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Control of Corruption in Germany¹

1. Introduction

Writing in 2020 in *Foreign Affairs*, Francis Fukuyama wondered why some countries have done better than others in dealing with the coronavirus crisis, to answer that “Countries with ... a competent state apparatus, a government that citizens trust and listen to, and effective leaders—have performed impressively, limiting the damage they have suffered”.² He went on to praise Germany and South Korea for precisely these qualities.

This is exactly how Germans think of themselves and are seen by the rest of the world: a benchmark in good governance, the country of a perfect social contract on which public trust is based. The World Bank’s (WB) World Governance indicators (WGI) Control of Corruption (CoC) and Government Effectiveness (GE) indicators rank Germany among the least corrupt and most efficient governments in the world. Due to this solid background reputation Germany is not a leader in corruption detecting and prosecution: its historical advantage is on building merit based administration and a high integrity body of magistrates and public servants. Transparency International Germany recently remarked this on the occasion of the Wirecard scandal, calling for a fundamental reform of financial supervision and a comprehensive whistleblower protection law.³

What is to be learned from how Germany deals with control of corruption? This brief report will try to answer this question reviewing Germany’s institutional arrangements, as well as their outcome as shown in both fact based and perception indicators.

1 This is a report of the European Center for Anticorruption and State-Building (ERCAS) at Hertie School, which received contributions from Maximilian Faour, Roberto Martinez Barranco Kukutschka and Francesco Bono. Prof. Dr. Alina Mungiu-Pippidi supervised the editorial work.

2 Fukuyama, F., *The Pandemic and Political Order*, 2020, <https://www.foreignaffairs.com/articles/world/2020-06-09/pandemic-and-political-order> [accessed 06.12.2020]

3 Transparency International, *Wirecard Scandal: Transparency Germany calls for reform of financial supervision and better protection of whistleblowers*, 2020, <https://www.transparency.org/en/press/wirecard-scandal-transparency-germany-calls-for-reform-of-financial-supervision-and-better-protection-of-whistleblowers> [accessed 06.12.2020]

1.1. Institutional framework

Germany is a federal parliamentary republic consisting of sixteen states (*Länder*). The federation and the states have concurrent legislative powers in areas related to corruption prevention and asset recovery⁴; however, a unitary criminal legislation applies. German anti-corruption legislation is largely divided between the Criminal Code and the Administrative Offences Act. The German Criminal Code applies to individuals and makes it illegal to offer, pay or accept a bribe. The German Criminal Code (StGB) contains, for example, provisions of money laundering (§ 261 StGB), embezzlement (§ 266 StGB), bribery (§ 334 StGB) and others. The Law on Fighting Corruption has expanded the scope of individuals covered by the act, now including German public officials in domestic and foreign transactions, members of parliament, delegates, and EU officials.⁵ The German Criminal Code defines “public official” in Section 11 as anyone who: (1) serves as civil servant or judge; (2) otherwise carries out public official functions; or (3) has otherwise been appointed to serve with a public authority or another agency, or has been commissioned to perform public administrative services regardless of the organizational form chosen to fulfil such duties. The definition of public official is very broad and includes virtually any individual who exercises public functions. In particular, the definition is not limited to individuals in government functions. It also encompasses individuals employed by universities or public hospitals (i.e., all employees of public sector entities).⁶ Other relevant legislation includes the Money Laundering Act, which criminalizes offenses including fraud, forgery, and embezzlement, and imposes due diligence and reporting requirements on financial institutions and the majority of the wholesale and retail sector; Act against Restraints of Competition (GWB), Freedom of Information Act (IFG), Money Laundering Act (AMLA) and Act on International Legal Assistance in Criminal Matters (IRG). Whistleblowers have some legal guarantees against arbitrary dismissal in the public and private sector, but there is no strong separate law regulating whistleblowing. Public officials are obliged to report reasonable suspicion of corruption to the highest service authority or law enforcement agency under the Act on Federal Civil Servants.⁷

The relevant authorities applying the anti-corruption legal framework are the Federal Ministry of the Interior, Building and Community (BMI), Federal Ministry of Justice and Consumer Protection (BMJV), the Supreme Audit Institution (BRH), Financial Intelligence Unit (FIU), the Federal Office for Justice (BfJ), the Federal Criminal Police Office (BKA), and the competent authorities (prosecution offices and courts) of the federal states.⁸ Germany has a high quality bureaucracy and a largely independent

4 UN Implementation Review Group, Second Resumed Tenth Session: Executive Summary Germany, 2019, Abu Dhabi: 2

5 GAN Integrity, Germany Corruption Report, last updated August 2020, <https://www.ganintegrity.com/portal/country-profiles/germany/> [accessed 06.12.2020]

6 Behr, N. and Lohner, A., Anti-Corruption in Germany, no date, <https://globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-germany/> [accessed 06.12.2020]

7 Idem note 7.

8 Idem note 6.

judiciary. The salaries of German magistrates and anticorruption officials are in line with the average income in this highly developed country.⁹

Germany's good control of corruption has been achieved long before the development of an international legal anticorruption framework. Still, Germany has ratified the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption (UNCAC), and has taken recent steps to comply with international regulation.

1.2. The process of controlling corruption

Germany's anticorruption institutional architecture owes its structure to the country's federalism and subsidiarity. Although efforts have been made in recent years to come closer to the UNCAC recommendations, the organically developed separate states and the strong cities each have contributions of their own, resulting in a diverse institutional landscape, very different from the centralized anticorruption agencies from developing countries. These institutions are easier to understand if we structure them in relation with the process of controlling corruption.

1.2.1 Prevention

The academic literature on corruption, as well as UNCAC stress the importance of preventing corruption. Germany excels on this chapter, in particular when administrative corruption is concerned. To this end, the federal administration has created a series of regulations ranging from general guidelines and detailed rules prohibiting the acceptance of gifts to regulations on sponsorship and internal auditing. The most important regulations are compiled in a 208-page brochure published by the Federal Ministry of the Interior¹⁰.

With the annual reports on "Corruption Prevention in the Federal Administration," the federal government gives account to the German Bundestag on the implementation of the corruption prevention guidelines. While reporting is thus centralized, prevention remains a completely decentralized affair, with each public organization responsible in implementing its conflict of interest and integrity rules. Citizens can petition classic institutions, such as committees for petitions (e.g. Bavarian legislature), or newer ones, such as the Ombudspersons against Corruption. Typically, these are either law firms or individual lawyers external to an organization to whom complaints can be addressed to be handled in confidentiality¹¹. Complaints about the lack of impartiality of public procurement, for instance, can be addressed to such instances.

⁹ According to the Council of Europe repository CEPEJ.

¹⁰https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/moderne-verwaltung/korruptionspraevention/korruptionspraevention-regelungen-zur-integritaet.pdf?__blob=publicationFile&v=9

¹¹ For instance, see *Ombudsperson Clemens Scholz Remes; Kanzlei Görg; Kantstraße 164; 10623 Berlin* https://www.bdbos.bund.de/DE/Bundesanstalt/Korruptionspraevention/korruption_node.html

Although the overall level of digitalization in Germany is somewhat inferior to its overall development level, corruption at municipal level is well handled wherever public participation exists and citizens can scrutinize their local government from the planning to the execution phase. At the state level, there are many individual initiatives to make projects more transparent. A good example is the participation platform of the state of Berlin (the German capital is in the same time a 'state' in the federal sense). There one can find an overview of projects of the Berlin administration, as well as numerous opportunities to actively participate in shaping the city. Ideas can be submitted, voted on and discussed. Projects can thus be shaped by the public from the planning phase¹².

1.2.2. Detection

Corruption is by definition hidden, and in particular in countries where corruption is an exception its detection can prove a challenge. A good prevention architecture creates opportunities to address the issues within the organization before resorting to the law enforcement authorities or the media. Contact points for employees often exist such as an internal office to report ethical issues. Many federal states, counties, cities and municipalities have installed anti-corruption officers and/or internal auditors for the entire administration or have assigned this task to individuals in the respective business units. Their task profile usually ranges from preventing corruption to receiving specific information. The same applies to the private sector: Many companies have set up contact points for employees to report suspected corruption. Possible points of contact could be, for example, a "Compliance Department", an "Ethics Officer" or a "Business Practices Office". Because whistleblowing may have negative consequences for the person who has the courage to denounce corruption, it is possible to make an anonymous report.

A good example is the State Criminal Police Office of Lower Saxony, which uses special software. This anonymous reporting procedure is an Internet-based communication platform that allows the whistleblower to be involved in the further course of the investigation without having to reveal his or her identity. It allows whistleblowers to make a detailed report of suspected corruption while remaining completely anonymous. After describing the facts of the case, the whistleblower is asked to set up an anonymous mailbox. This mailbox can be used to receive feedback, answer questions and stay informed about the status of the investigation. The system makes it technically impossible to draw conclusions about the identity of the informant: the computer on which the tips are received is located in a high-security area. Whistleblowers and investigators access the server from their

¹² *Der Regierende Bürgermeister von Berlin – Senatskanzlei
Presse- und Informationsamt, Landesredaktion / Koordinierung Berlin.de
Jüdenstraße 1 10178 Berlin
<https://mein.berlin.de/>*

respective locations. Only the content of the reports is stored, but not the IP address, so that tracing is not possible. In addition, various encryption techniques are used. If the State Criminal Police Office of Lower Saxony does not have jurisdiction over the issue reported by the whistleblower, it forwards the information to the competent authorities in the relevant federal state¹³.

A myriad of control agencies exist, one for every sector, which are supposed as part of their broader mission to enforce rules to collect reports from individuals blowing the whistle on corruption or fraud. In the financial sector this is the role of federal agency BAFIN¹⁴, currently investigated by both a parliamentary committee and prosecutors for the failure of following up on hints received on *Wirecard* during the years and possible conflict of interest of some employees.

Many counties, cities and municipalities have recently installed anti-corruption officers in their administrations, who can often be found on the Internet site of the respective municipality or inquired about by telephone. For example, a hotline and an answering machine have been set up in Berlin at the **Central Office for Combating Corruption**. The Central Office is under the authority of the Berlin Public Prosecutor's Office and primarily performs corruption prevention tasks. The hotline is aimed at public authority employees, citizens and entrepreneurs. It is possible to obtain general advice on corruption prevention issues or to provide specific information on corruption offenses in the administration and in the private sector. Those who do not want a personal contact person and want their anonymity preserved can leave a message on an answering machine instead. In addition, a counsel for combating corruption receives information containing suspicions of corruption offenses and checks their truthfulness and relevance under criminal law. If there are sufficient grounds for suspicion, the facts are reported to the competent supreme state authority. The counsel for combating corruption can assure confidentiality to a whistleblower upon request¹⁵.

For billing fraud and corruption in the healthcare sector, the KKH-Allianz (Kaufmännische Krankenkasse) enables all insured persons, service providers and basically every citizen throughout Germany to submit information on billing manipulation and other misconduct in the healthcare system either by name or completely anonymously. As long as the whistleblower does not disclose

¹³ *State Criminal Police Office of Lower Saxony, Central Office for Corruption (Department 37)*
Am Waterlooplatz 11, 30169 Hannover
<https://www.lka.polizeinds.de/kriminalitaet/deliktsbereiche/korruption/>

¹⁴ [BaFin - Startseite](#)

¹⁵ *Ombudsperson of the State of Berlin for Combating Corruption*
Fabian Tietz
Kurfürstendamm 234 10719 Berlin
Central Office for Combating Corruption at the Berlin Chief Public Prosecutor's Office
Senior Public Prosecutor Björn Kelpin
Elßholzstraße 30-33
10781 Berlin

his name, he is technically protected. For this purpose, KKH-Allianz uses a system that enables a dialog for case clarification despite the anonymity of the whistleblower¹⁶. All these institutions offer the possibility of individual redress and administrative solutions.

1.2.3 Repression

If prevention fails and corruption materializes, legal action, rather than administrative needs being taken. But this way is seldom used in Germany. Suspended sentences or dismissed cases are common. A report on the fight against corruption in Berlin in 2018, for instance, showed increased whistleblowing, with the number of new cases with suspicions related to corruption increasing from 114 in 2017 to 134, but no high-level corruption cases. In only 15 cases, the prosecution pressed charges against the accused. A total of 102 proceedings were closed because the initial suspicions could not be sustained¹⁷. Cases are not public until they reach Courts, so there is little discussion in the media on corruption.

As a rule, the state level is responsible for combating crime in Germany. Basically, different types of contact points can be distinguished among law enforcement authorities:

- Police authorities (state criminal investigation offices, locally responsible police directorates and departments)
- Judicial authorities (focal prosecutor's offices, locally competent prosecutor's offices)
- Integrated investigation units in which the police and judiciary work closely together (for example, in Saxony or in Schleswig-Holstein)
- Counsels for combating corruption (for example, in Rhineland-Palatinate and Berlin)
- Internet-based whistleblower systems (for example, in Lower Saxony and Brandenburg)
- Contact points within the administration

Within states or ministries special task forces may be created, sometimes driven by reputation problems. The police in Hamburg thus created an internal department to fight corruption¹⁸. Germany has no anti-corruption agency. Over 120 prosecutors spread over the country have the task to prosecute bribery and white collar crimes among other criminal offenses. A few bigger prosecutorial offices exist for complex crimes. For instance, bribery is often found associated with money laundering and tax evasion. Crimes like embezzlement and tax evasion carry longer penalties and shorter term limitations than bribery or profit from conflict of interest. These offices are typically involved in such cases.

¹⁶ *Counsel Kaufmännische Krankenkasse – KKH Karl-Wiechert-Allee 61 30625 Hannover*
<https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=118kkh&c=-1&language=ger>

¹⁷ [Berlin has Few Corruption Cases, but Fight Continues – The Berlin Spectator](#)

¹⁸ [DisplayDCTMContent \(coe.int\)](#)

2. Corruption indicators

2.1 Public perception

The general population survey shows that personal experience with corruption is extremely low in Germany at the level of the normal citizen. While around a quarter of Europeans are personally affected by corruption in their daily life on the average in Germany just 9% claim to be affected, and only 2% say they have personally experienced or witnessed a case of corruption in the last 12 months (European average is 5¹⁹). The absence of direct experience with corruption (2% only report it, with 6% the EU average, p 108) and no impact on their lives indicates clearly that public services and the administration that people encounter directly are clean as a rule. A different perception reigns in relation with political parties (61% find that insufficient party funding transparency and regulation exists to control political corruption, p 75), banks, financial institutions and private companies (indicated in relation with bribes, business corruption, p 95) and public procurement (28%, to an EU average of 54% perceive corruption, versus 56% who do not, p 78).

A different picture emerges from the businesses. Another Eurobarometer (EB 2019), this time on European businesses reveals that 33% of German businesses report corruption in relation with vehicle registration, 22% in relation with building permits, and 13% with environmental permits. 25% report corruption in 2019 as “widespread” in public procurement, down from 37% in 2013 and 34% in 2017.²⁰ The EU average is at 53% and quite stable.

Since the introduction of the Corruption Perceptions Index by Transparency International, an average of individual expert scores, Germany has achieved a good score.²¹ Between 2012 and 2019, this score was between 78 and 81. Germany currently achieves 80/100, ranking 9th of 198 countries in the world, only behind Denmark 87/100, Finland 86/100 and Sweden 85/100 from the European Union.

2.2. Judicial indicators

As corruption is difficult to measure directly, a new generation of objective indicators were developed to measure corruption risk²². If the capacity of detection and the enforcement of anticorruption are low, such measures can miss significant corruption. The German federal police

19 Kantar, Special Eurobarometer 502, Fieldwork December 2019; Publication June 2020, pp. 5-6

20 Kantar, Flash Eurobarometer 482: Businesses' attitudes towards corruption in the EU, Fieldwork September-October 2019; Publication December 2019. Available at <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/248>

21 Transparency International, Corruption Perceptions Index: 2019 Results Germany, no date, <https://www.transparency.org/en/cpi/2019/results/deu> [accessed 06.12.2020]

22 Mungiu-Pippidi, A. and Fazekas, M., How to Define and Measure Corruption, In: Heywood, P. (Ed.) and Mungiu-Pippidi, A. (Ed.), A Research Agenda for Studies of Corruption, 2020, Cheltenham: 7-26

reports for the year 2019 that a total of 5,428 corruption offences were registered by the police.²³ Concomitant offences include, in particular, fraud and breach of trust, forgery of documents, agreements restricting competition in tenders, obstruction of justice, false certifications in office, violations of official secrecy and violations of ancillary criminal laws.

Most cases of bribery in 2019 (33 %) were associated to the public service sector (40% in 2018; 48% in 2017). Such reports may not fully reflect the extent of the problems. Corruption related criminal investigations are often belated in Germany, being started by US under Foreign Corrupt Practice Act or, as in the case of Wirecard, entirely misdirected.²⁴ *Wall Street Journal* remarked that: “Germany has a patchy record in fighting corporate crime. Volkswagen AG’s giant emissions-cheating scandal was uncovered by California. The U.S. has imposed more money-laundering fines on troubled German lender Deutsche Bank AG than Germany has”.²⁵

2.3 Administrative indicators

While no systematic research on corruption exists, **the Federal and state Audit Offices** periodically report on corruption risks, prevention and awareness. For instance, the Berlin Court of Audit found serious violations of budget and public procurement law in Spandau and Charlottenburg-Wilmersdorf district office.²⁶ The Audit Court of Saxony examined the anti-corruption measures in the area of responsibility of the Saxon State Ministry of Economics, Labor and Transport. It found that essential obligations to anti-corruption regulations were not met and that there is no systematic discussion of the issue of fighting corruption.²⁷

Auditors have also criticized the cost runoffs which have become customary in Germany, once a country of great reputation for the effectiveness of public works. Politically endorsed infrastructure projects seem to backfire exactly as they do in the poor countries where everybody expects them to be corrupt. The Berlin Brandenburg airport BER's budget started at €2.8 billion (\$3.3 billion), but

23 Federal Criminal Police Office (Bundeskriminalamt): Report on Corruption 2019 [Bundeskriminalamt, Korruption: Bundeslagebild 2019, 2020], Wiesbaden: 5

24 See cases like Legal Tribune Online, Kein Anfangsverdacht wegen Bestechlichkeit: Staatsanwaltschaft ermittelt nicht gegen Philipp Amthor, 2020, <https://www.lto.de/recht/nachrichten/n/gsta-berlin-leitet-kein-ermittlungsverfahren-gegen-philipp-amthor-wegen-bestechlichkeit-ein/> [accessed 15.11.2020]; Legal Tribune Online, Suspendierter Regensburger Oberbürgermeister: Keine Strafe für Joachim Wolbergs, 2019, <https://www.lto.de/recht/nachrichten/n/lg-regensburg-keine-strafe-korruption-vorteilsnahme-joachim-wolbergs/> [accessed 15.11.2020].

25 Fairless, T., et al., How Germany’s SEC Dismissed a Decade of Warnings About Wirecard, 2020, <https://www.wsj.com/articles/how-germanys-sec-dismissed-a-decade-of-warnings-about-wirecard-11594907212> [accessed 06.12.2020]

26 Rechnungshof von Berlin, Jahresbericht 2020, 2020, Berlin: 186; Rechnungshof von Berlin, Jahresbericht 2019, 2019, Berlin: 260

27 Sächsischer Rechnungshof, Jahresbericht 2019, 2019, Leipzig: 177-180

it ended up costing over €4 billion more.²⁸ Authorities identified -though late- corruption too.²⁹ A department head was jailed in 2016 for accepting bribes from a contractor that went bankrupt.³⁰ Research by Hertie School of Governance³¹ shows that public large-scale projects in Germany have proven, on average, 73 percent more expensive than estimated, especially in areas classically prone to corruption, such as ICT, energy and defense.

2.4. Transparency and accountability indicators

Transparency in Germany varies across sectors. With a score of 10 (on a 1-14 scale), Germany is slightly under the European average on *de facto* transparency³². However, it leads in fiscal transparency, according to www.integrity-index.org.

The reason why other sector lag is the insufficient digitalization – for instance, in the financial sector. The lack of integration of various databases makes it difficult to uncover beneficial ownership, despite the existence of a **Transparency Register** (Transparenzregister) introduced in 2017.³³ The information in the Transparency Register and the Commercial Register has been made publicly available from 2020. Access is not automatic for the Transparency Register, which uses a manual check for each case, but works for the **Commercial Register**.

According to *europam.eu*, a legal data repository, compared to the other European countries, Germany scores above average in conflict of interest regulation (DE 54; EU Average 40). Most conflict of interests restrictions apply to the Head of State, who is not covered by financial disclosure law as the rest of officials. The Act on Federal Ministers (1953, amended 2015) on the other hand bans Ministers from additional paid employment or membership in advisory bodies. The Civil Servants Law (2009, amended 2016) restricts Civil Servants from accepting gifts, taking up an additional position in government agencies or financed by government, and performing a legislative

28 Sullivan, A., Berlin's new airport is ready. But will it go bankrupt before it takes off?, 2020, <https://www.dw.com/en/berlins-new-ber-airport-is-ready-to-open-but-will-it-go-bankrupt-before-it-takes-off/a-55442803> [accessed 06.12.2020]

29 Cermak, C., Capital Corruption: Berlin Airport in Trial, 2016, <https://www.handelsblatt.com/english/companies/capital-corruption-berlin-airport-on-trial/23540310.html?ticket=ST-8478454-XjDMBR6ouOfswdbZnGak-ap2> [accessed 06.12.2020]

30 The Local, Berlin airport employee jailed for taking huge bribe, 2016, <https://www.thelocal.de/20161013/berlin-airport-employee-jailed-for-taking-huge-bribe> [accessed 06.12.2020]

31 See <https://www.hertie-school.org/en/infrastructure>

32 The T-index (2020) developed by ERCAS measures de facto transparency- the existence of online searchable databases enabling every citizen to monitor the government and defend his rights.

33 Transparency International, Exporting Corruption: Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention, 2020, Berlin: 62-64

function.³⁴ GRECO, the Council of Europe's anticorruption arm has shown particular concern in relation to insufficient disclosures and immunities of members of Parliament.³⁵

2.5. Public procurement indicators

Given that public procurement is a sector where the public and the private interests may collide, it is particularly attractive for rent-seeking activities. About a third of the total German government spending is allocated through public procurement. The temptation to resort to illegal practices to secure government contracts can be high and this is proven by the fact that according to the BKA most of the bribes paid in Germany are indeed intended to secure public contracts or buy competitive advantages.³⁶

Germany's public procurement framework is defined by its federalism and the existence of two rules: one for contracts above the EU thresholds and one for contracts below, with each of these two branches having different level of corruption risks associated to them, with top contracts and EU contracts more generally better protected from fraud and corruption by EU directives.³⁷ Most of the contracts are awarded through the local and state authorities and are not accessible through digital platforms. Germany's fractioned and complex legal framework at the national level is the large room for discretion when choosing the means of tender publication or the procurement procedure itself. This lack of transparency is a corruption risk.

The task of scrutinizing the awarding of public contracts seems to fall solely in the hands of the federal and state courts of auditors, which given the nature and the scope of their tasks are not able to conduct systematic, in-depth analysis of the procurement spending on a regular basis. As a result, misconducts or mistakes like the ones frequently identified by the courts of auditors of Berlin and Saxony can only be detected after the contracts have already been awarded and, in many cases, after the goods have already been bought or the projects concluded.

The central website of the public administration (www.bund.de) would be the ideal platform to publish all tenders and trace risk indicators from the award stage. However, e-procurement platforms in Germany are severely underutilized, as their usage is not mandatory.

2.6. International conventions enforcement indicators

34 EuroPAM, Country Profile Germany, no date, <https://europam.eu/?module=country-profile&country=Germany> [accessed 06.12.2020]

35 GRECO, Fourth Evaluation Round: Second Compliance Report Germany, 2019, Strasbourg: 2

36 Kukutschka, R. M. B., A Look Inside the Black Box: Corruption Risks in the German Public Procurement System, 2015, Berlin: ERCAS. Accessible on www.anticorrrp.eu

37 Idem note 27.

Transparency International ranks Germany as a moderate enforcer of OECD anti-bribery convention. During the period 2016-2019, Germany opened 27 investigations, commenced 15 cases and concluded 46 cases with sanctions.³⁸ 2020 saw the adoption of major new compliance legislation, and the coming into being of a Federal Disbarment Register, based on legislation passed in 2017. In April 2020, the Ministry of Justice published major new draft legislation on corporate liability, the Act on Association Sanctions (Verbandssanktionengesetz), remedying deficiencies in the existing framework, but stopping short of criminal liability.

Federal court decisions are generally published in full on the internet. Decisions of the regional or local courts where corruption cases are decided in first instance can appear on the internet, but rarely do. National and regional newspapers report on court cases involving foreign bribery, but the majority of such cases are terminated without trial, and therefore mostly without involvement of the media.

The financial penalties that can be imposed on legal persons are inadequate. The maximum that can be imposed is €10 million (US\$11 million) for intentional commission of criminal offences, and €5 million (US\$5.5 million) for negligent commission. Since 2014, there have been 38 cases concluded with sanctions against natural persons, 11 of which –less than 30 per cent– also included sanctioning of legal persons. Transparency International Germany continues to be critical, arguing that “The prosecution of companies must no longer be left to the discretion of the public prosecutor's office and thus violate the OECD Convention on Foreign Corruption.”³⁹

3. Conclusions and lessons learned

It is perhaps easier to understand Germany if we resort to the statistical model of control of corruption as an equilibrium between opportunities for corruption (power discretion and material resources) and constraints (legal and normative)⁴⁰. An optimal balance has low opportunities and high constraints. Power discretion is low in Germany : the country has a sound constitutional framework and a high quality bureaucracy: its federalism and power separation work to reduce power and administrative discretion very well. Its score for fiscal transparency is also indicative for this: it is the third best in the world. It also has high constraints, scoring well for the quality of media, civil society and the judiciary.

38 Transparency International, *Exporting Corruption: Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention*, 2020, Berlin: 62-64

39 Reitmaier, A., *Germany's anti-foreign bribery measures fall short*, 2020, <https://www.transparency.org/en/blog/germanys-anti-foreign-bribery-measures-fall-short> [accessed 06.12.2020]

⁴⁰ See www.integrity-index.eu and www.againstcorruption.eu for more on the model and indicators.

Germany's only problems derive from its high material resources. **It is the world's third largest exporter and has the highest amount of public procurement in Europe. Since the advent of the 2008 crisis, the deteriorating economic conditions and an even higher public investment used as an economic redress policy have further multiplied opportunities for corruption.** Germany relates to the corruption syndrome described by Michael Johnston as 'influence market'⁴¹, present in developed countries, where administrative corruption is absent and the stake is to influence regulation and government decisions in order to bring market advantage in a situation of tight competition and diminished economic returns. Incentives to control this area are low since strong intervention would imply diminishing profits for German companies in times of economic adversity.

In conclusion, while Germany's administration is a model one, few developing countries could reproduce its historical success path. The most important lesson to learn from Germany is perhaps on the transformation of East Germany from a discretionary state and a highly centralized state-owned economy to a plural, prosperous and non-corrupt part of the country (unlike much of Eastern Europe, which has very high corruption still). Many of the processes used (like privatization or costing for public sector), created a large experience worth sharing with developing countries. This is especially the case with countries seeking to create more open economies and societies, since such models are also the best in controlling corruption.

41 Johnston, M., *Syndromes of corruption: wealth, power, and democracy*, 2005, Cambridge

Appendix 1. German Public Integrity Framework

1a. Public integrity index

Total Score

iPi8.62

Country Rank

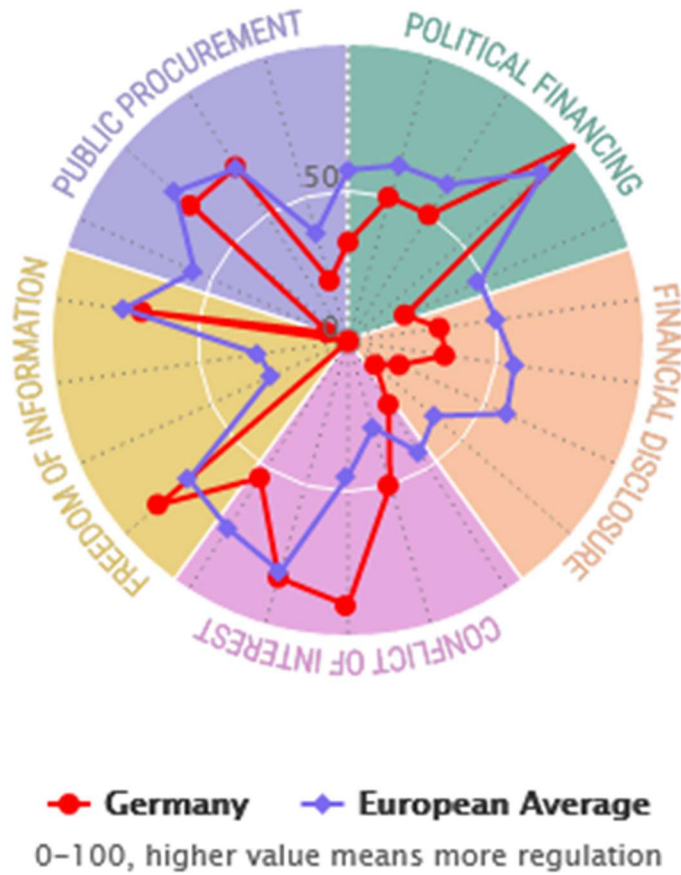
14 / 117

Components	Component Score	World Rank	Regional Rank	Income Group Rank
Judicial Independence	7.35	24/117	15/31	22/42
Administrative Burden	8.61	53/117	25/31	35/42
Trade Openness	9.44	38/117	29/31	27/42
Budget Transparency	9.79	4/117	3/31	3/42
E-Citizenship	7.83	19/117	13/31	19/42
Freedom of the Press	8.68	15/117	13/31	14/42

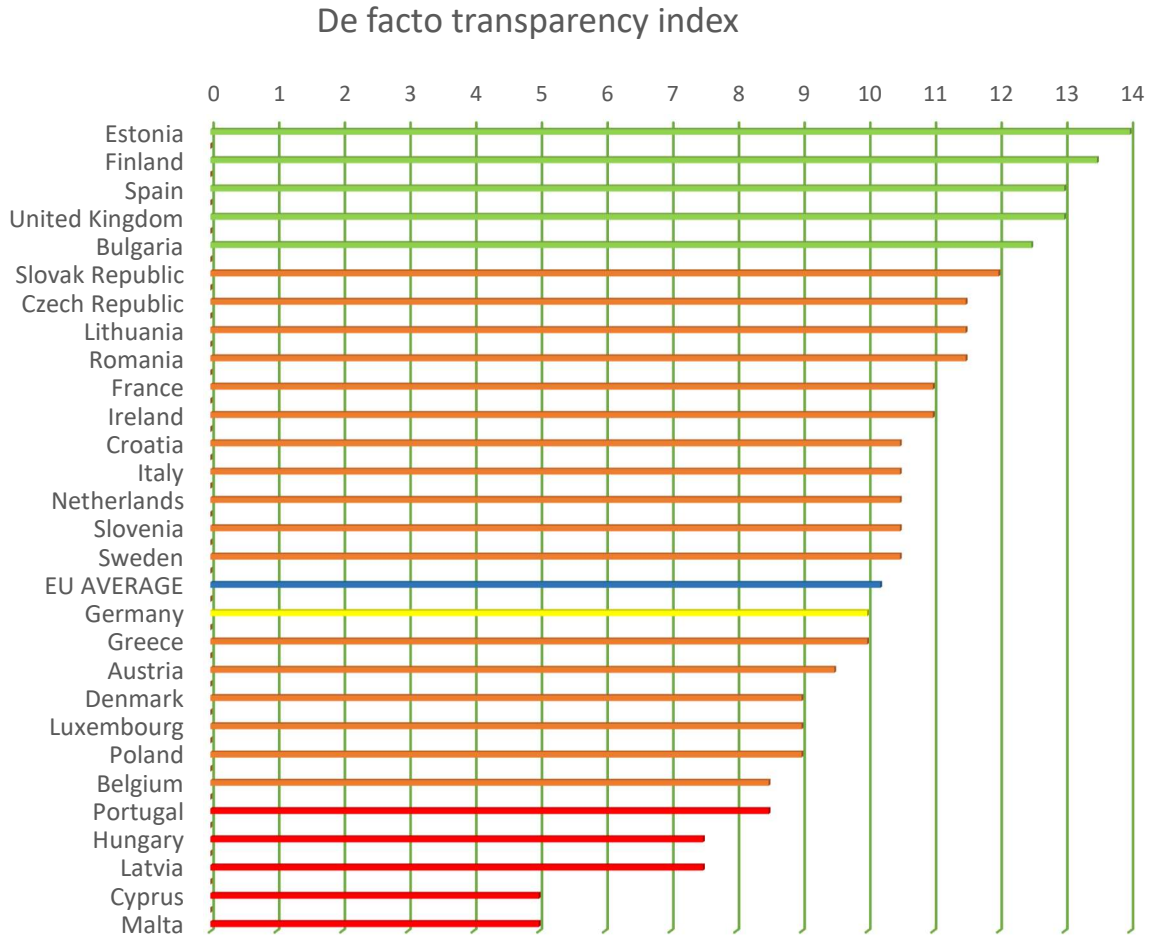
Source: <https://integrity-index.org/country-profile/?id=DEU&yr=2019>

Legend : Scales run from 1 to 10, with 10 best performance.

Ib. Public accountability regulation compared to European continent



Appendix II. Germany's transparency in a EU context



Legend 1 to 14 scale with 14 fully functional and comprehensive: Online past current expenditures (annual budget); Online current public expenditures (tracking system); Digital Register of Commerce; Public Procurement Portal; Annual General Audit Report; Supreme Court Online Hearings Schedule; Supreme Court Online Sentences; Asset, Online Gift and Income Declarations for Public Officials; Online Conflict of Interest Declarations for Public Officials; ODA Resources Allocation; Mining Concessions; Building Permits; Official Gazette fully online.