



Anti-corruption and civil society in Germany

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Bishkek, January 2014



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1. Anti-corruption policy in Germany: an overview

On the level of corruption in Germany

- German citizens: 65% believe that corruption is a serious problem in the public sector, 57% say that the level of corruption has increased over the past two years (TI GCB 2013)
- Different view: experts' perception of political and administrative corruption in Germany (TI CPI) 2013: 78/100 points (rank 12/177)
- Victimization/participation – percentage of people who paid a bribe in the last 12 months: 2% (TI GCB 2010)
- Suspected acts of corruption registered by the police in 2012: 8.175
- Convictions by German criminal courts because of bribery as main offence in 2009: 485



1. Anti-corruption policy in Germany: an overview

Foundations of German anti-corruption policy

- No single anti-corruption policy because of the federal political system
- No anti-corruption agency → decentralized approach
 - Some law enforcement authorities have specialized anti-corruption units; many administrative bodies have internal audit units, ombudsmen and/or anti-corruption contact persons
- Regulatory framework mainly by governments and parliaments at federal and Länder level
- Vertical accountability/control mechanisms within ministries and administrative bodies (intra-organizational, hierarchy within the executive branch, and supervision by higher levels of government)



1. Anti-corruption policy in Germany: an overview

Foundations of German anti-corruption policy

- Horizontal accountability/control mechanisms within the executive branch and scrutiny by the respective parliament
- Independent Courts of Auditors at federal and Länder level
- Law enforcement authorities: independent, but police and public prosecutors organizationally attached to executive branch
- Especially larger companies have compliance officers/departments
- Media make corruption cases public (blaming and shaming, but they rarely detect corruption)



1. Anti-corruption policy in Germany: an overview

Repressive measures:

Criminal law – Most important corruption related criminal offences

- Acceptance of benefits by (foreign/international) public servants with/without breach of duties
- Giving benefits to (foreign/international) public servants with/without breach of duties by the public servants
- Active/passive bribery in the private sector including a distortion of competition
- Active/passive bribery involving members of parliament
- Active/passive bribery of voters
- Embezzlement and misappropriation of funds
- Several other offences concerning misuse of public office



1. Anti-corruption policy in Germany: an overview

Disciplinary law

Complementary measures or potential repressive measures for public servants even if criminal law does not apply:

- Reprimand
- Salary cut
- Downgrading
- Dismissal

Civil law

Obligation of public servants to pay compensation if corrupt behavior has damaged public funds or third parties



1. Anti-corruption policy in Germany: an overview

Preventive measures at federal level

Most important framework measure: Directive of the Federal Government to prevent corruption in the federal administration (2004):

- Risk analysis (detect working areas particularly exposed to corruption)
- Transparency and four-eye-principle
- Careful selection of staff for endangered areas
- Contact persons for the prevention of corruption
- Special unit for the prevention of corruption (if necessary)
- Awareness raising and instruction
- Further anti-corruption training



1. Anti-corruption policy in Germany: an overview

Preventive measures at federal level

Most important framework measure: Directive of the Federal Government to prevent corruption in the federal administration (2004) (continued):

- Strict hierarchical and functional supervision
- Inform the public prosecutor and the supreme federal authority
- Public procurement: publish tenders, separation of tasks (e.g. preparation, tender, selection, accounting), check trustworthiness of bidders
- Insert anti-corruption clauses in public contracts
- Observe specific rules for donations and sponsoring
- Place private recipients of federal funds under the obligation to apply the Directive analogously



1. Anti-corruption policy in Germany: an overview

Preventive measures at state level (Länder)

Most important framework measure: Concept to prevent and fight corruption by the conference of the Länder ministers of the interior (1995):

- Intensified awareness raising and anti-corruption training
- Optimization of process organization
- Use of hierarchical and functional supervision
- Integration of old organizational structures and creation of new organizational structures
- Rotation of public servants
- Harmonize rules on acceptance of benefits



1. Anti-corruption policy in Germany: an overview

Preventive measures at state level (Länder)

Most important framework measure: Concept to prevent and fight corruption by the conference of the Länder ministers of the interior (1995)
(continued):

- Restriction of secondary employments
- Acceleration of disciplinary proceedings
- Enforce claims for compensation
- Obligation of tax authorities, courts of auditors and other authorities to report suspected cases of corruption
- Obligation to publish all tenders nationwide
- Creation of registers of corrupt companies



1. Anti-corruption policy in Germany: an overview

International anti-corruption regimes

- Since mid-1990s: growing importance of anti-corruption measures by international organizations
- Most important anti-corruption regimes for Germany: European Union, Council of Europe, OECD, United Nations
- International anti-corruption hard and soft law as well as rigorous intergovernmental monitoring → adaptation of national anti-corruption measures
- Mixed implementation record: e.g. UN Convention against Corruption and Council of Europe conventions still not ratified



2. Civil society organizations in the fight against corruption

Pluralism of anti-corruption NGOs in Germany

- Headquarters of Transparency International (TI Secretariat)
- Transparency International Germany (National Chapter)
- Several smaller organizations, e.g. LobbyControl, Abgeordnetenwatch, Business Crime Control, Pro Honore, Sport Transparency, MEZIS und Whistleblower-Netzwerk



2. Civil society organizations in the fight against corruption

Anti-corruption activities German NGOs are more or less capable to perform

- awareness raising
- blaming and shaming
- agenda setting, pushing for reforms

Anti-corruption activities German NGOs are hardly capable to perform

- detecting corruption cases
- controlling/monitoring (complex) private or public actors
- enacting rules
- putting strong pressure on perpetrators or inactive policy-makers



2. Civil society organizations in the fight against corruption

Different strategies of anti-corruption NGOs

TI Germany as an example:

- Ca. 1000 members, advocacy work by 100-150 active volunteers organized in several regional groups and sectoral working groups, staff: 5 (only administrative work)
- Coalition approach (aim to build coalitions for good governance reforms): rather cooperative than confrontative
- Some companies, administrative bodies and municipalities are corporate members (code of conduct, exchange of views on anti-corruption)



3. Comparative remarks on Public Advisory Boards in Kyrgyzstan

- Only tentative considerations
- Civil society in Germany: no institutionalized good governance/anti-corruption monitoring of public institutions such as PABs
- In Germany, civil society actors
 - are e.g. members of the supervisory boards of public broadcasting corporations and public social insurance institutions
 - take part in round-tables or discussions convened by the government
 - are members of (mostly ad hoc) expert bodies appointed by government or parliament to make policy recommendations
- In most cases rather limited influence of civil society actors/NGOs



3. Comparative remarks on Public Advisory Boards in Kyrgyzstan

- German anti-corruption NGOs/civil society actors usually try to influence political and administrative institutions from the outside
- Despite freedom of information legislation and other sources: German civil society often dependent on government and public administration in order to get documents, data, initiatives and other information (while they have little to offer)
- In Germany, a PAB model would probably be refused by several NGOs that do not want to be too close to the state. TI Germany is already sometimes criticized (co-operation with companies, rather non-confrontative coalition approach)



3. Comparative remarks on Public Advisory Boards in Kyrgyzstan

- Drawing on the experiences in Germany, the PAB model seems particularly useful when
 - civil society actors and anti-corruption NGOs as well as independent mass media are rather weak and/or
 - the political and administrative institutions lack expertise private actors can offer and/or
 - vertical and horizontal accountability/control mechanisms in the public sector lack or do not function properly and/or
 - PABs have adequate means to fulfill their tasks and may avoid their politicization