminal investigation) is currently examining whether the system should be introduced **across the whole of Germany**. In January 2005 the project group submitted a report for discussion by the BKA and all the Land offices of criminal investigation. Following these consultations the Standing Conference of the Interior Ministers of the Länder will make a decision on whether to introduce the system. A date has not yet been set for this decision.

Hamburg is planning to establish an internet portal via which people with any information may remain anonymous when reporting possible cases of corruption to authorities in Hamburg. The system is to be implemented in the second half of 2005 and will be accessible via the Hamburg Portal.

c. Improving the Protection of Whistle-blowers

In addition, the German government is currently reviewing the internal regulations on the protection of whistle-blowers in order to provide civil servants and public service employees with the possibility of reporting directly to the criminal prosecution authorities. At present only superior officials are permitted to report corruption offences to the public prosecution authorities. The principle of confidentiality in office applies to all other employees. For this reason federal civil servants are to be expressly exempt from the disciplinary consequences of reporting a concrete suspicion of corruption if the facts substantiate the claim – in accordance with Article 9 of the Council of Europe's Civil Law Convention on Corruption of 4 November 1999. An opt-out clause in the Framework Act on the Law Applicable to Civil Servants is to allow the Land legislators to introduce similar regulations to exempt those reporting crimes from facing such disciplinary consequences. Thus reporting the well-founded suspicion of corruption will not lead to negative disciplinary consequences for the civil servant in question.

The danger that illegal acts of corruption will not be reported will thereby be minimised. There are plans to make the legislative changes regarding the protection of whistle-blowers before the end of 2006.

There are, furthermore, plans to introduce a regulation in the Civil Code (BGB) to protect employees. This amendment will turn court decisions by the Federal Constitutional Court and the Federal Labour Court into legislation. According to these court decisions, the law currently allows employees to report cases of corruption if they are acting with honest intention and the report does not constitute a disproportionate reaction.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

2) Recommendations for ensuring adequate mechanisms for the effective prosecution of foreign bribery offences

Text of recommendation 6:

The Working Group recommends that Germany compile at the federal level for future assessment information on investigations of the foreign bribery offence for both natural and legal persons, and sanctions of the foreign bribery offence for both natural and legal persons (Convention, Article 3; Phase 1 Evaluation, section 2);

Actions taken as of the date of the follow-up report to implement this recommendation:

- a. In Germany the combating of corruption, including bribery of foreign officials, under criminal law is in principle a matter for the police and the judiciary at Land level. In January 2004 the Federal Ministry of Justice requested that, in order that information may be provided to the OECD Working Group on Bribery, the Länder report annually on ongoing preliminary proceedings, including such proceedings as are based on the suspicion of bribery, following receipt of a request for legal assistance from another country. To make it easier for the Länder to submit such reports and to standardise the format of the reports, the Federal Ministry of Justice provided the Länder with a sample report in January 2005.

- b. In addition, the Federal Criminal Police Office (BKA) is actively involved in the combating of corruption at national level. The BKA's area of responsibility includes, among other things, coordinating and evaluating preliminary proceedings and compiling the Status Report on Corruption in the Federal Republic of Germany. The Status Report includes statements regarding police investigations based on the Act on Combating International Bribery (with which the OECD Convention was transposed into national law) and the EU Bribery Act.
- c. Since 1 January 2005 the national Police Statistics on Crime have provided separate statistics on proceedings based on the Act on Combating International Bribery and the EU Bribery Act. However, it will not be possible to key all the data until a six-character key of crimes is introduced (i.e. once the Länder provide additional data coded according crimes), probably as of 1 January 2007.
- d. This will create consistency between the Police Statistics on Crime and the statistics on criminal prosecution. The criminal prosecution statistics have for some time now been recording all crimes pursuant to the Act on Combating International Bribery and the EU Bribery Act insofar as a German court has passed sentence or made a conviction in the matter.

Since not all the Länder produce criminal prosecution statistics, the Federal Statistical Office currently only publishes data from the former West Germany and Berlin. The Federal Ministry of Justice is currently considering whether to enact a federal law pertaining to the criminal prosecution statistics. This would allow data for the criminal prosecution statistics to be collated from across Germany in future. Work on this project is still at an early stage. No further details can therefore be made regarding content and timeframe at this time.

- e. The Federal Ministry of Justice is currently also examining ways of improving national statistics on administrative fines imposed on legal persons based on Section 30 of the Administrative Offences Act (OWiG). No further details regarding timeframe can be given, however, as plans are still at an early stage.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 7:

The Working Group recommends that Germany take measures to ensure the effectiveness of the liability of legal persons which could include providing guidelines on the use of prosecutorial discretion, and further increasing the maximum levels of monetary sanctions (Convention, Articles 2 and 3; Phase 1 Evaluation, section 2).

Actions taken as of the date of the follow-up report to implement this recommendation:

- a. The Federal Ministry of Justice has sent the Länder a draft of an Amendment to the Guidelines for Criminal Proceedings and Administrative Fines Proceedings (RiStBV). They aim to provide public prosecutors with additional practical help in applying the rules relating to the responsibility of legal persons (Sections 30, 130 Administrative Offences Act; Section 444 Criminal Procedure Code). To this end the procedural and substantive means under applicable law are further explained within the context of concrete investigation proceedings and proceedings in the main action on the one hand. On the other hand, it is made clear in what cases it is deemed particularly appropriate for the public prosecution office to apply for the imposing of an administrative fine against a legal person or association of persons. Based on the current draft, the public prosecutor must, for example, apply for such determination of a fine if this enables the legal person's or association of persons' economic situation and the economic advantage gained through the act to be taken into consideration when determining the sanction. Corruption offences are explicitly named as those offences to which this applies. Furthermore, the draft also envisages that the public prosecutor should in particular consider prosecuting the dereliction of the duty of supervision by a management office of a legal person or association of persons pursuant to Section 130 of the Administrative Offences Act if this enables a sanction to be imposed against the legal person or association of persons. Moreover, the public prosecutor is to be required to investigate the amount of the economic advantage acquired through the act during the preparatory proceedings if the accused is a member of the management of the legal person or association of persons and the imposition of an administrative fine against this association is an option.

The Länder have approved the draft in principle and it is expected to be passed by the Standing Conference of the Justice Ministers of the Länder in 2005.

- b. The maximum amounts for non-criminal monetary fines were doubled in 2002 and the need to increase the maximum amounts yet again in order to ensure the effectiveness of the responsibility of

legal persons is being considered. The same grounds that were stated during the Phase 2 examination in Germany still hold and we therefore still see no need to take action. Nor have public prosecutors requested that any further action be taken. However, the issue will be monitored in future.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Text of recommendation 8:

The Working Group recommends that, as concerns the prosecution of natural persons, Germany consider issuing guidelines which could help provide a uniform application of sections 153a and 153c of the Code of Criminal Procedure, as well as a uniform exercise of discretion between domestic and foreign bribery cases (Convention, Article 5; Commentary, 27; Phase 1 Evaluation, section 3).

Actions taken as of the date of the follow-up report to implement this recommendation:

Following the OECD recommendation the responsible Federal Ministry of Justice re-examined in depth the question of whether guidelines are necessary and proper with regard to uniform exercise of discretion as per Sections 153a and 153c of the Criminal Procedure Code (StPO) and the uniform exercise of discretion in domestic and foreign bribery cases. However, the question was answered in the negative:

- a. Under German criminal procedural law the regulations set out in Sections 153a and 153c of the Criminal Procedure Code grant the public prosecutor discretionary powers when deciding on whether to dispense with criminal prosecution. In view of the fact that German law applies the principle of mandatory prosecution, these discretionary powers have an important compensatory function. They ensure that the proportionality of criminal prosecution is maintained in each case, as required by the constitution. This compensatory function limits the permissibility of guidelines on the uniform exercise of discretion as regards application of Sections 153a and 153c of the Criminal Procedure Code. This constitutes a crucial difference to the principle of discretionary prosecution set out in the Administrative Offences Act. This principle says that the prosecution of administrative offences is at the discretion of the responsible authorities (cf. Response to recommendation 7). The Guidelines for Criminal Proceedings and Administrative Fines Proceedings therefore do not contain any guiding principles on the substantive exercise of discretionary powers as regards criminal prosecution, but rather only procedural instructions (e.g. the duties to examine, hear and report) as regards the application of Section 153a and Section 153c of the Criminal Procedure Code.

In order to guarantee a certain degree of legal uniformity in public prosecutorial practice within the districts of individual prosecutor generals, the public prosecutors' decisions regarding discretionary waiving of a case are generally also counter-signed by their superiors. This system of control is based on the hierarchical structure of public prosecution offices in Germany, according to which each public prosecutor acts as representative for his/her superior and is bound by instructions from him/her. This system has also been adopted in the Guidelines for Criminal Proceedings and Administrative Fines

Proceedings to such an extent that when terminating proceedings pursuant to Section 153c of the Criminal Procedure Code the public prosecutor must immediately seek a decision from the prosecutor general (Guidelines for Criminal Proceedings and Administrative Fines Proceedings No 94 paras 3 and 4, No 95 para. 2, Nos. 96 and 97). This system of control has proved its worth in practice.

- b. Some of the Länder have taken further steps to ensure a uniform exercise of discretionary powers. For example in **Mecklenburg-Western Pomerania** the uniform application of the statutory regulations set out in Sections 153a and 153c of the Criminal Procedure Code is guaranteed by additional meetings at regional and supra-regional level. The individual heads of authorities reserve the right to control the application of the regulations by stipulating that in certain cases equivalent departmental orders may also need to be presented to and signed by the head of department. Upon until now this has led to the uniform application of the law by public prosecutors.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures:

Part II: Issues for Follow-up by the Working Group

3) Follow-up by the Working Group

The Working Group will follow up the issue below:

1. The effectiveness of the reporting of the suspected bribery transactions by the tax authorities in practice (Revised Recommendation, Article I);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

- a. Pursuant to Section 386 subsection 2 of the Fiscal Code (AO) the tax authority may only carry out preliminary proceedings independently if the offence in question exclusively constitutes a tax offence. Should the Land tax authorities decide that the offence constitutes a tax offence in conjunction with a corruption offence, they will pass the matter on to the public prosecution office. Conversely, the public prosecution offices are obligated pursuant to Section 116 of the Fiscal Code to inform the tax authorities of any facts which justify the suspicion of a criminal offence.

This system has proved its worth in practice. Several investigation proceedings based on infringement of the Act on Combating International Bribery were initiated following reports of a suspected offence from the tax authorities.

- b. In the Länder co-operation between the tax authorities and the criminal prosecutorial authorities is sometimes underpinned by special organisational and personnel measures. In **Hamburg** when dealing with corruption offences the Internal Investigations Department can draw on the help of a tax official responsible for investigating suspected tax evasion. This tax official spends 70% of his/her time helping criminal police investigations and 30% of his/her time investigating suspected cases of tax evasion. This twofold function allows information to be exchanged between the police (as the criminal prosecutorial authority) and the tax administration (audits and investigation of suspected tax evasion).

The Working Group will follow up the issue below:

2. The effectiveness of the operation of the new financial intelligence unit within the BKA under the new Money Laundering Act in practice (Revised Recommendation, Article I);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The main emphases of the new Money Laundering Act lay in restructuring the Federal Criminal Police Office's (BKA's) German Financial Intelligence Unit (FIU) and making it more effective, in particular with a view to improving international co-operation with FIUs in other countries. The establishment of the FIU and its organisational integration within the BKA has proved its worth. Co-operation at national and international level runs smoothly and without any problems. The German FIU was accepted as a member of the Egmont Group in July 2003. The immediate goal of optimising information regarding money laundering in Germany has been achieved.

One further aspect should be highlighted, namely that a great many of the reports of suspected cases of money laundering contain information that is relevant for investigations. Such reports have led to around 36% of cases being investigated. In these cases there were in fact indications confirming the suspicion of a crime pursuant to Section 261 of the Criminal Code (money laundering) or of another criminal offence, including tax offences, which constituted a well-founded suspicion meriting criminal prosecution. The proceedings were passed on to the responsible office for further processing. The FIU's 2003 Annual Report (www.bka.de) contains further details.

All in all it is significant that the recommendations of the Financial Action Task Force on Money Laundering (FATF) set the decisive standard in the prevention of money laundering and the combating of the financing of terrorism. In view of the existing regulations, the close international co-operation in practice and the fact that the work of the FIU is already being evaluated by various organisations (Council of Europe, European Union, FATF, IWF), the required development of legal and organisational framework conditions has been comprehensively safeguarded.

The Working Group will follow up the issue below:

3. The application of sanctions under the legislation implementing the Convention (i.e. the foreign bribery, money laundering and accounting offences) [Convention, Articles 3, 7 and 8.2; Revised Recommendation, Article V.A(iii)];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Cf. the responses to recommendation 6 as well as the report on investigation proceedings and preliminary investigations.

The Working Group will follow up the issue below:

4. The impact of the exception for the money laundering offence where the predicate offence is bribery of a foreign MP, on the effective detection of foreign bribery in practice (Convention, Article 7; Revised Recommendation, Article I);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

According to applicable Germany law the bribery of a foreign MP does not constitute a predicate offence of the crime of money laundering as per Section 261 of the Criminal Code. The Länder did not report that this has any negative consequences for the effective uncovering of cases of foreign bribery.

Despite this fact, Germany intends to make legal changes in this area: Within the framework of implementing the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 (cf. comments on recommendation 1, under a) (1.)), the bribery of national, foreign and international MPs is to be included in the catalogue of predicate offences of money laundering.

The Working Group will follow up the issue below:

5. The adequacy of the statute of limitations for the foreign bribery offence (Convention, Article 6);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The period of the statute of limitations for bribery of a foreign public official – like the bribery of a German public official – is five years (Section 78 subsection 3 no 4 Criminal Code). The period of limitations commences as soon as the offence is completed. If a result constituting an element of the offence only occurs later, then the statute of limitations commences at that time (Section 78a Criminal Code). For example, the running of the statute of limitations can be interrupted by a request for mutual legal assistance (Section 78c subsection 1 no 12 Criminal Code) and then commences to run anew. Prosecution is barred by the absolute lapse after 10 years (Section 78c subsection 3 Criminal Code), unless the act constitutes a serious case of taking or offering of bribes (Section 335 Criminal Code). In such cases the statute of limitations shall be tolled at most for a period of five years if the preconditions set out in Section 78b subsection 4 of the Criminal Code are fulfilled. In certain cases, therefore, prosecution is barred by the absolute lapse after 15 years.

The Federal Ministry of Justice is not aware of any case to date in which preliminary proceedings on suspicion of bribery of a foreign public official were terminated because they were statute-barred.

However, as is to be expected, the **Draft Law Amending Statutory Limitation Rules Under Criminal Law** will be of significance for the prosecution of bribery of foreign public officials. The Draft Law was passed by the German government on 13 April 2005 and is now going through the parliamentary legislative procedure. To date the period of the statute of limitations continues to run during extradition proceedings. In contrast, the Draft Law envisages that the period of limitations shall cease to run for as long as the accused is staying abroad and the German criminal prosecutorial authorities are trying to effect his/her extradition. The period of the statute of limitations does not recommence to run until the perpetrator has been handed over to the German authorities or the request for

extradition has been rejected or withdrawn. In contrast to the interruption of the period of limitations based on Section 78c of the Criminal Code, the time-point at which prosecution is barred is postponed in such cases. The legislation is to be applied to all proceedings which are pending when it comes into force.

The Working Group will follow up the issue below:

6. Whether, in practice, the sanctions against legal persons for the foreign bribery offence are effective, proportionate and dissuasive (Convention, Articles 2 and 3; Phase 1 Evaluation, section 2).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Länder reported no cases in which sanctions were imposed on legal persons on account of bribery of a foreign public official.

However, **Bavaria** reported that fines imposed on legal persons for national corruption offences currently total over 8.5 million EUR.