



Bundesrepublik Deutschland
Federal Republic of Germany

Bundesministerium des Innern
Federal Ministry of the Interior

Combating Corruption in Germany

**„Vice President's Conference on Fighting Corruption and Safeguarding Integrity
Among Justice and Security Officials“, Washington, February 24-26, 1999**

1. Introductory Comment

Corruption in industry and the administration causes considerable economic damage. The state must therefore take appropriate action against corruption and must not shy away from radical measures. The citizens' confidence in the integrity of the state is one of the cornerstones of our society.

This confidence remains unchanged in Germany; but it must not be shaken in the future. In the federal system of the Federal Republic of Germany, the Federal Government, the *Länder* and the local authorities are called upon to jointly make every effort to prevent corruption in any form and to combat cases of corruption with all available means.

Experience to date shows that particular importance can be attached to the prevention of corruption in the following areas in Germany:

- Awarding contracts in the public administration, in particular in the construction sector,
- Granting concessions, **licences** and permits,
- Setting and levying fees and
- Awarding public funds and grants

The cases of corruption in public authorities in Germany discovered to date indicate that they have only been isolated cases. Nevertheless the damage to the community incurred in this way must not be underestimated. In comparison to the citizens' loss of confidence in the integrity and functioning of the state and the administration, the economic damage incurred by corruption is very slight.

The Federal Government is of the opinion that effectively combating corruption is of great importance for safeguarding internal security.

2. Figures

The state administration in Germany has a federal structure. The *Länder* and local authorities together employ some 1.4 million civil servants and the Federal Government employs some 370,000 civil servants.

In terms of **disciplinary law** action was taken against Federal civil servants in only twelve cases in Germany in 1997. However, with this figure we must bear in mind that civil servants who have been sentenced by a criminal court in corruption cases usually leave the civil service with the result that the basis for disciplinary proceedings has been removed.

According to the police criminal statistics, i.e. the list of all **criminal offences** processed by the police including punishable attempts, there is an upward trend for crimes involving corruption between 1996 and 1998. The precise figures for 1998 are not yet available.

The figures for the cases registered with the police for the previous years:

	1996	1997
Acceptance of an advantage (Section 331 Criminal Code)	621 cases	1,068 cases
Taking a bribe (Section 332 Criminal Code)	1,281 cases	1,239 cases
Granting an advantage (Section 333 Criminal Code)	474 cases	406 cases
Offering a bribe (Section 333 Criminal Code)	1,917 cases	1,493 cases
Offering bribes to civil servants without life tenure (Section 12 Unfair Competition Act)	149 cases	198 cases

3. Criminal Law Regulations

The criminal law means of sanction in force for many years in Germany were tightened considerably in 1997 with the introduction of the Act to Combat Corruption.

The relevant criminal law regulations have been enclosed with this paper at Annex 1.

3.1 Acceptance of and granting an advantage (Sections 331,333 Criminal Code)

Anyone who accepts, demands or allows himself to be promised an advantage for performance of an official duty will be punished by imprisonment of up to three years. In this connection it is not necessary for the advantage to be given in return for a specific official act. So-called “palm greasing” is thus punishable. Neither is it necessary for the advantage to benefit the public official directly, the advantage may also be granted to a third party (for example a family member, an association, etc.). The acceptor of the advantage receives exactly the same punishment as the granter of the advantage.

3.2 Taking and Offering Bribes (Sections 332,334 Criminal Code)

If the advantage is destined for a specific official act and the public official thus infringes his official duty, there is a prison sentence of up to five years. In this case, too, the “giver” receives exactly the same punishment as the “taker”.

According to Section 335 of the Criminal Code the prison sentence is a minimum of one year and a maximum of ten years in particularly serious cases of offering or taking bribes. **The** level of an advantage or the repeated acceptance or granting of advantages, in particular the perpetration of such offences on a commercial or gang basis, determines whether a case is

deemed to be particularly serious. This main aim of this provision is to take account of those cases where corruption and organised crime are linked.

3.3 **Offences against Competition (Sections 298,299 Criminal Code)**

As a result of the above-mentioned Act to Combat Corruption, protection under criminal law for free competition has been upgraded. Anyone who submits an offer in a tendering procedure (invitation to tender or single tender actions) that is based on an unlawful arrangement can be punished with a prison term of up to five years. Until 1997 these cases were punishable to a limited extent pursuant to the provision of Section 12 of the Unlawful Competition Act (cf. item 2: Figures above).

3.4 **Group of Possible Perpetrators**

The criminal provisions outlined in items 3.1 and 3.2 above affect civil servants with life tenure and judges as well as those persons who offer or give a civil servant or a judge an advantage. Insofar as civil servants without life tenure, wage earners or third parties are engaged specifically for the public sector under the terms of the Act on Service and Loyalty at the beginning of their employment, these persons are placed on equal terms with civil servants under criminal law.

German criminal law furthermore gives courts the opportunity to seize objects that are associated with the **offence**. This ensures that illegally earned profits are siphoned off and the perpetrators are not left with the advantages of their illegal activity.

The frequently heard claim that monies used for bribery can be offset against tax as operational expenses in Germany is not true. If a “donor” is sentenced, his illegal grants may not be deducted as operational expenses.

4. Rules for Federal Public Employees on Protection against Corruption

4.1 Principles

Every German civil servant has to perform his official duties conscientiously, to abide by the Constitution and the individual statutes and to exercise justice to everyone. As a servant of the entire population a civil servant has to carry out his official duties impartially, striving to safeguard the common good in the process. He has to avoid any action that could make him appear biased. The general duty to conduct official tasks impartially, fairly and selflessly prohibits a civil servant from making an official activity dependent on the granting of any advantages or from exploiting his position to his own advantage. Above and beyond this, a civil servant must also avoid any appearance that he may be influenced by favours in his official activities. Section 70 of the Act on the Federal Civil Service therefore states that a civil servant may not accept any rewards or gifts in relation to his office. Exemptions require the consent of the highest administrative authority, i.e. the Ministry. Provisions with the same content are also to be found in the Civil Service Acts of the *Länder* and in the collective bargaining agreements for civil servants without life tenure and wage earners for the Federal Government, the *Länder* and local authorities.

4.2 Administrative Procedure

According to Sections 20 and 21 of the Administrative Procedures Act, an employee of an authority may not participate in an administrative procedure if his own interests or the interests of his family are affected. When there is a reason for mistrust concerning impartial exercising of office – or if such a reason is alleged -the head of the authority is to be informed. He can then forbid the civil servant concerned from participating in this matter.

4.3 More Recent Regulations

In order to permit more effective monitoring of all activities by the employer, the rules on additional occupations for civil servants were tightened in 1997. In principle, all private additional occupations are subject to permission; a civil servant who carries out an additional occupation without permission is guilty of a breach of official duty. Any activities in the literary, scientific and artistic spheres, lectures and authorship of expert opinions have to be reported, as do any fees.

Under the amendment to the Act to Reform Federal Civil Service Law of 1997, in every case where a suspicion of the prohibited acceptance of rewards or gifts has not been allayed, a formal disciplinary procedure has to be started automatically. In these cases a superior can no longer stop the procedure or issue a disciplinary order. The aim of this amendment is to pursue more effectively under disciplinary law – in the area of corruption – those actions of a civil servant that are not yet relevant under criminal law but that are contrary to official duties.

4.4 Consequences under Criminal Law and under Disciplinary Law

If a civil servant with life tenure is sentenced to imprisonment of at least one year by a criminal court, his civil service status ends with immediate effect and he loses his remuneration and pension rights. Civil servants without life tenure and wage earners can have their contracts terminated in such a case. If the civil servant has committed a disciplinary **offence** that is not also a criminal offence, disciplinary proceedings will be started against him.

Disciplinary measures include:

- Reprimands
 - Fines
 - Salary reductions
 - Demotion
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- Removal from office and
- Abrogation of pension entitlement.

The **authority** itself can impose reprimands and fines; only the disciplinary court can impose the other measures. Unlike criminal law there is also a “small regulation for principal witnesses” in disciplinary proceedings: a civil servant who has been removed from office can receive a supplement from his 65th birthday onwards if he helps to prevent or clear up cases of corruption.

5. In Particular: Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 17 June 1998

All the measures in the Directive aim at preventing corruption from occurring. They are preventive measures to make all Federal employees aware of the problem and to implement control mechanisms in all Federal authorities. Each individual Ministry has to order and implement these measures for itself and for the authorities in its field of operation. The Directive is enclosed at Annex 2 of this overview.

The governments of the 16 German Federal *Länder* have in the meantime started to lay down similar measures for their *Land* administrations.

The measures that all Federal offices can take to prevent corruption are based on this Directive. Areas of work at risk of corruption are to be identified in every Federal office. Risk analyses are to be carried out for areas of work at particular risk of corruption. In this connection, an analysis should be carried out to identify how many and which precautions should be introduced (for example, measures for greater transparency in decision-making, directives for the so-called “more eyes principle”, etc.). If the results of the risk analyses or special circumstances so require, the head of the authority should order an administrative unit to carry out an internal review. This review should randomly control ongoing and completed procedures and the decisions taken in the process. If there are deficits in the prevention of corruption it

recommends appropriate changes, or if there is a suspicion of corruption it informs the management of the authority, which should then call in the public prosecutor's office.

In areas at particular risk of corruption, personnel rotation is to be recommended.

Every employee is to be handed a Code of Conduct against Corruption. The Code contains eight maxims, which are described in detail there:

1. Set an example. Show that you do not tolerate corruption.
2. Inform your employer in the event of attempts at corruption.
3. Call your colleagues as witnesses.
4. Work transparently.
5. Avoid collisions with private interests.
6. Help to clear up corruption.
7. Support your authority in removing organisational deficits that are conducive to corruption.
8. Learn about corruption prevention.

The Directive also ensures that contact persons for corruption prevention are appointed in every office. They should be the contact persons for employees, citizens and the office management and they should take note of signs of corruption and take appropriate countermeasures.

Furthermore, the Directive contains regulations of measures to be taken with public contracts. Most of the cases of corruption detected so far in Germany have become known in connection with the awarding of public contracts. For this area that is at particular risk there is therefore a bundle of special preventive measures that are tailored to the special nature of public procurement.

In this connection the directives go beyond the existing detailed legal requirements (for example, the requirement of public invitation to tender). A

second official, who is then jointly responsible for the decision, must now check cases of exemption from the requirement of public invitation to tender; Detailed records must now be kept of all public contracts that can then be checked for unlawful influences in the awarding of the contract.

Planning, the awarding procedure and accounting have to be separate from each other. An anti-corruption clause is included in contracts with suppliers. This clause states that the contract will be rescinded immediately if the provider has made an illicit payment and that the provider has to pay a contractual penalty. Companies that have been proved to be guilty of serious misconduct, e.g. corruption, can be excluded from Federal contracts. In future, these companies should be recorded in a central register. All authorities that want to award a contract would have to inquire whether the company that is to be awarded the contract is listed in the register.

6. International Cooperation

At **EU** level, too, considerable efforts have been taken in recent years to further improve the fight against corruption:

The **Convention on the protection of the European Communities' financial interests** of 26 July 1995, transposed in Germany by means of the EC Financial Protection Act, laid down EU-wide criminal law minimum standards to combat corruption, regulations on jurisdiction and the "ne bis in idem" principle for criminal proceedings in several Member States;

The **Protocol to the Convention on the protection of the European Communities' financial interests** of 27 September 1996, transposed in Germany by means of the EU Bribery Act, strengthened the agreement of criminal law minimum standards to combat the taking and offering of bribes by means of an obligation to place international civil servants on an equal footing with national civil servants, insofar as the national provisions exceed the EU-wide minimum standard. Bribery of and by Community civil servants and officials of the Member States of the European Union is comprehensively covered;

The as yet unratified **Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union**, transposed in Germany by the EU Bribery Act, supplements the existing provisions with regulations on jurisdiction and the responsibility of the European Court of Justice.

- The **Joint Action of 22 December 1998 on corruption in the private sector**, not yet transposed in Germany, is designed to supplement the taking and offering of bribes in the private sector by laying down criminal law minimum standards and supplementary provisions concerning the responsibility of legal persons. For Germany we can say that this goal is already largely met by Section 299 of the Criminal Code.

At **OECD level** the **Convention of Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997** deserves our particular attention. The Convention has been implemented in Germany by means of the Act to Combat International Bribery that entered into force on 15 February 1999 (Annex 3). It governs minimum standards for the bribery of foreign officials (**including judges, soldiers and officials**) in international business transactions and is supplemented, among other things, by regulations of the responsibility of legal persons. A Working Group supervises the implementation of and adherence to the Convention. In a first stage, the USA, Germany and Norway will be the subject of national examinations.

Finally, at **Council of Europe level** the **Criminal Law Convention on Corruption** signed on 27 January 1999 and not yet implemented by Germany also deserves mention. It obliges Member States of the Council of Europe to introduce criminal law regulations for the taking of bribes by and offering of bribes to national, foreign and international public officials, members of public legislative and administrative bodies and for the taking and offering of bribes in the private sector. Responsibility for monitoring adherence and implementation lies with the “**GRECO Committee**” (Groupe d’Etats contre la Corruption).