

Overall Score:

78 - Moderate

Legal Framework Score:

81 - Strong

Actual Implementation Score:

76 - Moderate

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁸¹Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

The right to form civil society organizations is guaranteed in Article 9, Paragraph 1, of the German Constitution. This right applies to everyone with the restriction that "associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited." Basic civil rights, such as the freedom of assembly, can be enforced basically by everyone through a constitutional complaint before the Federal Constitutional Court.

References:

Freedom of Assembly, Article 9, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_9.html:http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P9

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

There is no restriction concerning the acceptance of funding from foreign or domestic sources. There are no legal restrictions concerning the amount of funding.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Civil Society

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | **No**

Comments:

There is no general legal obligation for civil society organizations (associations, foundations, etc.) to disclose their sources of funding, except to tax authorities. If the CSO is organized in the form of a nonprofit company (gesellschaft) or cooperative (genossenschaft), accounting is mandatory according to commercial legislation. Associations (vereine) and foundations (stiftungen) are only obliged to render an account to their members.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Civil Society

Charity Watch. <http://www.charitywatch.de/?id=841>

Saarländische Oberlandeszeitung vom, Paritätischer Wohlfahrtsverband fordert gesetzliche Regelung zur Offenlegung von Finanzdaten gemeinnütziger Organisationen, June 24, 2010. <http://www.s-o-z.de/?p=24871>

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

92

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The creation of anticorruption or good governance civil society organizations is possible without major obstacles. There are no administrative requirements. The fight against corruption is a charitable cause when applying to the tax authorities of the Länder for charitable status.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapters on Media and Civil Society

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Some of Germany's biggest CSOs have more members (Greenpeace: 566,000; Amnesty International: 110,000) than some of the big political parties (CDU: 500,000; SPD: 495,000; FDP: 65,000; Grüne: 58,000). In addition, the possibility of campaigning online has led to increased public involvement. However, the influence of CSOs in the political and policy-making process depends highly on the issue under debate. The manifest resistance against the Stuttgart 21 project (the rebuilding of the central station in Stuttgart) can be seen as an example of active involvement in the policy-making process. For budgetary planning, CSOs have barely any influence. The campaign of 2004 to introduce an anticorruption commissioner in the social and health sector, which led to the establishment of special bodies controlling corruption in many institutions in the health sector, can be seen as a positive example.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Civil Society

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

No civil society organization has been reported to have been shut down.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO

was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

No case of an imprisoned civil society activist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

No case of a physically harmed civil society activist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Media Report on Anti-Corruption Action. <http://www.zeit.de/online/2009/26/korruptionsbekaempfung-transparency>.

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

No case of a killed civil society activist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011)

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

The right to organize into trade unions is a basic civil right guaranteed to every individual and profession by the German Constitution. Basic civil rights of the constitution can be enforced by everyone through a constitutional complaint before of the Federal Constitutional Court.

Additionally, the right to organize into trade unions is guaranteed by Article 11 of the European Convention on Human Rights. Complaints can be made before the European Court of Human Rights. Though the court's judgments are only binding inter partes (between parties), the jurisdiction of the European Court of Human Rights in reality influences the German Federal Constitutional Court in its interpretation of the basic rights.

References:

Article 9, Paragraph 3, German Constitution. http://www.gesetze-im-internet.de/gg/art_9.html. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P9

Article 11, European Convention on Human Rights. http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Working citizens are able to organize into trade unions. Trade unions are common and an important part of the political process and political discourse. Major trade unions, such as Ver.di, have many members and, thus, a lot of political leverage and even have opened their ranks to self-employed people.

References:

Ver-di. <http://darum.verdi.de/leistungen/selbststaendige>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

The freedom of the media is guaranteed, and there shall be no censorship, according to the German Constitution. It is a basic civil right guaranteed by the constitution that can be enforced by everyone through a constitutional complaint before the Federal Constitutional Court.

References:

Article 5, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_5.html. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P5

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

According to Article 5 of the German Constitution, "Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures."

Additionally, the freedom of expression is guaranteed by Article 10 of the European Convention of Human Rights. Complaints can be made before the European Court of Human Rights. Though the court's judgments are only binding inter partes (between parties), the jurisdiction of the European Court of Human Rights in reality influences the German Federal Constitutional Court in its interpretation of the basic rights.

References:

Article 5, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_5.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P5

Article 10, European Convention on Human Rights. http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

There are no major obstacles to the formation of a print media entity, such as a license requirement. The print media entity has to be declared to the trade office, and the responsible person in terms of media law has to be announced (according to the press laws of the Länder).

References:

Interview with Dr. Ulrich Reber, media lawyer, SKW Schwarz, Munich

Article 8, Paragraph 1, Press Act of Bavaria

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

No license is needed. In any case, Section 40 of the Code of Administrative Court Procedure ensures recourse to the administrative courts.

References:

Interview with Dr. Ulrich Reber, media lawyer, SKW Schwarz, Munich

Section 40, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0154

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed.

References:

Section 40, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0154

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed.

References:

Section 40, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0154

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Due to the limited amount of broadcasting capacity, a license is needed to broadcast. This license is issued by the respective Landesmedienanstalt (Public Media Institution of the Länder) through its license oversight body, the Zentrale Aufsichtskommission (Central Oversight Commission), while the Commission on the Determination of Concentration in the Media needs to confirm that issuing the license to the applicant does not lead to a concentration of the media in the hands of a few media owners or distribution groups. The licenses are issued to applicants according to different criteria to ensure a broad diversity of opinions in radio and television.

References:

Section 20, Interstate Treaty on Broadcasting between Bund and Länder (Rundfunkstaatsvertrag). http://www.dvtm.net/fileadmin/pdf/gesetze/13_RStV.pdf;

Interview with Dr. Ulrich Reber, media lawyer, SKW Schwarz, Munich

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

If a license is denied or revoked, an objection to the Public Media Institution of the Länder (Landesmedienanstalt) has to be initiated prior to any recourse to administrative courts. Details of the proceedings are different in the Länder. However, following an unsuccessful objection, recourse to the administrative courts is open.

References:

Section 40, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0154

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Anti-Corruption Agency

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Due to the limited amount of broadcasting capacity and the selective process, the issuance of a license can take up to two months. The Zentrale Aufsichtskommission (Central Oversight Commission) meets on a monthly basis to discuss the applications. After the meeting, the decision is communicated to the applicant by the respective Landesmedienanstalt (Public Media Institution of the Länder). The Central Oversight Commission publishes a file on meetings held and applications discussed.

References:

Die-medienanstalten. <http://www.die-medienanstalten.de/themen/zulassung.html>

Die-medienanstalten. http://www.die-medienanstalten.de/fileadmin/Download/ZAK_PW/Verfahrenliste_ZAK.pdf

Landesanstalt für Kommunikation Baden-Württemberg. http://www.lfk.de/fileadmin/media/pdf/Merkblatt_Allgemein.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost for a license depends on whether a broadcast license is issued for the entire territory or only one land or local area. A radio license for the whole territory of Germany is available for a minimum of 2,000 euros.

References:

Statutes of fees by the Public Media Institutions of the Länder (Kostensatzung der Landesmedienanstalten. http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Satzungen/Kostensatzung_der_Landesmedienanstaltenpdf

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There are no restrictions concerning access to the Internet. Broadband coverage is assured in most regions, and costs for Internet access are affordable. In 2010, approximately 82 percent of Germans had access to the Internet.

References:

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Anti-Corruption Agency

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There is no censorship of online content. In fact, Article 5 of the German Constitution guarantees the freedom of reporting by means of broadcasts. Nevertheless, in the fight against child pornography, the blocking of websites is subject to debate. Proposals of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth are highly criticized by the Internet community for being a gateway for censorship.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

ARD Tagesschau. <http://www.tagesschau.de/inland/internetsperren124.html>

Spiegel Online. <http://www.spiegel.de/netzwelt/web/0,1518,619509,00.html>

Stern. <http://www.stern.de/politik/deutschland/kinderpornografie-die-internet-zensur-ist-ein-irrweg-703961.html>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

In general, if a report is based on correct information, there are no restrictions on the report, even if a public figure's reputation might be damaged. The Federal Constitutional Court gives the freedom of speech, press and information a high value in weighing it against the protection of one's reputation.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Bundesverfassungsgericht 12, Page 113. <http://www.servat.unibe.ch/dfr/bv012113.html>

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

All in all, self-censorship is not encouraged by the government or media owners or distribution groups. Several newspapers have established investigative research teams.

Nevertheless, in April 2010, court proceedings were initiated against two journalists who reported on corruption in the justice sector of Saxony. In August 2010, the court convicted them and imposed fines for the breach of libel laws. The journalists had published an article in two major news magazines (Zeit Online and Der Spiegel) in which, according to the court, they indicated corrupt behavior by some policemen during an investigation in a complex case involving high-level judges. The court found the report to be biased. It noted that the reproaches against the officials had not been confirmed. The court therefore found the report to be unjustifiable. This judgment was widely criticized and seen as an attempt to intimidate investigative journalism.

References:

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Zeit Online. <http://www.zeit.de/gesellschaft/zeitgeschehen/2010-08/sachsensumpf-urteil>

Taz.de. <http://www.taz.de/157006/>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

No prior censorship exists in practice.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

Goethe Institut. <http://www.goethe.de/wis/med/dos/jou/pfr/en2298880.htm>

Reporters Without Borders. http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

90

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | No

Comments:

Media law generally falls under the legislative power of the Länder, according to Article 70 of the German Constitution.

In the laws of eight of the 16 Länder, the disclosure of the ownership of print media companies is required. There are no regulations in Baden-Wuerttemberg, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Saarland or Saxony-Anhalt.

References:

Article 8, Paragraph 3, Bavarian Press Act

Section 7a, Berlin Press Act

Section 9, Brandenburg Press Act

Section 7, Paragraph 4, Mecklenburg-Vorpommern Press Act

Section 9, Paragraph 4, Rhineland-Palatinate Media Act

Section 8, Saxon Press Act

Section 7, Paragraph 4, Schleswig-Holstein Press Act

Section 8, Thuringian Press Act

Interview with Dr. Ulrich Reber, media lawyer, SKW Schwarz, Munich

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | No

Comments:

Section 21, Paragraph 2, No. 1, of the Interstate Treaty on Broadcasting and Telemedia requires the disclosure of ownership to the competent authorities. Section 20A, Paragraph 2, of the treaty ensures that media companies organized as public companies allow only registered shares to ensure that shareholdings are not concealed. Section 26, Paragraph 7, of the treaty states that the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on the Determination of Concentration in the Media), together with the Landesmedienanstalten (Public Media Institutions of the Länder), must publish a yearly list of programs that comprises all programs, including their broadcasters and ownerships.

References:

Section 26, Paragraph 7, Interstate Treaty on Broadcasting and Telemedia. http://www.dvtm.net/fileadmin/pdf/gesetze/13_RStV.pdf

Report of Commission on the Determination of Concentration in the Media. <http://www.kek-online.de/Inhalte/beteiligung.php>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

Interview with Dr. Ulrich Reber, media lawyer, SKW Schwarz, Munich

Die Bayerische Landeszentrale für neue Medien. http://www.blm.de/de/pub/radio_tv/programmorganisation/fernsehen_bundesweit.cfm

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Journalists have a duty to be truthful and diligent. A press codex, imposing concrete duties of professional journalism, has been signed by the unions of journalists and publishers. The codex can be seen as self-commitment: in case of an infringement, a public notice shall be released by the media entity. Furthermore, the competition between the media entities ensures compliance with the professional criteria. Additionally, some publishers have their own codices that their journalists have to follow.

References:

Presserat. http://www.presserat.info/uploads/media/Pressekodex_01.pdf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Media

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to “sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

For the most recent election, the OSCE/ODIHR Election Assessment Mission observed that media coverage on ARD and ZDF, Germany’s major public-service television broadcasters, was allocated to the political parties as follows:

SPD – 12 minutes (eight spots);
CDU – 10.5 minutes (seven spots);
FDP/Greens/Left Party and CSU – six minutes (four spots) each;
Non-parliamentary parties – three minutes (two spots) each.

According to OSCE/ODIHR participants, private media outlets operating countrywide traditionally attempt to match the schemes for the allocation of airtime of ARD and ZDF.

In addition to the broadcasting of campaign spots, ARD organized a “Chancellor’s Debate” between Angela Merkel and Frank-Walter Steinmeier, the respective candidates of the CDU and SPD. Candidates of the FDP, Greens and Left Party took part in a separate debate, while nonparliamentary parties debated among themselves. ARD and ZDF had to cancel plans to hold debates among leaders of the five largest parliamentary parties due to the unavailability of the leaders of CDU and SPD. Representatives of FDP, the Greens and the Left Party all criticized this decision. In other respects, according to the OSCE/ODIHR report, the parliamentary parties were satisfied with their coverage by the public broadcast media, including in news and discussion programs. Some of the nonparliamentary parties expressed dissatisfaction with the media’s tendency to focus coverage on the six largest parties and stated that they were rarely invited to participate in political discussion programs or give interviews. However, overall the media coverage during the 2009 Bundestag election can be assessed as fair.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Election Supervision

OSCE/ODIHR Election Assessment Mission Report, Federal Republic of Germany, Elections to the Federal Parliament (Bundestag), Sept. 27, 2009, Page 19

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets. Broadcasting time for campaign spots on public media networks is provided free of charge. In the private media, a charge of 35 percent of the price for commercial advertising is levied to cover broadcasting costs. The Interstate Treaty prohibits the purchasing of paid advertising "of a political, ideological or religious nature" on public and private broadcasters. The Interstate Treaty is enforced in practice. However, parties are allowed to buy advertising space in print media, although print media outlets are free to decide whether to accept the advertisements. In practice, some newspapers refuse all political advertisements, and many parties cannot afford to place advertisements in national newspapers.

The Interstate Treaty on Broadcasting and Telemedia further regulates media coverage of political matters. For example, according to Section 42, Paragraph 2, of the treaty, parties that have registered at least one Land list are granted an "appropriate time" of broadcasting time. The regulations stipulated by the treaty are generally followed by all state-owned media outlets. While access of political parties and candidates to state-owned media outlets in practice reflects the proportion of each party to some extent, it is overall equitable.

References:

OSCE/ODIHR Election Assessment Mission Report, Federal Republic of Germany (Elections to the Federal Parliament (Bundestag)), Sept. 27, 2009, Page 19

Interstate Treaty on Broadcasting and Telemedia. http://www.dvtm.net/fileadmin/pdf/gesetze/13_RStV.pdf

Bundesverfassungsgericht 47/198 (Wahlwerbesendungen). <http://www.servat.unibe.ch/dfr/bv047198.html>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

Comments:

No case of an imprisoned journalist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | No

Comments:

No case of a physically harmed journalist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

No case of a killed journalist has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Freedom House. http://www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8043&year=2011&pf

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

99

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

67

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

Comments:

The right to inform oneself by using publicly available sources is ensured by Article 5 of the German Constitution. However, not all

government sources are publicly available.

Basic government information, such as the budget, is publicly available as soon as it is introduced in the Bundestag. Moreover, the earnings of the Bundeskanzler (federal chancellor) and the Bundesminister (federal minister) are publicly known, since the salary is determined by law (Section 11 of the Federal Minister Act).

The government has the duty to inform the public about the decision-making process. This, however, constitutes a governmental duty rather than an individual right to access the information. Nevertheless, there is no duty to publish records of committees counseling the government.

In 2006, a Federal Freedom of Information Act was adopted. According to Section 1, Paragraph 1, everybody has the right to access information from the federal administrative bodies — the executive bodies, such as the ministries, insofar as they discharge administrative tasks under public law — and even private bodies acting in the fulfillment of administrative tasks. The information will be provided in written or oral form or by granting access to records.

However, the Administrative Court of Berlin rendered two judgments concerning the scope of the Federal Freedom of Information Act in 2007 and 2008 (Urteil vom, Oct. 10, 2007 – VG 2 A 101.06 – and Urteil vom, Jan. 16, 2008 – VG 2 A 68.06). The court in general distinguished between ordinary administration activity and government activity. It noted that the law solely regulates the access to information on ordinary administrative activity and excluded government activity from the scope of application of the Federal Freedom of Information Act. Since then, the scope of application of the act is under discussion and the subject of legal dispute.

The review of the legislative process indicates the intent to generally grant access to information on governmental activity as well. It is to be noted that the law already contains provisions allowing the refusal of access to information if the disclosure might have a detrimental effect on special public interests (Sections 3 and 4 Federal Freedom of Information Act). It is argued that this provision would not make sense if information on government activity would be excluded. Notably the Higher Administrative Court of Berlin-Brandenburg has indicated that the law generally provides for the access of information on government activity (Urteil vom Nov. 6, 2008 – 12 B 50.07 – Paragraph 24).

However, in a more recent case (Urteil vom Dec. 17, 2009 – 2 A 109.08, 2 A 109/08), the Berlin's Administrative Court confirmed its judgment and ruled that the fulfillment of governmental tasks, such as the preparation of laws to be submitted to the Bundestag, shall not fall under the Federal Freedom of Information Act. It is to be noted that this decision is not yet confirmed by the Federal Administrative court or Federal Constitutional Court, and the scope of application of the Federal Freedom of Information Act to government activity will be under debate until a judgment of the highest judicial authority is rendered.

It has to be further noted that the Federal Freedom of Information Act applies only to federal bodies, while most administrative tasks fall under the duty of the Länder. Only 11 of the 16 Länder have adopted laws ensuring free access to government records. Those are: Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Vorpommern, Northrhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony-Anhalt, Schleswig-Holstein and Thuringia.

References:

Section 1, Federal Freedom of Information Act. <http://www.gesetze-im-internet.de/ifg/index.html>, http://www.gesetze-im-internet.de/englisch_ifg/index.html

Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit. http://www.bfdi.bund.de/IFG/Gesetze/Landesgesetze/Landesgesetze_node.html

Article 5, Paragraph I, of the German Constitution. http://www.gesetze-im-internet.de/gg/art_5.html, http://www.gesetze-im-internet.de/englisch_gg/html#GGengl_000P5

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009, Page 12: http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

Section 11, Federal Minister Act. <http://www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Legislative

Hints on the Application of the Federal Freedom of Information Act. http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_21112005_V5a13025016.htm

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | No

Comments:

Filing objections to an administrative body denying access to government records is possible.

Following an unsuccessful objection, recourse to the administrative courts is open, according to Section 9 of the Federal Freedom of Information Act.

A complaint to the Federal Commissioner for Data Security and Freedom of Information constitutes an extrajudicial remedy.

References:

Section 9, Federal Freedom of Information Act. <http://www.gesetze-im-internet.de/ifg/index.html>, http://www.gesetze-im-internet.de/englisch_ifg/index.html

Deutsche Gesellschaft für Informationsfreiheit e.V. <http://www.dgif.de/index.php?id=62>

Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit. <http://www.bfdi.bund.de>

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | **No**

Comments:

Citizens have the right to address the respective authority that is authorized to dispose of requested information. Thus, citizens file their requests to already existing institutional mechanisms. No new centralized mechanism dealing with all requests under the Federal Freedom of Information Act has been established.

References:

Section 7, Federal Freedom of Information Act. <http://www.gesetze-im-internet.de/ifg/index.html>, http://www.gesetze-im-internet.de/englisch_ifg/index.html

Hints on the application of the IFG. http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_21112005_V5a13025016.htm

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

46

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Information shall be made available by the authority within one month (Section 7, Paragraph 2, and Section 9, Paragraph 1, of the Federal Freedom of Information Act). In case of involvement of third parties, the request is to be dealt with within two months. However, the report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 shows that the time limits are commonly not respected by authorities. Citizens have received responses on simple requests after several months or even a year.

References:

Section 7, Federal Freedom of Information Act. <http://www.gesetze-im-internet.de/ifg/index.html>, http://www.gesetze-im-internet.de/englisch_ifg/index.html

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 (Pages 11 and 44). http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

Deutsche Gesellschaft für Informationsfreiheit e.V. <http://www.dgif.de/index.php?id=62>

Zitat von Peter Schaar, Bundesdatenschutzbeauftragter, überlange Verfahrensdauer und erhebliche Gebühren. <http://www.stern.de/politik/deutschland/kritik-des-datenschutz-beauftragten-behoerden-arbeiten-immer-noch-intransparent-1563787.html>

Henrik Schmitz in interview. <http://www.evangelisch.de/themen/gesellschaft/die-informationsrechte-der-b%C3%BCrger-fragen-und-antworten17083>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Simple requests are redressed at no cost. For other requests, the costs can vary from 15 to 500 euros (see Regulation on the Fees concerning the Freedom of Information Act). The cost depends on the complexity of the request. Unfortunately, some administrative bodies charge citizens for their efforts on checking the admissibility of the request. This, and the fact that the ultimate costs cannot be anticipated, discourages many citizens from using their right to request information.

References:

Regulation on the Fees Concerning the Freedom of Information Act.
http://www.bfdi.bund.de/SharedDocs/IFG/IFGBundesgesetzUndGebuehrenO/GebuehrenOrdngIFG.pdf?__blob=publicationFile

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 (Page 24). http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

Heise Online. <http://www.heise.de/newsticker/meldung/Bundestag-streitet-ueber-Kosten-fuer-Informationsfreiheit-177142.html>

Heise Online. <http://www.heise.de/newsticker/meldung/Saftige-Gebuehren-beim-Informationsfreiheitsgesetz-in-der-Kritik-163732.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

Comments:

Authorities are making extensive use of the clauses allowing refusal of access to information. These clauses allow the denial of requests when disclosure of information may have detrimental effects on special public interests (Section 3, Federal Freedom of Information Act), such as in cases in which confidentiality was given, where the access infringes on the protection of personal data (Section 6 Federal Freedom of Information Act) or compromises the protection of intellectual property or business or trade secrets (Section 6, Federal Freedom of Information Act). The restrictive adoption of the law seriously affects the quality of responses since authorities appear to avoid a response. Similarly, many ministries refer to the narrow scope of application of the Federal Freedom of Information Act, excluding governmental activity and consequently denying access to information. Motions have been denied solely by stating the original terms of the Federal Freedom of Information Act. The lack of substantial reasoning is criticized.

References:

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 (Page 24). http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Bundesministerium des Innern. http://www.bmi.bund.de/cjn_104/SharedDocs/Pressemitteilungen/DE/2007/01/ein_jahr_ifg.html/

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

Comments:

For the process of objections, no comparable time periods are indicated by the different entities; yet, cases arise where applicants have waited several months or even longer before an appeal was resolved. When it comes to a process before the administrative court, the time period is even more protracted.

References:

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 (Pages 10 and 81). http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If the objective is unsuccessful, the burden of costs is very low, with the applicant having to pay an amount of 30 euros. The risk of high costs increases significantly if an appeal is taken before the administrative court. The costs are calculated with regard to the value of the claim; therefore, general information on the costs cannot be given. Nevertheless, an administrative process with a low value of a claim in the first instance can evoke costs of several hundred or even 1,000 euros, which have to be paid only in case of a loss.

References:

Deutsche Gesellschaft für Informationsfreiheit e.V. <http://www.dgif.de/index.php?id=62>

Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern. <http://www.lfd.mv.de/dschutz/veranst/infrei/mecklenburg.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In general, the denial of an information request has to be given with reasons. However, frequently, refusals only repeat the wording of the exclusion clauses in the Federal Freedom of Information Act, instead of giving substantial reasons why these clauses apply in the specific case.

References:

Activity Report of the Federal Commissioner for Data Security and Freedom of Information 2008-2009 (Page 24). http://www.informationsfreiheitsgesetz.net/blog/wp-content/uploads/2010/05/2TB08_09.pdf

Section 39, Federal Code on Administrative Proceedings. http://www.gesetze-im-internet.de/vwvfg/_39.html

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

77
2.1. Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

Comments:

Article 38 of the German Constitution guarantees general, direct, free, equal and secret elections of the members of the German Bundestag, Landtag (state parliament) and local governments; any citizen who has reached age 18 is entitled to vote.

References:

Article 38, German Constitution. http://www.gesetze-im-internet.de/gg/art_38.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P38.

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

Comments:

According to the German Constitution, elections for the German Bundestag shall be held every four years. However, certain provisions of the constitution provide for the abbreviation of the election period. Elections for the Landtag (state parliament) are held every five years, with the exception of Bremen and Hamburg, where the township elections are held every five years.

References:

Article 39, German Constitution. http://www.gesetze-im-internet.de/gg/art_39.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P39.

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

92

15a. In practice, all adult citizens can vote.

Comments:

As a principle, all citizens of full age (18 years) are entitled to vote. However, in extreme circumstances, adult German citizens may lose their right to vote on the basis of a judicial decision. Section 13 of the Federal Electoral Act authorizes the judiciary to deprive individuals of the aforementioned right if a custodian has been appointed to attend to their affairs or the individual is committed to a psychiatric hospital pursuant to the German Criminal Code. Moreover, the German Criminal Code provides for the loss of suffrage rights for a period of two to five years if a person is convicted for certain politically motivated crimes such as treason.

References:

Article 38, German Constitution. http://www.gesetze-im-internet.de/gg/art_38.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P38

Section 13, Federal Electoral Act (Bundeswahlgesetz). http://www.gesetze-im-internet.de/bwahlg/_13.html

Sections 45, Paragraphs 5, 92A, 101, 108C and 109, German Criminal Code. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P92

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

Comments:

In addition to Article 38 of the German Constitution, Section 33 of the Federal Electoral Act requires authorities to guarantee the secrecy of ballots and make the necessary arrangements. The practice follows the legal provisions.

References:

Article 38, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/index.html

Section 33, Federal Electoral Act. http://www.gesetze-im-internet.de/englisch_gg/index.html

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 24. <http://www.osce.org/odihr/elections/germany/40879>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Yes. The Bundestag shall be elected for a term of four years (Article 39 of the German Constitution, 14B). However, the federal president, upon the proposal of the federal chancellor, may dissolve the Bundestag if a motion of the federal chancellor for a vote of confidence is not supported by the majority of the members of the Bundestag (the vote of confidence is covered in Article 68 of the German Constitution). Since the German Constitution came into force, the Bundestag has been dissolved twice according to the procedure laid down in Article 68 of the German Constitution (the process was initiated in 1982 by then-Chancellor Helmut Kohl and in 2005 by former Chancellor Gerhard Schröder). It is to be noted that, in both cases, the motion for a vote of confidence was submitted exclusively with the aim to cause new elections. It was discussed among politicians and scholars whether the motion for a vote of confidence was misused in these instances, considering that both chancellors did not simply resign but were seeking another tenure and were running the following election campaigns. However, the Constitutional Court confirmed the approach taken by the chancellors.

References:

Articles 39 and 68, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P67

Report on the 2005 early elections of the Bundestag: <http://www.spiegel.de/politik/deutschland/0,1518,357076,00.html>

Die Bundesrepublik Deutschland: eine Bilanz nach 60 Jahren, Hans-Peter Schwarz, 2008

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

Yes | No

Comments:

In Addition to Article 9, Paragraph 1, of the German Constitution, which guarantees the freedom of association, Article 21, Paragraph I, of the German Constitution provides that political parties "may be freely established." The legislation does not contain any formal requirements for the establishment of political parties. However, Section 2 of the Act on Political Parties defines political parties as associations of citizens which, on a continuing basis or for a longer period of time, wish to influence the development of informed political opinion at the federal level or in any of the Länder as well as participate in representing the people in the German Bundestag or a Land parliament (Landtag). Such an association will lose its legal status as a political party if it has not participated, with its own nominations of candidates, in either an election to the German Bundestag or a Landtag election for six years. The second part of the Act on Political Parties contains certain provisions as to the internal organization of a party. Among other things, a political party must have a written statute and program. Political parties must be organized in regional and/or local branches. Their internal organization must conform to democratic principles.

References:

Article 21, German Constitution. http://www.gesetze-im-internet.de/gg/art_21.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P21

Sections 2, 6 and 7, Act on Political Parties. <http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteengesetz>

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes | No

Comments:

In principle, every German citizen can run for political office. For example, all Germans who have reached the age of 18 are eligible to the Bundestag (Federal Parliament). However, for some distinguished posts, such as the federal president, a minimum age of 40 is required (Article 54, Paragraph 1, of the German Constitution).

References:

Section 15, Federal Election Act. http://www.gesetze-im-internet.de/bwahlg/_15.html

Articles 38 and 54, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/index.html

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Since there are few bureaucratic obstacles in law, it is fairly easy to set up a political party. Every citizen is able to form such a party. However, Section 2 of the Act on Political Parties regulates that parties must "offer a sufficient guarantee of their sincerity" in pursuing the aim to represent people in the Bundestag or a Land parliament, as evidenced by their actual overall situation and standing, especially in the size and strength of their organization, membership numbers and visibility in public.

References:

Section 2, Act on Political Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Report on the Foundation of the Pirate Party Germany in 2006. <http://www.piratenpartei.de/navigation/presse/gr%C3%BCndung>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

Comments:

The practice is in accordance with the legislation. However, there are some weaknesses.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 11. <http://www.osce.org/odihr/elections/germany/40879>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

Comments:

The Federal Republic of Germany is a republic consisting of 16 Länder, which are vested with significant powers. At the federal level, the Bundestag is the key body responsible for legislative matters. However, the Bundesrat (Federal Council) is the body through which the Länder participate in the legislation process. The Bundesrat is composed of representatives of the governments of the Länder and has authority to review and grant consent on some legislative proposals.

Since many governments of the Länder regularly comprise members of an opposition party at the national level, the opposition – through the Bundesrat – might influence the legislation of the Bundestag. Article 77 of the German Constitution provides that, if consent of the Bundesrat is required for a bill to become law, the Bundestag, Bundesrat or federal government may demand that a mediation committee for joint consideration be convened. Should this committee propose any amendment to the adopted bill, the Bundestag shall vote on it a second time. The mediation committee of bills is composed of members of the Bundestag and Bundesrat.

References:

Article 77, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/index.html

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

Comments:

The Constitution provides for the scrutiny of elections which, as a guiding principle, is the responsibility of the Bundestag (Article 41 of the German Constitution). However, the mechanism outlined in Article 41 of the German Constitution applies predominantly after elections have taken place. Election administration and monitoring is further regulated by the Federal Electoral Act and Regulation on Federal Elections. Section 1 of the Regulation on Federal Elections (Bundeswahlordnung) establishes a federal returning officer (Bundeswahlleiter), who chairs a Federal Election Committee (Bundeswahlausschuss). Moreover, the federal system of Germany also is reflected in the election monitoring agencies. As a result, other election committees are supposed to be established: 16 Land Election Committees (one for each Land), 278 District Election Committees and some 80,000 Election Boards.

References:

Sections 49 and 52, Federal Election Act. http://www.gesetze-im-internet.de/bwahlg/_49.html, http://www.gesetze-im-internet.de/bwahlg/_52.html

Sections 1 and 81, Regulation on Federal Elections. http://www.gesetze-im-internet.de/bwo_1985/_1.html

Article 41, German Constitution. http://www.gesetze-im-internet.de/gg/art_41.html

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

95

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

Comments:

The federal returning officer and his deputy are appointed by the federal minister of the interior for an unspecified period of time. In continuation of an old tradition going back to the Reichstag elections, the president of the Federal Statistical Office is regularly entrusted with the tasks of a federal returning officer. Although appointed by the minister of the interior, the federal returning officer is not bound by any instructions or subject to interference. The Land returning officers are appointees of the equivalent Land authorities. Like the federal returning officer, they are not subject to directives as well. Section 4, Paragraph 2, of the Federal Electoral Act provides that, in the selection of members of election committees, due consideration should be given to the political parties. In that respect, the votes obtained in the last Bundestag election are supposed to be taken into account. As a consequence, the composition of the election committee reflects the majority structure in the Bundestag and, as for the Land and municipal committees, the last results of the respective constituency. As a result, nominees of the election committees in fact represent their parties. Due to the provisions outlined above, the election committees are composed largely of party nominees. This, in fact, raises some issues as to the registration of parties as eligible to contest elections. Section 18, Paragraph 2, of the Federal Electoral Act provides that parties that have continuously held at least five seats in the Bundestag or a Landtag since the last election are allowed to participate in elections without any initial approval. All other parties and political associations are obliged to formally notify the federal returning officer of their intention to participate no later than 90 days prior the actual election day. Section 18, Paragraph 2 and 4 of the Federal Electoral Act further regulate that parties not falling under Section 18, Paragraph 2, of the Federal Electoral Act have to submit their written statute and program and prove that the party is organized in a way requested in the Act on Political Parties. After a party's submission of the aforementioned documentation, the Federal

Election Committee decides whether the applicant's association in fact constitutes a party in terms of the Act on Political Parties. Only if that question is answered in the affirmative can the party regularly enter elections. To some observers, these regulations have appeared troublesome, considering that the election committees are composed of members of established parties who would decide on their competitors. It was further noted with concern that decisions of the Federal Election Committee are not subject to appeal to court prior to the elections. However, since the relevant law seeks to adjust the various political interests by composing the committees according to the electoral of the election in the respective constituency, some balance is warranted.

References:

Sections 1, 2 and 3, Federal Electoral Act. http://www.gesetze-im-internet.de/englisch_gg/index.html

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 11. <http://www.osce.org/odihr/elections/germany/40879>

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Notwithstanding the aforementioned concerns, it was reported by independent observers that the election committees have carried out their duties "in a well-organized, transparent and efficient manner."

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Yes. The set of returning officers have a professional staff at their disposal. However, most electoral staff members are appointed on an honorary basis. These are citizens volunteering on election day to observe the secret, fair and free conduct of elections. Local election observation teams receive specific training prior to the election.

References:

Federal Returning Officer. <http://www.bundeswahlleiter.de/en/index.html>

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009). <http://www.osce.org/odihr/elections/germany/40879>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The federal returning officer maintains a comprehensive website, on which statistics, legal acts and other information are published. Access is granted free of charge.

References:

Federal Returning Officer. <http://www.bundeswahlleiter.de/en/index.html>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The federal returning officer or subordinate returning officers may impose a fine up to 50,000 euros for a misdemeanor by electoral staff members, according to Section 49A of the German Election Act. Moreover, certain provisions of the German Criminal Code sanction offenses that can occur during the election process (Sections 107A to 108B of the German Criminal Code). Those crimes include the disruption of the election process, falsification of election results, falsification of election documents, violation of secrecy of elections, blackmailing voters, deceiving voters or bribing voters. According to the OSCE/ODIHR Election Assessment Mission Report on the elections of the federal parliament in 2009, no cases of offenses have been reported. This shows that the legal framework provides sufficient deterrence to prevent offenses.

References:

Section 49A, Federal Electoral Act. <http://www.gesetze-im-internet.de/bwahlg/>

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009). <http://www.osce.org/odihr/elections/germany/40879>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Voters whose residence is registered are automatically included in the voter register. Since the registration of residence is obligatory, there is little, if any, concern about the system of voter registration. However, it has to be acknowledged that a countrywide and centralized voter register does not exist. OSCE election observers have noted that no routine practice of voter registration exists. As a result, the possibility of multiple voter records across municipal boundaries is not 100 percent excluded.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

According to Article 41 of the German Constitution, scrutiny of elections shall be the responsibility of the Bundestag. The scrutiny procedure is set out in the Law on Scrutiny of Elections, which provides for the establishment of an Election Scrutiny Board to be elected by the Bundestag. The Election Scrutiny Board is responsible for receiving complaints regarding any violations of the law during the election. Complaints can be filed by any group of people eligible to vote and, in their official capacities, by any land returning officer, the federal returning officer and the president of the Bundestag. According to Section 13 of the Law on Scrutiny of Elections, the Bundestag shall decide on the matter brought to the Election Scrutiny Board. If, however, the complaint is dismissed and the election validated, an appeal can be lodged to the German Constitutional Court.

References:

Article 41, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/index.html

Section 13, Law on Scrutiny of Elections. http://www.gesetze-im-internet.de/wahlprg/_13.html

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 20. <http://www.osce.org/odihr/elections/germany/40879>

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

It is viewed with skepticism that the initial decision on the validity of elections is the responsibility of the Bundestag. It is to be noted that it is, in fact, the newly elected Bundestag that is supposed to take decisions on cases involving its own election. This raises the issue on a potential conflict of interest. However, as there is a right to appeal before the Constitutional Court, recourse to court is granted. However, there are some bureaucratic obstacles. Among other things, an individual appellant is obliged to submit at least 100 signatures of eligible voters in support of his appeal.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

No complaint concerning interference by military or security forces is known.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

There are no regulations that contain explicit rules as to the presence of election observers. However, the law generally emphasizes the public nature of elections (see Section 31, Federal Electoral Act, and Section 54, Federal Electoral Regulation). It does not provide for any accreditation mechanism for observers.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 22. <http://www.osce.org/odihr/elections/germany/40879>

Section 31, Federal Electoral Act. http://www.gesetze-im-internet.de/englisch_gg/index.html

Section 54, Federal Electoral Regulation. http://www.gesetze-im-internet.de/bwo_1985/

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

During the last federal election to the Bundestag, access was granted to observers of the OSCE who monitored the elections.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 22. <http://www.osce.org/odihr/elections/germany/40879>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

20a. In law, there are limits on individual donations to political parties.

Yes | **No**

Comments:

There are no limits. However, the relevant law provides for some strict rules as to the procedure. According to Section 25, Paragraph 1, of the Act on Political Parties, a donation not exceeding 1,000 euros must be paid via bank transfer; only donations less than 1,000 euros can be paid in cash. If a donation exceeds 10,000 euros, the name of the donor has to be disclosed and published in the annual financial report, which is to be submitted to the president of the Bundestag. If a donation exceeds 50,000 euros, the party receiving the money has to notify the president of the Bundestag immediately.

References:

Act on Political Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany 2011), Chapter on Political Parties

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14 2009), Page 17. <http://www.osce.org/odihr/elections/germany/40879>

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | **No**

Comments:

In general, there are no limits on corporate donations to candidates and political parties. However, according to the Act on Political Parties, the acceptance of donations from some sources is prohibited. According to Section 25, Paragraph 2, political parties are not allowed to accept:

(1) Donations from public corporations, parliamentary parties and groups and parliamentary groups of municipal councils (local assemblies);

(2) Donations from political foundations, corporate entities, associations and estates that are exclusively and directly intended for nonprofit, charitable or church purposes (Sections 51 to 68 of the German Fiscal Code);

(3) Donations from sources outside of the German territory, unless:

a) The donations accrue directly to a political party from the assets of a German, citizen of the European Union or business enterprise whose majority of shares are owned by Germans, or they accrue from citizens of the European Union or whose registered office is located in a member state of the European Union;

b) They are donations transferred to parties of national minorities in their traditional settlement areas from countries that are adjacent to the Federal Republic of Germany and where members of their ethnic group live;

c) They are donations made by a foreigner not exceeding 1,000 euros;

(4) Donations from professional organizations that were made to the organization with the provision that such funds be passed on to a political party;

(5) Donations from enterprises that are fully or partly in public ownership or are managed or operated by public agencies if the state's direct participation amounts to more than 25 percent;

(6) Donations exceeding 500 euros that are made by an unidentified donor or that are passed on as a donation by unnamed third parties;

(7) Donations evidently made in the expectation of, or return for, some specific financial or political advantage;

(8) Donations solicited by a third party against a fee to be paid by the political party and amounting to more than 25 percent of the value of the solicited donation.

It is to be noted that the aforementioned prohibitions do not apply to individual candidates.

References:

Section 25, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | **No**

Comments:

According to Section 1, Paragraph 4, of the Act on Political Parties, political parties shall use their funds exclusively for performing the functions incumbent on them under the constitution and the act. As regulated in the constitution and federal law, "political parties are integral to the free democratic basic order and required under the constitution. Through their free and continuous participation in the formation of the people's political will, they perform a public function that is required of them and guaranteed by the constitution. Political parties are supposed to participate in forming the people's political will in all fields of public life, in particular by exerting an influence on the shaping of public opinion." Beyond these rules, there are no regulations as to a political party's expenditures.

References:

Section 25, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

11. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

According to Section 23 of the Act on Political Parties, each political party is required to submit an annual financial report no later than Sept. 30 of each year to the president of the Bundestag, who is in charge of review. However, while all donations have to be reported, only those donors whose contributions exceeded 10,000 euros have to be identified. Moreover, only donations exceeding 50,000 euros have to be disclosed immediately to the president of the Bundestag, who makes the information available to the public on a monthly basis. However, it is to be noted that the annual report generally accounts only for the preceding year. As a result, parties' annual reports are available for the public some 18 month after the end of the actual reporting year.

References:

Section 23, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

Prior to the report being submitted to the president of the Bundestag, a certified auditor has to review it. Furthermore, the president of the Bundestag is at liberty to assign another auditor to check if the report complies with the law.

References:

Section 23A of the Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

Section 23A of the Act on Political Parties provides that the president of the German Bundestag shall ascertain whether the submitted statement of accounts is accurate and meets the formal requirements. If the president has concrete evidence that any information contained in a party's statement of accounts is inaccurate, he shall give the party concerned an opportunity to comment. Section 31B of the Act on Political Parties further provides for sanctions in the event of a wrongly stated financial report. If the president of the German Bundestag, in the course of the verification, detects inaccuracies in the statement of accounts, the political party shall be liable to pay twice the amount of the wrongly stated sum. A failure to declare details of donations exceeding 10,000 euros may result in the imposition of a similar fine. Lastly, Section 31C of the Act on Political Parties regulates that a political party that, in contravention of Section 25, Paragraph 2, has accepted donations and not remitted them to the president of the German Bundestag shall be liable to pay three times the amount of the illegally obtained sum of money.

References:

Sections 23A, 25 and 31, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

40

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

As a preliminary remark, the German electoral system is twofold (personalisiertes Verhältniswahlrecht – personalized proportional system): The intention of the system is to grant parties representation in the Bundestag in accordance with the principles of proportional representation combined with uninominal voting. The Federal Electoral Act provides that the Bundestag shall consist of 598 members. Of these members, 299 are elected from single-seat electoral districts (Direktkandidaten) through a first-past-the-post system. The remaining members are elected by proportional representation on the basis of closed lists on the Land level (Landeslisten – Landlists). These Land lists are prepared by the parties; each party that is participating in the elections has a Land list that contains its candidates in one or more of the 16 Länder. Furthermore, each of the 16 Länder constitutes a multi-seat electoral constituency. During the elections, each voter is entitled to cast two votes: The first vote is cast for the candidate in the single-seat electoral districts. The candidate with the most votes is elected to the Bundestag. The second vote is cast for a Land list. In reality, this means that the second vote is a vote for a certain party. It is to be noted that only parties that have received at least 5 percent of valid “second” votes are eligible to participate in the allocation of proportional seats. As a result of this system, every citizen may seek election as a party-nominated candidate or an individual candidate without any party affiliation.

However, political parties play a dominant role in Germany’s political system, and independent political candidates are not common in Germany. In fact, it was in 1969 when an individual candidate without party affiliation was seriously seeking election to the Bundestag. As a result, the current framework is not governing donations to individual political candidates that are not organized in a political party, and there are no general provisions on limits and the auditing of donations to political candidates. In addition, donations to individual political candidates bear some unpractical side effects that the party, donor and candidate presumably would try to avoid. According to Section 18, Paragraph 3, No. 3, of the Act on Political Parties, the state grants to a party another 0.38 euros for each euro that is received through a lawful donation. In addition, only donations to political parties are tax-deductible for the donor. Lastly, the candidate himself has to pay a gift tax.

However, donations to political candidates are generally possible, and some provisions apply. If, for example, the candidate is already a member of the Bundestag, he has to keep account for any donation he receives in the context of his political mandate and notify the president of the Bundestag if a donation exceeds 5,000 euros (Section 4 of the Code of Conduct for Members of the Bundestag – Verhaltensregeln des Deutschen Bundestages). In addition, some of the provisions of the Act on Political Parties apply for members of the Bundestag. If the candidate is a civil servant, he has to be aware of some offenses of the Criminal Code, such as taking bribes, etc. (Section 331 of the German Criminal Code).

References:

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Pages 8, 13 and 29. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Section 4, Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

As the law governing regulations concerning donations to individual candidates is rather fragmentary or absent, there are no limits on corporate donations. However, according to Section 4, Paragraph 4, of the Code of Conduct for Members of the Bundestag, Section 25, Paragraphs 2 and 4, of the Act on Political Parties, shall apply to members of the Bundestag. This means that members of the Bundestag are not allowed to accept donations.

References:

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Pages 8, 13 and 29. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

Comments:

Once again, only few regulations pertain to members of the Bundestag. Section 4, Paragraph 1, of the Code of Conduct for Members of the Bundestag requests that the delegate keep accounts of the donations he receives. However, only donations exceeding 5,000 euros have to be reported to the president of the Bundestag by identifying the name and address of the donor. Only donations exceeding 10,000 euros are to be disclosed to the public by the president of the Bundestag.

References:

Section 4, Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btq/anlage1.html

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

There are no regulations for independent auditing of the campaign finances of individual political candidates. For members of the Bundestag, the procedure to uncover irregularities is laid down in Section 8 of the Code of Conduct for Members of the Bundestag. This procedure, however, is only for parliamentary control.

References:

Section 8, Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btq/anlage1.html

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

For assemblymen, it is the president of the Bundestag who is in charge of monitoring the financing activities.

References:

Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

83

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

As noted above, there are no limits on individual donations. As a result of this flexible approach, any individual is able to financially support the party of his choice.

References:

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Pages 10 and

11: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany 2011), Chapter on Political Parties

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

See above; the only limitations are described in Question 20B.

References:

Section 25, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Since the legislation does not contain specific provisions as to the regulation of campaign financing, there are no limits on the campaign expenditures.

References:

Section 25, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

11: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As soon as irregularities are uncovered, the president of the Bundestag initiates an investigation as to whether a party's funding is in contravention of the law. In fact, this happens regularly. For example, in 2010, the Christian Democratic Union of Rhineland-Palatinate was convicted and required to pay a fine of 1.2 million euros to the German Bundestag following investigations regarding illegal party funding.

References:

Section 23A, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009). http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Reports on investigations regarding funding to the Christian Democratic

Union. http://www.spiegel.de/thema/cdu_spendenaffaere/; <http://www.faz.net/aktuell/politik/inland/parteispendenaffaere-cdu-muss-1-2-millionen-euro-strafe-zahlen-1582388.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Section 31B of the Act on Political Parties provides as follows: If the president of the German Bundestag, in the course of the verification pursuant to Section 23A, detects inaccuracies in the statement of accounts, the political party shall be liable to pay twice the amount of the wrongly stated sum. A failure to declare details of donations exceeding 10,000 euros may also result in the imposition of a similar fine.

Proceedings are initiated regularly. For example, in 2010, the Christian Democratic Union of Rhineland-Palatinate was convicted and required to pay a fine of 1.2 million euros to the German Bundestag following investigations regarding illegal party funding.

References:

Section 31B of the Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009). http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Reports on investigations regarding funding to the Christian Democratic

Union. http://www.spiegel.de/thema/cdu_spendenaffaere/; <http://www.faz.net/aktuell/politik/inland/parteispendenaffaere-cdu-muss-1-2-millionen-euro-strafe-zahlen-1582388.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law requires parties to have their statement of account audited by an independent auditor. Their financial report is reviewed by the president of the Bundestag. Detailed information is made available to the public.

References:

Section 23A, Act on Political parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009). http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

Reports on investigations regarding funding to the Christian Democratic Union. http://www.spiegel.de/thema/cdu_spendenaffaere/; <http://www.faz.net/aktuell/politik/inland/parteispendenaffaere-cdu-muss-1-2-millionen-euro-strafe-zahlen-1582388.html>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

As noted above, with the exception of the Code of Conduct for Members of the Bundestag, the current system does not regulate donations to individual candidates. As a result, there are neither limits nor other regulations on donations to individual candidates. However, considering the bureaucratic obstacles described in Question 21A, donations to individuals are not common in Germany.

References:

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

See Question 23A.

References:

Group of States against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page 8. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Since there is no regulation as to the financing of individual candidates, the current framework does not provide for any sanctions that would require investigations.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page 29. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are no penalties as a result of the lack of legislation.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation as to the auditing of individual campaign financing.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

75

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The parties are requested to submit their statement of accounts on Sept. 30 of each year for the preceding year to the president of the Bundestag (Section 23 of the Act on Political Parties). This rule is strictly followed. However, as the statement of accounts is only published once a year, it may take up to 12 months for data to be accessible.

References:

Section 23, Act on Political

Parties. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?__blob=publicationFile

Bundestag. http://www.bundestag.de/dokumente/datenhandbuch/01/01_23/index.html

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland

(2009). http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Due to the fact that the reports submitted to the president of the Bundestag account for only the previous year and the reviewing process is extensive, the financial reports are accessible some 18 months after the reporting period. This was noted with concern by the OSCE Election Mission.

References:

OSCE: Elections to the Federal Parliament (Bundestag), Election Assessment Mission Report (Warsaw, Dec. 14, 2009), Page 5. <http://www.osce.org/odihr/elections/germany/40879>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The financial reports can be accessed on the Bundestag's website, and they are also published in the Bundestag Printing Paper (Bundestagsdrucksache). The review is free of charge.

References:

Bundestag. http://www.bundestag.de/dokumente/datenhandbuch/01/01_23/index.html

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The procedure laid down in Section 23A of the Act on Political Parties and the necessity of engaging independent auditors results in reports of very high quality.

References:

Bundestag. http://www.bundestag.de/dokumente/datenhandbuch/01/01_23/index.html

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation as to the financing of individual candidates. Therefore, no data concerning their financing or expenditures must be disclosed to the public.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation as to the financing of individual candidates. Therefore, no data concerning their financing or expenditures must be disclosed to the public.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation as to the financing of individual candidates. Therefore, no data concerning their financing or expenditures must be disclosed to the public.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation as to the financing of individual candidates. Therefore, no data concerning their financing or expenditures must be disclosed to the public.

References:

Group of States Against Corruption (GRECO), Evaluierungsbericht über die Transparenz der Parteienfinanzierung in Deutschland (2009), Page

10. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%293_Germany_Two_DE.pdf

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards &
Checks and Balances

3.1. ⁶⁸Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

All citizens can sue the government for infringement of their civil rights. The civil rights are defined in Articles 1 to 19, Article 20, Paragraph 4, and Articles 33, 38, 101, 103 and 104 of the German Constitution.

If, at the last instance at the national level, no infringement of civil rights is found, citizens can take their case before the European Court of Human Rights in Strasbourg. According to Section 46, Paragraph 1, of the European Convention of Human Rights, Germany (having ratified the convention) has to abide by the court's rulings.

References:

German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm>

European Convention on Human Rights. <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

94

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In line with Section 25 of the Common Ministerial Rules of Procedure, the press and information office of the federal government informs citizens and the media about governmental policy decisions.

Furthermore, delegates of the Bundestag (Parliament) can get further information on specific policy decisions through the mechanisms of "minor interpellation" (Kleine Anfrage) or "major interpellation" (Große Anfrage). Minor interpellations usually encompass about 15 questions addressed to the federal government, which has 14 days to respond. Major interpellations are of a stronger nature, as answers provided by the government are discussed in the plenary of the Bundestag. They comprise between 30 and 100 questions, and it may take up to six months to receive an answer.

In addition, regular press conferences are organized where journalists can ask critical questions regarding policy decisions.

References:

Section 25, Common Ministerial Rules of Procedure. <http://www.bmi.bund.de/cae/servlet/contentblob/139852/publicationFile/56552/ggo.pdf>

Documentation and information system of the Bundestag. <http://dipbt.bundestag.de>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

Article 93 of the German Constitution codifies the procedural mechanisms on how state organs can bring cases before the Constitutional Court, which can render individual state actions unconstitutional. In addition, individual citizens (by means of a constitutional complaint) can refer to the Federal Constitutional Court to review the constitutionality of government decisions. In fact, there have been several occasions where the judiciary has passed judgments obliging the executive to reverse or change decisions.

References:

Article 20, Paragraph 2, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P20

Chapter 9, Article 92, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000G11

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In practice, actions of the executive are frequently taken before the Federal Constitutional Court, federal courts or courts of the Länder to review their constitutionality or legality. Complaints can be brought before the court by individuals (by means of a constitutional complaint) or state organs and institutions. For example, in May 2011, the Federal Constitutional Court ruled that a new mechanism of preventive custody was not in line with the constitution. Consequently the mechanism was overturned.

However, critics state that the independence of the judiciary is not sufficiently assured as political considerations do impact the appointment of new judges.

References:

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/bundesverfassungsgericht-kippt-sicherungsverwahrung-verwahren-nicht-wegsperrren-1.1093050>

Piratenpartei. <http://www.piratenpartei.de/node/1501/58821>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

In line with Article 80, Paragraph 1, of the German Constitution, the federal government, a federal minister or the governments of the Länder may be authorized by law to issue statutory instruments. However, the content, purpose and scope of the authority needs to be specified in the law, and each statutory instrument needs to contain a statement explaining its legal basis. Despite these regulations, executive orders are used relatively frequently. For example, by the end of 2009, the German federal law comprised 3,440 executive orders, a number that has continuously risen over the last few years.

References:

Article 80, German Constitution: <http://www.iuscomp.org/gla/statutes/GG.htm#80>

Presse Anzeiger. <http://www.presseanzeiger.de/meldungen/recht-gesetz/317121.php>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

The federal chancellor, in his position as head of government, cannot claim political immunity. However, as all chancellors are at the same time members of the Bundestag, they enjoy parliamentary immunity. All delegates of the Bundestag and Federal Convention have parliamentary immunity protecting them from criminal prosecution. However, they are not immune from civil claims. In line with Article 46 of the German Constitution, a delegate's immunity can be waived by the Bundestag, allowing for his prosecution.

The federal president, on the contrary, enjoys immunity from criminal prosecution throughout his term of office. The federal president cannot be voted out of office. However, Article 61 of the German Constitution provides that the Bundestag or the Bundesrat may impeach the federal president before the Federal Constitutional Court for willful violation of the constitution or any other federal law. The motion of impeachment must be supported by at least two-thirds of the members of the Bundestag or two-thirds of the votes of the Bundesrat. After the federal president has been impeached, the court may issue an interim order preventing him from exercising his functions. Following impeachment, the federal president can be prosecuted.

References:

Article 46, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#46>

Article 61, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#61>

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

In line with the Vienna Convention on Diplomatic Relations of 1961, the minister of foreign affairs as chief diplomat enjoys diplomatic immunities. Article 31 of the Convention establishes the immunity from civil and criminal jurisdiction – with precise exceptions to immunity from civil jurisdiction where previous state practice had varied. Immunity from jurisdiction – like other immunities and privileges – may be waived as specified in Article 32 of the Convention.

For all other ministerial-level officials, the same rules as those for the federal chancellor apply: If they hold a mandate of the Bundestag in addition to their ministerial office, they enjoy parliamentary immunity protecting them from criminal prosecution. This can be waived by the Bundestag.

References:

Vienna Convention on Diplomatic Relations of 1961. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3 ←en

Article 46, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#46>

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

22

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

Neither the federal chancellor nor the federal president needs to file a regular asset disclosure form. However, no member of the executive may hold an additional paid job, position in companies or other professional engagement. Furthermore, as the federal chancellor also holds a mandate of the Bundestag, he is obliged to report any possible conflict of interest to the president of the Bundestag and needs to declare into which income group his possible extra income falls (as regulated by the Code of Conduct for Members of the Bundestag). The federal chancellor's salary is laid down in Section 11 of the Law on Federal Ministers (Bundesministergesetz). The federal president's salary in turn amounts to 10/9 of the federal chancellor's salary.

References:

Section 11 of the Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | **No**

Comments:

Ministerial-level officials do not need to file a regular asset disclosure form. However, those ministers that do simultaneously hold a mandate of the Bundestag are obliged to report any possible conflict of interest to the president of the Bundestag and need to declare into which range their extra income falls (as regulated by the Code of Conduct for Members of the Bundestag). Ministers' salaries are laid down in Section 11 of the Law on Federal Ministers (Bundesministergesetz).

References:

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btq/anlage1.html

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

Regulations governing gifts and hospitality offered to members of the executive branch are laid down in Chapter 30 of the German Criminal Code. In line with Section 331, Paragraph 1, of the Criminal Code, a public official who demands, allows himself to be promised or accepts a benefit for himself or a third person for the discharge of a duty shall be punished with imprisonment for not more than three years or a fine.

Furthermore, according to Section 332, Paragraph 1, of the Criminal Code, a public official who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or would in the future perform an official act, and thereby violated or would violate his official duties shall be punished with imprisonment from six months to five years. In less serious cases, the punishment shall be imprisonment for not more than three years or a fine. An attempt shall be punishable.

In addition, Section 5, Paragraph 3, of the Act Governing Federal Ministers stipulates that members as well as former members of government are obliged to declare gifts received with regard to their office to the federal government. The federal government then decides whether the gift can be accepted.

References:

Chapter 30, Crimes in Public Office of the German Criminal Code. <http://www.iuscomp.org/gla/statutes/StGB.htm#BXXX>

Act Governing Federal Ministers. <http://www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | **No**

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | **No**

Comments:

There are no regulations on heads of state and government and ministers entering the private sector after leaving the government. However, according to Section 6 of the Act Governing Federal Ministers (Ministergesetz von Bund und Ländern), former members of government have an obligation of confidentiality regarding insider information gained during their former duties. Despite calls for introducing a cooling off period for former members of the executive (similar to a corresponding rule for civil servants stipulated in Section 69A of the Law on Federal Public Servants), such legislation is still missing.

References:

Act Governing Federal Ministers. <http://www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf>

Section 69A, Law on Federal Public Servants. <http://www.buzer.de/gesetz/885/a11981.htm>

Transparency International Deutschland e.V., Positionspapier TI Deutschland zu Karenzzeiten für Politiker und Beamte (Berlin, Transparency International Deutschland e.V., 2006). http://www.transparency.de/fileadmin/pdfs/Themen/Politik/Positionspapier_Karenzzeiten_fuer_Politiker_06-06-19.pdf

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

Such legislation is missing and thus not effective. In fact, following the 2005 elections, about 25 percent of the former ministers and state secretaries directly moved on to lobbying positions in the private sector.

References:

H. Klein and T. Höntzsch (2007): Fliegende Wechsel – die Drehtür kreist, LobbyControl Kurzstudie, Köln

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Even though regulations governing gifts and hospitality to members of the executive branch are generally effective, several cases of breach have become known, and there is a big gray area of questionable cases. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

In late 2011, German Federal President Christian Wulff was accused of having repeatedly accepted benefits beyond what was allowed during his prior term as minister president of Lower Saxony as well as during his term as federal president. On Feb. 16, 2012, the prosecution of Lower Saxony announced it was filing a request to the Bundestag to waive Wulff's immunity to initiate legal investigations. Following this announcement and calls for him to confess his wrongdoing, he resigned from office. This example shows that the checks and balances established by the legal framework are still effective, as the ex-president in the end had to take responsibility.

References:

Franfurter Allgemeine. <http://www.faz.net/aktuell/wirtschaft/recht-steuern/korruptionsdelikte-geschenke-an-staatsdiener-koennen-straefbar-sein-11573466.html>

Spiegel Online. <http://www.spiegel.de/politik/deutschland/0,1518,812834,00.html>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Members of the executive branch do not have to file asset disclosure forms.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Section 11, Law on Federal Ministers. <http://www.buzer.de/gesetz/6837/a97219.htm>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

As Germany is a parliamentary democracy and the government is indirectly elected by means of mixed member proportional representation, called "personalized proportional representation," party politics and functions do have a certain impact on official government functions.

For example, current Federal Chancellor Angela Merkel, like all German chancellors, simultaneously holds a political mandate of the Bundestag. In addition, she is the leader of her party, the Christian Democratic Union. Similarly, the German vice chancellor and minister for economic affairs also serves as leader of the Free Democratic Party. In fact, most government officials simultaneously hold a political mandate or represent a party.

However, rules distinguishing state functions from party activities are generally recognized. Moreover, the state funding of political parties is codified in detail in the Act on Political Parties (starting at Section 18).

References:

J. Hartmann (2004): Das Politische System der Bundesrepublik Deutschland, Page 31

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/resonanzstudien-fuer-parteien-regierungs-und-partearbeit-sorgfaeltig-trennen-13363.html>

Act on Political Parties. <http://www.gesetze-im-internet.de/partg/index.html>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

The Federal Constitutional Court has exclusive competence to render a law unconstitutional. If, however, a subordinated court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Federal Constitutional Court (Article 100 of the German Constitution). In addition, state organs and institutions as well as individual citizens (by means of a constitutional complaint) can refer to the Federal Constitutional Court to review the constitutionality of laws. In fact there have been several occasions where the judiciary has passed judgments obliging the legislature to change laws.

References:

Article 20, Paragraph 2, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P20

Chapter 9, Article 92, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000G11

Section 31, Paragraph 2, Law on the Federal Constitutional Court. <http://www.iuscomp.org/gla/statutes/BVerfGG.htm#31>

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In practice, laws passed by the legislature are frequently taken before the Federal Constitutional Court to review their constitutionality or legality. Complaints can be brought before the court either by individuals or state organs and institutions. For example, in May 2011, the Federal Constitutional Court ruled that a new mechanism of preventive custody was not in line with the constitution. Consequently the mechanism was overturned.

However, critics state that the independence of the judiciary is not sufficiently assured as political considerations do impact on the appointment of judges.

References:

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/bundesverfassungsgericht-kippt-sicherungsverwahrung-verwahren-nicht-wegsperren-1.1093050>

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/cdu-politiker-mueller-wird-verfassungsrichter-der-boese-schein-1.1219018>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

Comments:

All members of the Bundestag have parliamentary immunity protecting them from criminal prosecution. However, they are not immune from civil claims. Furthermore, in line with Article 46 of the German Constitution, a delegate's immunity can be waived by the Bundestag, allowing for prosecution.

References:

Article 46, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#46>

Standing Order of Parliament (Geschäftsordnung des Deutschen Bundestages). http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btq/anlage6.html

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

4

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | **No**

Comments:

Members of the national legislature are not required to file an asset disclosure form. However, they have to publicly disclose information on further employment or positions. Additionally, according to the Code of Conduct for Members of the German Bundestag, extra income from other occupations arising to more than 1,000 euros per month or 10,000 euros per year needs to be declared to the president of the Bundestag. The precise amount of extra income earned from additional jobs is not published; delegates need to declare only in which monthly range category their income lies. Category 1 ranges from 1,000 to 3,500 euros, Category 2 from 3,500 to 7,000 euros and Category 3 from 7,000 euros and higher.

References:

Code of Conduct for Members of the German Bundestag (Annex I to the Standing Order of Parliament). http://www.bundestag.de/dokumente/rechtsgrundlagen/go_bg/anlage1.html

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | **No**

Comments:

There are no regulations for delegates entering the private sector following their term in office. However, where possible conflicts of interest may arise, planned employment is subject to approval by the president of the Bundestag. Furthermore, in line with Section 44D of the Parliamentary Act, delegates and former delegates have an obligation of confidentiality regarding insider information gathered during their time as delegate.

References:

Section 44D of the Parliamentary Act. <http://www.jusline.de/index.php?cpid=f92f99b766343e040d46fcd6b03d3ee8&lawid=339&paid=44d>

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

The Parliamentary Act outlaws the acceptance of financial benefits. However, the Code of Conduct for Members of the German Bundestag does not concretely lay down such rules with regard to nonmonetary gifts and hospitality.

References:

Code of Conduct for Members of the German Bundestag (Annex I to the Standing Order of Parliament). http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Parliamentary Act. <http://www.bundestag.de/dokumente/rechtsgrundlagen/abgges.pdf>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

Comments:

Members of the legislature do not have to publicly disclose their assets.

References:

Code of Conduct for members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no laws regulating private sector employment following a term as delegate of the Bundestag. In fact, many former delegates return to their previous employment or take up new employment once their term in office is over. According to a socio-scientific survey conducted by scientists of the University of Jena in 2009, 26 percent of former delegates returned to their previous employment while 20 percent took up new employment. A mere 14 percent of former delegates continued to be active in the political sphere. In fact, many German delegates are civil servants (particularly teachers) by profession and can thus easily return to their previous employment at the end of their tenure.

References:

DasParlament. <http://www.das-parlament.de/2009/29-30/Innenpolitik/25148986.html>

Michael Edinger and Bertram Schwarz: Leben nach dem Mandat, Sonderforschungsbereich 580 der Universität Jena, Heft 35, 2009

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality for delegates are relatively weak. The Code of Conduct for Members of the German Bundestag prohibits the acceptance of financial benefits but does not concretely lay down rules with regard to nonmonetary gifts and hospitality. There is a significant gray area as financial benefits granted to political parties only need to be published if they exceed the amount of 10,000 euros per person or company and year. In fact, many cases have become known in which delegates have accepted financial benefits beyond the allowed amount or gifts conflicting with their impartiality.

References:

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/abgeordnete-erhielten-schecks-dubiose-parteispenden-aus-gluecksspielkonzern-1.1061744>

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/parteispenden-von-gauselmann-clever-sehr-clever-zu-clever-1.1062251>

Augsburger Allgemeine. <http://www.augsburger-allgemeine.de/politik/Air-Berlin-Bonuskarten-fuer-Politiker-waren-mit-Bundestag-abgestimmt-id17079996.html>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Members of the legislature are not required to disclose their assets.

References:

Code of Conduct for Members of the Bundestag. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

31

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | **No**

Comments:

As outlined previously, members of the national legislature are not required to file an asset disclosure form. However, they have to publicly disclose information on further employment or positions. Additionally, according to the Code of Conduct for Members of the German Bundestag, extra income from other occupations arising to more than 1,000 euros per month or 10,000 euros per year needs to be declared to the president of the Bundestag. The precise amount of extra income earned from additional jobs is not published; delegates only need to declare in which monthly range category their income lies. Category 1 ranges from 1,000 to 3500 euros, Category 2 from 3,500 to 7,000 euros and Category 3 from 7,000 euros on up. Citizens can access this information online on the homepage of the Bundestag.

References:

Code of Conduct for Members of the German Bundestag (Annex I to the Standing Order of Parliament). http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html

Bundestag. <http://www.bundestag.de/bundestag/abgeordnete17/index.jsp>

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The only information made publicly available is related to the extra income (of more than 1,000 euros per month or 10,000 euros per year) of members of the Bundestag gained from additional jobs according to three income categories. Specific information on each member of the Bundestag is immediately published on the homepage of the Bundestag. Furthermore, some delegates have started an initiative called "transparent delegate" (Gläserner Abgeordneter), voluntarily disclosing all information on their income and assets.

References:

Bundestag. <http://www.bundestag.de/bundestag/abgeordnete17/index.jsp>

Zeit Online. <http://www.zeit.de/politik/deutschland/2011-04/abgeordnete-nebeneinkuenfte-bundestag>

Der Gläserner Abgeordnete. <http://www.glaeserner-abgeordneter.de/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The only information made publicly available is related to the extra income (of more than 1,000 euros per month or 10,000 euros per year) of members of the Bundestag gained from additional jobs according to three income categories. Specific information on each member of the Bundestag is immediately published free of charge on the homepage of the Bundestag. Furthermore, some delegates have started an initiative called "transparent delegate" (Gläserner Abgeordneter), voluntarily disclosing all information on their income and assets free of charge on the Internet.

References:

Bundestag. <http://www.bundestag.de/bundestag/abgeordnete17/index.jsp>

Zeit Online. <http://www.zeit.de/politik/deutschland/2011-04/abgeordnete-nebeneinkuenfte-bundestag>

Der Gläserner Abgeordnete. <http://www.glaeserner-abgeordneter.de/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The only information made publicly available is related to the extra income (of more than 1,000 euros per month or 10,000 euros per year) of members of the Bundestag gained from additional jobs according to three income categories. Critics argue that the disclosure of mere extra income ranges according to three categories is not sufficient as it leaves a great range of uncertainty regarding extra income of more than 7,000 euros.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Legislature

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

In line with Article 42 of the German Constitution, sessions of the Bundestag are public. Only if a request by 10 percent of its members or the federal government is accepted by a two-thirds majority, the public can be excluded. Section 19 of the Standing Order of Parliament reiterates this provision. According to the German Freedom of Information Act, every citizen has the right to access official information of the federal institutions. This also applies to the Bundestag, Bundesrat, Federal Constitutional Court, Federal Courts and the Federal Bank where public administration tasks are carried out (Section 1, Paragraph 1, of the Freedom of Information Act). However, specific tasks linked to parliamentary affairs such as those relating to the legislative process, control of the federal government, etc., are exempt from this rule and thus not publicly available. For example, Section 69 of the Standing Order of Parliament stipulates that all committee sessions are not public. Specific legislative projects and background documents are made public only a few months before the draft is debated in the Bundestag.

As noted earlier, the Administrative Court of Berlin rendered two judgments concerning the scope of the Federal Freedom of Information Act in 2007 and 2008 (Urteil vom, Oct. 10, 2007 – VG 2 A 101.06 – and Urteil vom, Jan. 16, 2008 – VG 2 A 68.06). The court in general distinguished between ordinary administration activity and government activity. It noted that the law solely regulates access to information for ordinary administrative activity and excludes government activity. Since then, the scope of application of the act is under discussion and subject to legal dispute.

References:

German Freedom of Information Act. <http://dejure.org/gesetze/IFG>

Article 42, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#42>

Sections 19 and 69, Committees of the Standing Order of Parliament. http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btq/go07.html

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Press and Communication Department of the Bundestag informs citizens and the media on news from the Bundestag. All public sessions are broadcast free of charge. Furthermore, all drafts that are discussed in parliament are published in the Official Records of Parliament and accessible online. This includes draft legislation, motions by parliamentary groups or the government, draft resolutions and reports from committee sessions, motions for amendment and resolutions, as well as interpellations. However, no background documents are available as long as documents are at the drafting stage.

References:

German Bundestag. www.bundestag.de/bundestag/verwaltung/abteilung_puk/index.html

Information and documentation center of the Bundestag: <http://dip.bundestag.de/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All public sessions are broadcast free of charge. Furthermore, all drafts that are discussed in parliament are published in the Official Records of Parliament and accessible online. This includes draft legislation, motions by parliamentary groups or the government, draft resolutions and reports from committee sessions, motions for amendment and resolutions, as well as interpellations. However, no background documents are available as long as documents are in the drafting stage.

References:

Information and documentation center of the Bundestag: <http://dip.bundestag.de/>

German Bundestag. www.bundestag.de/dokumente/drucksachen/index.html

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

57
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

A high value is attached to judicial independence. The procedure for selecting national-level judges is transparent and laid down in the Federal Judicial Election Act. However, the selection procedure of the highest-level judges (such as those of the federal courts and the Federal Constitutional Court) is viewed with some skepticism. Half of the selection committee consists of ministers of the Länder; the other half is elected by the Bundestag. As a result, the composition of the selection committee reflects the composition of the Bundestag or, rather, the respective constituency. Hence, a judge's party affiliation might have an impact on his selection. Nevertheless, the principles of merit and performance are taken into account when it comes to the actual selection of national-level judges. Article 33, Paragraph 2, provides that "every German shall be equally eligible for any public office

according to his aptitude, qualifications and professional achievement." An alleged violation of this right can be challenged before administrative courts by means of a competitor's complaint.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Federal Judicial Election Act. <http://www.gesetze-im-internet.de/riwg/BjNR003680950.html>

Bundestag. http://www.bundestag.de/service/glossar/R/richterwahl_aussch.html

Article 33, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#33>

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

A high value is attached to judicial independence. However, the selection procedure of the highest-level judges (such as those of the federal courts and the Federal Constitutional Court) is viewed with some skepticism. Half of the selection committee consists of ministers of the Länder; the other half is elected by the Bundestag. As a result, the composition of the selection committee reflects the composition of the Bundestag or, rather, the respective constituency. Hence, a judge's party affiliation might have an impact on his selection. Nevertheless, the principles of merit and performance are taken into account when it comes to the actual selection of national-level judges. Article 33, Paragraph 2, provides that "every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievement." An alleged violation of this right can be challenged before administrative courts (by means of a competitor's complaint). In practice, this happens frequently.

References:

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/rheinland-pfalz-klage-gegen-justizminister-richter-jetzt-ist-zeit-zum-laermen-1.1054796>

Decision by the Federal Administrative Court of 04.11.2010, 2 C 16.09, <http://www.bverwg.de/pdf/1343.pdf>

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/wahl-in-rheinland-pfalz-2011/proteste-gegen-kurt-beck-juristen-begehren-auf-15205.html>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

Comments:

In line with the Federal Judicial Election Act, national-level judges are appointed by the federal president upon joint nomination by the federal minister in charge and the selection committee. Half of the Selection Committee consists of ministers of the Länder; the other half is elected by the Bundestag.

References:

Federal Judicial Election Act. <http://www.gesetze-im-internet.de/riwg/BJNR003680950.html>

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

100

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

According to the Courts Constitution Act, all court decisions and judgments are to be substantiated and published by the respective court. Furthermore, the principle of publicity applies to court hearings. Only in exceptional cases can the public be excluded from the proceedings.

References:

Section 169 of the Courts Constitution Act. <http://www.gesetze-im-internet.de/bundesrecht/gvg/gesamt.pdf>

Decision by the Federal Constitutional Court of Feb. 26, 1997, on the publication of court decisions (AZ. BVerfG 6 C 3.96). <http://www.jurpc.de/rechtspr/19980010.htm>

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Court decisions and judgments are substantiated extensively. These explanations are made public and can be accessed on the respective court's homepage.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

Court decisions can be reviewed by higher instance courts if an appeal is filed. The highest instances are the Federal Courts (Federal Court of Justice, Federal Administrative Court, etc.). Moreover, a constitutional complaint can be brought to the Federal Constitutional Court. In addition, in specific cases of procedural error, citizens can file a disciplinary complaint against a judge. Section 61 of the German Law on Judges establishes the Federal Disciplinary Tribunal, competent for disciplinary proceedings, including for retired judges.

References:

Code of Civil Procedure. http://www.gesetze-im-internet.de/englisch_zpo/index.html

Code of Criminal Procedure. http://www.gesetze-im-internet.de/englisch_stpo/index.html

Section 61 of the German Law on Judges. <http://www.buzer.de/gesetz/2075/b5840.htm>

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

The Federal Disciplinary Tribunal is composed of a chairman, two permanent assessors and two nonpermanent assessors. The chairman and two permanent assessors need to be members of the Federal Court of Justice, while the two nonpermanent assessors need to be appointed for life and belong to the same branch of law as the concerned judge. The president of a court and his permanent representative cannot be members of the Federal Disciplinary Tribunal. This is to ensure the tribunal's independence.

References:

German Law on Judges. <http://www.buzer.de/gesetz/2075/b5840.htm>

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Cases that are brought before the Federal Disciplinary Tribunal are thoroughly investigated. There have been prominent cases in which judges have been removed from office after review by the Federal Disciplinary Tribunal. This mechanism to ensure accountability of the judiciary is quite effective. As court proceedings are public, the media also has an important control function.

References:

HNA.de. <http://m.hna.de/nachrichten/stadt-kassel/kassel/skandal-beendet-ex-gerichtspraesident-geschieden-874382.html>

Spiegel Online. <http://www.spiegel.de/spiegel/print/d-45141027.html>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Cases that are brought before the Federal Disciplinary Tribunal are thoroughly investigated, and violations are sanctioned. There have been prominent cases in which judges have been removed from office after review by the Federal Disciplinary Tribunal. This mechanism to ensure accountability of the judiciary is quite effective.

References:

HNA.de. <http://m.hna.de/nachrichten/stadt-kassel/kassel/skandal-beendet-ex-gerichtspraesident-geschieden-874382.html>

Spiegel Online. <http://www.spiegel.de/spiegel/print/d-45141027.html>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

32

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

Members of the judiciary are not required to publicly disclose their assets. However, salaries of judges are regulated by the Federal Law on Salaries. There are 10 salary steps (R1 to R10), and the respective salaries are made public. Secondary employment is allowed only if it does not compromise a judge's impartiality.

References:

Salaries of judges. <http://www.juristenkoffer.de/richter/richterbesoldung/>

Federal Law on Salaries. <http://www.buzer.de/gesetz/1599/a22843.htm>

Section 4, German Law on Judges. <http://www.gesetze-im-internet.de/drig/index.html>

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

Rules regulating the acceptance of benefits and bribery are strict. Chapter 30 of the German Criminal Code regulates offenses committed in public office and sets increased sentences for judges accepting benefits or bribes. Furthermore, according to Section 339 of the German Criminal Code, a judge or an arbitrator who in conducting or deciding a legal matter perverts the course of justice for the benefit or to the detriment of a party shall be liable to imprisonment from one to five years. In addition, administrative regulations governing gifts and hospitality exist at the level of the Bund and Länder. However, there is no written Code of Conduct for judges.

References:

Chapter 30, German Criminal Code. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P339

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

Members of the judiciary do not have to disclose their assets.

References:

German Law on Judges. <http://www.gesetze-im-internet.de/drig/index.html>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

Judges who retire or resign from their office can take up other employment without requesting permission from their highest administrative authority. Furthermore, the law does not require a cooling off period for retired judges, even if the subsequent employment is linked to the judge's former office. While few cases of judges stepping over to the private sector exist, those cases have been met with criticism.

References:

Spiegel Online. <http://www.spiegel.de/spiegel/vorab/0,1518,765433,00.html>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | **25** | 0

Comments:

As outlined above, there are no laws restricting post-government private sector employment for retired judges. While few cases of judges stepping over to the private sector exist, those cases have been met with criticism in the media.

References:

Spiegel Online. <http://www.spiegel.de/spiegel/vorab/0,1518,765433,00.html>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Rules regulating the acceptance of benefits and bribery are strictly enforced, and violations are met with increased sentences. Furthermore, judges usually recuse themselves from cases in which their impartiality may be compromised. No cases of judges having accepted benefits have become known.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Opinion No. 3 of the Consultative Council of European Judges, CCJE (2002), Strasbourg, Nov. 19, 2002

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Members of the judiciary do not have to disclose their assets.

References:

German Law on Judges. <http://www.gesetze-im-internet.de/drig/index.html>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

Comments:

Members of the judiciary do not have to disclose their assets. However, the salary scales for judges are publicly available and can be accessed by citizens.

References:

Salary of judges. <http://www.juristenkoffer.de/richter/richterbesoldung/>

German Association of Judges. <http://www.drb.de/cms/index.php>

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Members of the judiciary do not have to disclose their assets. However, the salary scales for judges are publicly available and can be accessed by citizens online.

References:

Salary of judges. <http://www.juristenkoffer.de/richter/richterbesoldung/>

German Association of Judges. <http://www.drb.de/cms/index.php>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

Members of the judiciary do not have to disclose their assets. However, the salary scales for judges are publicly available and can be accessed by citizens online free of charge.

References:

Salary of judges. <http://www.juristenkoffer.de/richter/richterbesoldung/>

German Association of Judges. <http://www.drb.de/cms/index.php>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Members of the judiciary do not have to disclose their assets. However, the salary scales for judges are publicly available and can be accessed by citizens online.

References:

Salary of judges. <http://www.juristenkoffer.de/richter/richterbesoldung/>

German Association of Judges. <http://www.drb.de/cms/index.php>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

The budget is thoroughly discussed in the plenary of the Bundestag. In fact, control over the federal budget is one of the Bundestag's principal jobs. In line with Article 110 of the German Constitution, all bills to approve or amend the budget law or the budget itself need to be submitted simultaneously to the Bundesrat and Bundestag for approval.

References:

Article 110, German Constitution. <http://www.iuscomp.org/gla/statutes/GG.htm#110>

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Article 110 of the German Constitution stipulates that all state expenditures must be listed in the budget. This regulation is strictly enforced, and all public expenditures as well as the overall budget need to be approved by the Bundestag. This includes so-called "hidden budgets," such as the chancellor's budget, which is independent from the general budget but nonetheless subject to the Bundestag's approval. Any government violation of this principle is known.

References:

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/haushalt-2012-26-milliarden-euro-neue-schulden-11540827.html>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

A special committee of the Bundestag, the Budget Committee, is in charge of controlling and monitoring government expenditures as well as complying with the annual budget plan. The Accounting Committee, a subcommittee of the Budget Committee, cooperates closely with the German Federal Court of Audit. At the end of every financial year, the German Federal Court of Audit verifies revenue and expenditures and comments on the government's budget management. Taking this review into account, the Bundestag is asked to relieve the government.

References:

Bundestag. <http://www.bundestag.de/bundestag/aufgaben/haushalt/entstehung.html>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

83

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

In general, all sessions of the Bundestag are public. This includes sessions in which the budget is debated. These sessions are usually met with a lot of interest by the media, which reports on the budget plan. In addition, sessions are broadcast, and records of the debates are publicly available, allowing for the identification of specific priorities and their origins. As a consequence, the process is very transparent.

References:

Spiegel Online. <http://www.spiegel.de/politik/deutschland/0,1518,799393,00.html>

Bundestag. http://www.bundestag.de/dokumente/textarchiv/2011/35467875_kw34_vorschau/index.html

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

In general, citizens cannot provide input at budget hearings as there is no formal process to include them. However, some influence may occur through NGOs and the media reporting on specific topics or seeking to raise awareness for specific problems. Furthermore, renowned people and civil society representatives who have been nominated as official experts can contribute to the budgetary process during consultations.

References:

Kampagne 2.0. <http://www.kampagne20.de/2010/02/13/ngos-lobbyieren-online-haushalten-mit-twitter/>

Bundestag. http://www.bundestag.de/bundestag/ausschuesse17/a08/anhoerungen/2_Finanzmarktstabilisierungsgesetz_Drs__17_8343/79.pdf

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

All information on the annual budget, including itemized budget allocations, is available online on the homepage of the Bundestag. Information is also published by the Ministry of Finance.

References:

Offener Haushalt. http://bund.offenerhaushalt.de/faq.html?reference_year=2011

Documentation and information system of the Bundestag. <http://dipbt.bundestag.de/dip21/btd/17/066/1706600.pdf>

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Budget Committee of the Bundestag is in charge of controlling and monitoring government expenditures as well as complying with the annual budget plan. The Accounting Committee, a subcommittee of the Budget Committee, cooperates closely with the German Federal Court of Audit. At the end of every financial year, the German Federal Court of Audit verifies revenue and expenditures and comments on the government's budget management. Taking this review into account, the Bundestag is asked to relieve the government.

References:

Bundestag. <http://www.bundestag.de/bundestag/aufgaben/haushalt/entstehung.html>

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

100

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Budget Committee or the Accounting Committee can request that department heads and heads of public institutions attend a question time during which they have to provide information on their institution or department's expenditures. Furthermore, the minister of finance has to testify regularly before the Budget Committee.

References:

Die Freie Welt. <http://www.freiewelt.net/nachricht-8794/spd-zitiert-weidmann-vor-den-haushaltsausschuss.html>

Bundestag. http://www.bundestag.de/bundestag/ausschuesse17/a08/arbeit_und_aufgaben1.html

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Budget Committee is always chaired by a member of the strongest opposition party to ensure impartiality. The Budget Committee is the biggest committee of the Bundestag and is composed of members of all parliamentary groups.

References:

Bundestag. <http://www.bundestag.de/bundestag/ausschuesse17/a08/index.jsp>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Budget Committee is primarily tasked with overseeing government expenditures, the annual budget plan and allocation of the budget. It also monitors compliance of expenditures with the budget plan. Only when a violation of the budget plan is found can the committee initiate investigations or block specific expenditures.

References:

Bundestag: http://www.bundestag.de/bundestag/aussschuesse17/a08/arbeit_und_aufgaben1.html

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

First of all, the executive branch — and, thus, the administration — is bound by law and justice, assured by Article 20 of the German Constitution. According to Article 33, Paragraph 5, of the German Constitution, the law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service, which include integrity, altruism and impartiality.

When it comes to management of the civil service, Article 33, Paragraph 2, of the German Constitution states that every German shall be equally eligible for any public office that suits his aptitude, qualifications and professional achievements. Public office is seen as every job in the public sector. The Act on Federal Civil Servants (Bundesbeamtengesetz) assures the impartial management of civil servants. Among other things, this includes the requirement of published advertisements of vacancies (Section 8 of the Act on Federal Civil Servants), the selection of civil servants based only on merit and professional criteria (Section 9 of the Act on Federal Civil Servants) and the regulation of special requirements for promotions (Section 22 of the Act on Federal Civil Servants). The same provisions can be found in the respective acts on civil servants at the Länder-level, as most of the administration tasks are carried out by the Länder (see Article 83 of the German Constitution). In addition, civil servants' career brackets are predominantly governed by law.

References:

Article 33, German Constitution. http://www.gesetze-im-internet.de/gg/art_33.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGenl_000P33

Act on Federal Civil Servants (Bundesbeamtengesetz). http://www.gesetze-im-internet.de/bbg_2009/BJNR016010009.html#BJNR016010009BJNG000100000

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

Article 33, Paragraph 2, of the German Constitution assures that every German is equally eligible for any public office suited to his aptitude, qualifications and professional achievements. Furthermore, the legal recourse for competitors for not being chosen constitutes an effective remedy to prevent nepotism, cronyism and patronage as it allows every competitor who has a better aptitude to take action against being passed over. An alleged violation of this right can be challenged before an administrative court (competitor's complaint). This ensures that civil servants are selected based on their professional qualifications.

References:

Article 33, German Constitution. http://www.gesetze-im-internet.de/gg/art_33.html,
http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P33

BAG, Urteil vom, Sept. 7, 2004 – 9 AZR 537/03. <http://lexetius.com/2004.1958>

Explanation of the competitor's complaint (Konkurrentenklage) by Wolfgang Reuter. <http://www.reuter-arbeitsrecht.de/alltag-im-arbeitsrecht/einstellungsanspruch-bei-der-konkurrentenklage.html>

Zimmerling. <http://www.zimmerling.de/veroeffentlichungen/volltext/stellen-besetzungsverfahren.htm>

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Civil servants can address their employee committees, which are bodies consisting of elected civil servants (Personalvertretungen). The Bund (for federal employees and civil servants) and every Land (for employees and civil servants of the Länder) have acts installing and regulating the employee committees (Personalvertretungsgesetze). The employee committees are impartial bodies within the administration representing the interests of the civil servants. They have participatory rights in several decisions concerning the management of the civil servants. Moreover, legal recourse against unlawful employment decisions is possible.

References:

Federal Act on Employee Committees of Civil Servants (Bundespersönalvertretungsgesetz). <http://www.gesetze-im-internet.de/bpersvg/BJNR006930974.html#BJNR006930974BJNG000700314>

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

Civil servants convicted of corruption committed during the execution of their main duties automatically lose their status as civil servants and therefore their employment after the final judgment. This applies both to civil servants of the Bund (according to Section 41 of the Act on Federal Civil Servants) and the Länder (according to Section 24 of the Act on the Status of Civil Servants). For other violations of obligations, disciplinary proceedings can be initiated (Section 77 of the Act on Federal Civil Servants and the respective provisions in the Federal Act on Disciplinary Proceedings). Additionally, a penal court can rule on deprivation of public office as an ancillary measure (Section 358 of the Criminal Code). Pursuant to Section 14 of the Act on Federal Civil Servants, the appointment of a person convicted of a crime such as corruption is to be revoked. This further ensures that a civil servant convicted of corruption cannot seek government employment again.

References:

Section 14, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_14.html

Section 41, Paragraph I, No. 2, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_41.html

Section 24, Paragraph I, No. 2, Act on the Status of Civil Servants. http://www.gesetze-im-internet.de/beamstg/_24.html

Battis/Battis, Bundesbeamtenengesetz, 2009, Section 41, Paragraph 6

Section 358, Penal Code. http://www.gesetze-im-internet.de/stgb/_358.html

Bundesministerium der Justiz. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBBengl_000P358

Bundesdisziplinargesetz (Federal Act on Disciplinary Proceedings). <http://www.gesetze-im-internet.de/bdg/index.html>

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

83

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In general, civil servants, though bound by instructions given at a higher level (by ministers and state secretaries who are appointed based on their political affiliation), are operating independently from the political level. This, however, does not apply to state secretaries and division managers of the ministries who are seen as political officers and can be retired at any time. Regular civil servants can contest politically motivated dismissals and other measures in court. Therefore, protection from political interference is ensured in practice. Though the rule of law is highly developed, cases where civil servants were dislocated for political reasons have occurred. This is even more likely to happen in parts of the country where a party has been in power for a long time without notable opposition. The case of the tax investigators in Hessen who have been prevented from investigating in tax fraud cases represents an example of strong political interference in civil servants' work. The tax investigators were dislocated, called mentally ill and subjected to different disciplinary measures.

On the other hand, this case also shows that the maltreatment of civil servants is not without consequences, and it attracts the media's attention. Moreover, the cases were brought to court and were the subject of an investigation committee of the Landtag (State Parliament). Preliminary proceedings against the doctor attesting mental sickness have been initiated.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Executive and Chapter on Public Administration

FrankfurterRundschau. <http://www.fr-online.de/steuerfahnder-ffaere/steuerfahnderffaere-in-hessen-erfolgreich-kaltgestellt.1477340.2792418.html>

FrankfurterRundschau. <http://www.fr-online.de/politik/steuerfahnder-ffaere-ex-steuerfahnder-im-hessischen-landtag.1472596.9704374.html>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Civil servants' career brackets are predominantly governed by law. Therefore, the evaluation takes place according to defined criteria. When it comes to the appointment of civil servants, the legal recourse by competitors for not being chosen constitutes an effective remedy as it allows every competitor with a better aptitude to take action against being passed over. Article 33 of the German Constitution assures that civil servants are chosen according to professional criteria. However, every now and again, individual cases become known in which other criteria were taken into consideration for civil servants' appointment.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Bundesministerium des

Innern. http://www.bmi.bund.de/DE/Themen/OeffentlDienstVerwaltung/OeffentlicherDienst/Beamte/Laufbahnrecht/laufbahnrecht_node.html

Bundesministerium des Innern. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Oeffentlicher_Dienst/Bundesbedienstete/LeitfadenLeistungsbewertung.pdf?__blob=publicationFile

BAG, Urteil vom, Sept. 7, 2004 – 9 AZR 537/03, <http://lexetius.com/2004.1958>

Explanation of the competitor's complaint by Wolfgang Reuter. <http://www.reuter-arbeitsrecht.de/alltag-im-arbeitsrecht/einstellungsanspruch-bei-der-konkurrenzenklage.html>

Zimmerling. <http://www.zimmerling.de/veroeffentlichungen/volltext/stellen-besetzungsverfahren.htm>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:

There is no observable pattern of nepotism, cronyism or patronage in civil service management. Once again, the executive branch — and, thus, the administration — is bound by law and justice, assured by Article 20 of the German Constitution. Moreover, the provisions defined in Article 33, Paragraph 2, of the German Constitution and the Act on Federal Civil servants assure fair and impartial management of civil servants, and any infringement of a law can be taken to court.

However, some individual cases arise in which people are hired for reasons other than professional merit. Political parties can exercise a certain influence when it comes to the appointment of board members in public enterprises; such lucrative jobs are often given to long-serving party members.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Report on recruitment practice of the current German minister of the development. <http://www.handelsblatt.com/politik/deutschland/vetternwirtschaft-harsche-kritik-an-niebels-personalpolitik/6113156.html>; http://www.germanwatch.org/ez/2012-02-16_bmz.htm

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

Comments:

The descriptions of vacant job positions are clear.

References:

Bund.de. http://www.bund.de/DE/Stellenangebote/Festeinstellung/festeinstellung_node.html

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

According to Section 2 of the Federal Act on the Salary of Civil Servants, civil servants' remuneration is governed by law. Bonuses can be paid only in cases foreseen by law. A bonus can be paid under the conditions of Section 42A of the Federal Act on the Salary of Civil Servants for civil servants with outstanding performance. Bonuses, however, constitute only a small fraction of the total salary. Unlawfully paid bonuses are subject to investigations.

References:

Section 42A, Federal Act on the Salary of Civil Servants. http://www.gesetze-im-internet.de/bbesg/_42a.html

Section 2, Federal Act on the Salary of Civil Servants. http://www.gesetze-im-internet.de/bbesg/_2.html

Spiegel Online. <http://www.spiegel.de/wirtschaft/soziales/0,1518,790170,00.html>

Waldeckische Landeszeitung / Frankfurter Zeitung. <http://www.wlz-fz.de/Lokales/Landkreis/SPD-beantragt-Beamten-Boni-zurueckfordern>

General Anzeiger. <http://www.ga-online.de/index.php?id=540&did=47937>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Every vacant position has to be published before it is filled (according to Section 8 of the Act on Federal Civil Servants). A list with all job positions in the public sector in the Bund and Länder can be found on the website of the Federal Administration (www.bund.de). However, a final number of positions cannot be given due to numerous changes. It is also possible that the central website does not contain information on all published positions. The Ministry of the Interior publishes a list with statistics on the number of filled positions.

References:

Section 8, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_8.html

Federal Administration. http://www.bund.de/DE/Stellenangebote/Festeinstellung/festeinstellung_node.html

Bundesministerium des Innern. http://www.bmi.bund.de/DE/Themen/OeffentlDienstVerwaltung/OeffentlicherDienst/ZahlenUndFakten/Personalstatistik/personalstatistik_node.htm

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

If employee committees (Personalvertretungen) are not involved in a personnel matter, such as the termination or dislocation, the decision can be voided. This makes the participatory rights of the employee committees quite effective. The employee committees also have some participatory rights in the decision-making process; for instance, new staff cannot be hired without the committee's consent.

References:

FrankfurterRundschau. <http://www.fr-online.de/steuerfahnder-afaaere/steuerfahnderafaaere-in-hessen-erfolgreich-kaltgestellt,1477340,2792418.html>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In the past year, the government has paid civil servants on time. The budgetary situation this year even allowed the government to reintroduce a higher Christmas allowance three years earlier than planned.

References:

Spiegel Online. <http://www.spiegel.de/wirtschaft/soziales/0,1518,790170,00.html>

Der Lehrerfreund. <http://www.lehrerfreund.de/in/schule/1s/lehrer-gehalt>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

Comments:

As conviction automatically leads to the loss of the status as a civil servant after the final judgment, the prohibition of future employment is effective in practice and not subject to individual decisions.

References:

Section 41, Paragraph I, No. 2, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_41.html

Section 24, Paragraph I, No. 2, Act on the Status of Civil Servants. http://www.gesetze-im-internet.de/beamstg/_24.html

Short News. <http://www.shortnews.de/id/912050/Polizei-Kripo-Chef-fristlos-entlassen-und-Beamtenstatus-entzogen>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

67

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | **No**

Comments:

Members of the civil service (no matter what level) are not required to file an asset disclosure form. However, as the exact income of civil servants is governed by law, it is automatically publicly available. Additional part-time jobs need to be approved and are allowed only if they do not cause a conflict of interest with the civil servant's main job. Extra income gained from such employment needs to be declared. In addition, public officials' income is filed to the tax authorities, who have the duty to convey to state prosecutors information that indicates the commission of offenses such as bribery. Considering that all income underlies a duty of disclosure, the answer to this question is positive.

References:

Section 25, Paragraph 3, Income Tax Act. http://www.gesetze-im-internet.de/estg/_25.html

Section 4, Paragraph 5, No. 10, Income Tax Act. http://www.gesetze-im-internet.de/estg/_4.html

GTZ (2007), The UN Convention against Corruption and Development Cooperation – Corruption Prevention by More Efficient Law Enforcement. <http://www2.gtz.de/dokumente/bib/07-0876.pdf>

Federal Act on Secondary Employment. <http://www.gesetze-im-internet.de/bundesrecht/bnv/gesamt.pdf>

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Any civil servant who is involved in a decision or directly benefits from it — or whose relative benefits — is prohibited from participating in the administrative proceeding. The prohibition to accept any advantage applies to federal civil servants, according to Section 71 of the Act on Federal Civil Servants, and civil servants of the Länder, according to Section 42 of the Act on the Status of Civil Servants. In addition to this prohibition, unlawful participation renders the decision illegitimate or, in case of a grievous contravention, even void.

References:

Section 71, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_71.html

Section 42, Act on the Status of Civil Servants. <http://www.gesetze-im-internet.de/beamstg/BJNR101000008.html>

Section 20, Act on Administrative Proceedings. http://www.gesetze-im-internet.de/vwvfg/_20.html; this provision can also be found in the respective Acts of the Länder

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

According to Section 105 of the Act on Federal Civil Servants, retired or former civil servants who receive pension payments are obliged to report during a period of three to five years after the end of their tenure any employment they intend to engage in to the highest instance of their last duty station, provided that such employment is related to their former duties in the civil service. If the superior of the former duty station decides that official interests might be compromised, the employment will be prohibited. This applies likewise to civil servants of the Länder, according to Section 41 of the Act on the Status of Civil Servants. In addition, all civil servants and public employees are sworn to secrecy. This obligation persists after their employment is terminated.

References:

Sections 67 and 105, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_105.html

Sections 37 and 41, Act on the Status of Civil Servants. http://www.gesetze-im-internet.de/beamstg/_41.html

Section 3, Paragraph 1, Agreement for the Public Service. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Oeffentlicher_Dienst/Tarifbeschaeftigte/Lesefassung_TVoeD_2_AendTV.pdf?__blob=publicationFile

GRECO (2007), Compliance Report on Germany, Second Evaluation Round. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282007%293_Germany_EN.pdf

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Executive and Chapter on Public Administration

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

Civil servants are not allowed to ask for or accept gifts, hospitality or other advantages, even after the termination of their employment. This applies to all civil servants and public employees of the Bund and Länder.

References:

Section 71, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_71.html

Section 42, Act on the Status of Civil Servants. <http://www.gesetze-im-internet.de/beamtsstg/BJNR101000008.html>

Section 3, Paragraph 2, Collective Agreement for the Public Service. http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Oeffentlicher_Dienst/Tarifbeschaeftigte/Lesefassung_TVoeD_2_AendTV.pdf?__blob=publicationFile

Section 3, Paragraph 3, Collective Agreement for the Public Service of the Länder. http://www.tdl-online.de/fileadmin/downloads/rechte_Navigation/A_TV-L_2011_01_Tarifvertrag/TV-L_i.d.F.des_%C3%84TV_Nr.3_VT.pdf

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

Comments:

The income declarations of civil servants are audited by tax authorities. Only incomes are generally subject to disclosure, not assets.

References:

Section 1, Income Tax Act. http://www.gesetze-im-internet.de/estg/_1.html

Section 19, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_19.html

GTZ (2007), The UN Convention Against Corruption and Development Cooperation – Corruption Prevention by More Efficient Law Enforcement. <http://www2.gtz.de/dokumente/bib/07-0876.pdf>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | **75** | 50 | 25 | 0

Comments:

It appears that the existing regulations restricting post-government employment in the private sector are not enforced rigorously, considering the broad discretion to decide whether the employment “is in conflict” with the previous position as a civil servant. However, as voluntary retirement from the civil service leads to a lot of disadvantages for the civil servant, such as the loss of pension rights, a move to the private sector rarely occurs.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

GRECO (2007), Compliance Report on Germany, Second Evaluation Round. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282007%293_Germany_EN.pdf

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants who are convicted of having accepted gifts or hospitality beyond a legal threshold are sanctioned. However, public administrations assume that some cases remain unreported.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

S. Salvenmoser, K. Bussmann and O. Krieg (2010): Kriminalität im öffentlichen Sektor. Berlin, PWC, Martin-Luther Universität Halle-Wittenberg, Halle an der Saale

Berliner Morgenpost. <http://www.morgenpost.de/printarchiv/seite3/article1854773/Heikle-Zuwendungen-koennen-Politiker-die-Karriere-kosten.html>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to a study by PricewaterhouseCoopers, a rethinking of the mechanisms to prevent conflicts of interest can be observed. Most civil servants recuse themselves from policy decisions in which their personal interests are affected. This is reinforced by the established regulations and possible objection before an administrative court.

References:

S. Salvenmoser, K. Bussmann and O. Krieg (2010): Kriminalität im öffentlichen Sektor. Berlin, PWC, Martin-Luther Universität Halle-Wittenberg, Halle an der Saale

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | **25** | 0

Comments:
Incomes declared to tax authorities are audited by tax authorities every year.

References:
Section 1, Income Tax Act. http://www.gesetze-im-internet.de/estg/_1.html

Section 19, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_19.html

GTZ (2007), The UN Convention Against Corruption and Development Cooperation – Corruption Prevention by More Efficient Law Enforcement? <http://www2.gtz.de/dokumente/bib/07-0876.pdf>

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:
Members of the civil service (no matter what level) are not required to file an asset disclosure form. The exact income of civil servants is governed by law; thus, it is publicly available. The filing of revenue (including other income) to tax authorities is not information made publicly available; it is subject to the principle of tax confidentiality.

References:
Section 30, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_30.html

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As members of the civil service are not required to file an asset disclosure form, no such forms are publicly available. However, some members of the Bundestag have decided to voluntarily publish their records on the Internet to increase transparency.

References:

Section 30, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_30.html

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/ebeneinkuenfte-der-glaeserne-abgeordnete-1465917.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As members of the civil service are not required to file an asset disclosure form, no such forms are publicly available. However, some members of the Bundestag (mostly members of the opposition parties) have decided to voluntarily publish their records on the Internet free of charge to increase transparency.

References:

Section 30, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_30.html

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/ebeneinkuenfte-der-glaeserne-abgeordnete-1465917.html>

Campact.de. <http://www.campact.de/nebenekft/presseraum/resonanz>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

As members of the civil service are not required to file an asset disclosure form, such forms are not publicly available.

References:

Section 30, Tax Act. http://www.gesetze-im-internet.de/ao_1977/_30.html

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

19

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

Civil servants are delivered from the obligation of confidentiality when they witness corrupt behavior. In fact, they have the duty to report unlawful behavior to their supervisor. However, besides the general protection against dismissals, there is no specific protection of civil servants reporting cases of corruption, graft, abuse of power or abuse of resources from recrimination or other negative consequences.

References:

Section 67, Paragraph 2, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_67.html

Section 37, Paragraph 2, Act on the Status of Civil Servants. http://www.gesetze-im-internet.de/beamstg/_37.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

In general, civil servants are protected from retaliatory measures, such as dislocation or dismissal, as they can challenge employment-related measures before administrative courts. However, as there is no specific legislation protecting whistleblowers, the protection in practice is hampered, as well. As the estimated number of unreported cases of corruption and other misbehavior is quite high, a fear to blow the whistle can be observed. Mechanisms allowing whistle-blowers to report anonymously or confidentially exist only in a few Länder.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Whistleblower. <http://www.whistleblower-net.de/blog/2010/11/22/pwc-studie-kriminalitaet-im-oeffentlichen-sektor-2010/>

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | **No**

Comments:

General labor law provides for the protection of unjustified dismissals and other measures. This protection in case of a report of mismanagement has recently been enlarged by the European Court of Human Rights in light of freedom of expression. However, the reporting of misbehavior as a legal foundation for dismissal (breach of confidentiality) is still to be decided on a case-by-case basis. No general protection of whistle-blowers is in place. However, pursuant to the (legally nonbinding) G20 Anti-Corruption Action Plan, adopted at the G20 summit in Seoul in November 2010, Germany committed itself to enact and implement whistle-blower protection legislation by the end of 2012. Furthermore, a petition to the German Bundestag, signed by 5.406 citizens, requests implementation of legislation to protect whistle-blowers.

References:

Heinisch vs. Germany, 28274/08, ECHR. <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=888505&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

G7, G8, G20 World Economic Summits Ministerial Meetings. <http://www.economicsummits.info/2010/11/seoul-summit-annex-3-g20-anti-corruption-action-plan/>

Deutscher Bundestag. <https://epetitionen.bundestag.de/index.php?action=petition;sa=details;petition=15699>

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In general, employees are protected from retaliatory measures, such as dislocation or dismissal, as they can object to employment-related measures before labor courts. However, as there is no specific legislation protecting whistle-blowers, the protection in practice is hampered, too. The burden of proof that the retaliatory measure has been imposed for having blown the whistle lies on the employee. In addition, mechanisms allowing employees to report anonymously or confidentially are only in place in a few companies.

Regarding the European Court of Human Rights, even though the judgment may strengthen whistle-blower protection over time, no immediate impact can be noted. On the contrary, the ECHR judgment proves that whistle-blower protection for private sector employees in Germany is poor by international standards.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

There are special administrative institutions in Germany that deal with the prevention of corruption in the public sector. However, the situation is rather unclear in view of the varying regulations in the individual Länder. Within the administration's institutions, the internal revision and anticorruption agents or the ombudsmen can be mentioned. Many government agencies have appointed confidential counselors or established internal oversight departments. For example, the State Office of Criminal Investigation of Lower Saxony has established an electronic whistle-blowing system to allow for anonymous reporting of corruption. Furthermore, according to Section 37 of the Act on the Status of Civil Servants, civil servants are entitled to report acts of corruption (such as detailed under Sections 331 to 337 of the German Criminal Code) directly to the prosecutor. Section 67 of the Act on Federal Civil Servants includes a similar provision for civil servants of the Bund. However, as there is no internal mechanism at the national level, this indicator receives a negative score.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Executive

Transparency International (2011), Hinweise auf Korruption – Tipps und Ansprechpartner für Hinweisgeber

Section 67, Paragraph 2, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_67.html

Section 37, Paragraph 2, Act on the Status of Civil Servants. http://www.gesetze-im-internet.de/beamstg/_37.html

European Commission (2007): Study on Corruption within the Public Sector in the Member States of the European Union, Page 155

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As outlined above, such institutions exist, but there are varying regulations and mechanisms, and there is no central mechanism at the federal level. Where such mechanisms exist, a competent staff member is appointed as a full-time ombudsman or a regular staff member serves as a contact person or confidential counselor in addition to his regular tasks.

This question refers to the "internal reporting mechanism," not the prosecutor or court of auditors. The task of confidential counselor within public institutions is mostly carried out by staff in addition to other tasks.

References:

Transparency International (2011), Hinweise auf Korruption – Tipps und Ansprechpartner für Hinweisgeber

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Anti-Corruption Agency

European Commission (2007): Study on Corruption within the Public Sector in the Member States of the European Union, Page 155

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

As outlined above, such institutions exist, but there are varying regulations and mechanisms, and there is no central mechanism at the federal level. Where such mechanisms exist, they are funded through the respective institution's budget. It can be observed that awareness of corruption has been growing in recent years and, as a consequence, a growing number of institutions are

seeking to establish internal reporting mechanisms. This is also reflected in an increase of resources allocated to such mechanisms. Funding is independent of political considerations.

This question refers to the "internal reporting mechanism," hence not the prosecutor or the court of auditors. As the task of confidential counselor within public institutions is mostly carried out by staff in addition to other tasks, remuneration varies significantly from one institution to another.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Anti-Corruption Agency

Stadte- und Gemeinderate, tema: korruption. 56. Jahrgang. January to February 2002.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As outlined above, such institutions exist, but there are varying regulations and mechanisms, and there is no central mechanism at the federal level. Thus, there are no formal rules of procedure at the national level. Where such mechanisms exist, officials act on complaints within a reasonable time period, which is reflected in a growing number of discovered frauds, thanks to revelations made by whistle-blowers.

This question refers to the "internal reporting mechanism," not the prosecutor or court of auditors. As the task of confidential counselor within public institutions is mostly carried out by staff in addition to other tasks, remuneration varies significantly from one institution to another.

References:

KPMG Forensic: "Profile of a Fraudster" Survey (2007). <http://www.kpmg.co.uk/pubs/ProfileofaFraudsterSurvey%28web%29.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As outlined above, such institutions exist, but there are varying regulations and mechanisms, and there is no central mechanism at the federal level. Where such mechanisms exist, investigations are initiated when irregularities are discovered and reports need verification. The effectiveness of investigations depends on the respective mechanism's strength and competencies.

References:

Transparency International (2011), Hinweise auf Korruption – Tipps und Ansprechpartner für Hinweisgeber

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

23
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

78

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Section 16 of the Regulation on the Public Procurement (Vergabeverordnung) excludes public officials who might have conflicts of interest from the decision-making process.

References:

Section 16, Regulation on the Public Procurement. http://www.gesetze-im-internet.de/vgv_2001/_16.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | **No**

Comments:

There is no mandatory or regular professional training for public procurement officials.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Regulations regarding conflicts of interest for procurement officials are enforced. For example, public officials who may have conflicts of interest from the decision-making process are not allowed to take part in it.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

BDP Aktuell. <http://www.bdp-aktuell.de/75/unternehmenswerte-schuetzen.htm>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

Comments:

There is no such mechanism in place.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

The principle of efficiency and economy applies, according to Section 7 of the Act on the Federal Budget. Moreover, according to Section 55 of the act:

The conclusion of contracts for supplies and services must be preceded by a public tender unless the nature of the business or special circumstances justify an exception.

The conclusion of contracts must proceed in accordance with uniform guidelines.

References:

Sections 7 and 55, Act on the Federal Budget. http://www.gesetze-im-internet.de/bho/_7.html, http://www.gesetze-im-internet.de/bho/_55.html

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology. According to Section 101B of the Law Against Restraints on Competition, contracts made with a supplier without having previously consulted other bidders in the procurement process are void.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

Section 101B, Law Against Restraints on Competition. http://www.gesetze-im-internet.de/gwb/_101b.html

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

A formal appeals process for unsuccessful bidders is ensured by law. According to Section 101A of the Law Against Restraints on Competition, bidders whose offer is not going to be accepted need to be informed about the successful bidder's identity, the underlying reasons for the decision and the earliest possible date of conclusion of the contract in writing. A contract can be concluded only 15 days after the information has been sent to the unsuccessful bidders to allow the latter to initiate a review process. Furthermore, the regulatory authority or the procurement chamber can review the lawfulness of the procurement process in accordance with Section 102 of the Law Against Restraints on Competition.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011)

Sections 101A and 102, Law Against Restraints on Competition. http://www.gesetze-im-internet.de/gwb/_101a.html , http://www.gesetze-im-internet.de/gwb/_102.html

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

Unsuccessful bidders can appeal the procurement decision in a court of law. According to Section 104 of the Law Against Restraints on Competition, damages can also be claimed in a court.

References:

Section 104, Law Against Restraints on Competition. http://www.gesetze-im-internet.de/gwb/_104.html

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

Companies guilty of major violations of procurement regulations are prohibited from participating in future procurement bids, according to Section 6 of the Official Contracting Terms for Award of Service Performance Contracts (Vergabe- und Vertragsordnung für Leistungen). The eligibility of bidders is to be tested prior to the procurement process. Furthermore, some state administrations have established so-called corruption indexes (Korruptionsregister) containing information on unreliable bidders. However, there is no central index at the federal level.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Section 6, Official Contracting for Award of Service Performance Contracts. <http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/verdingungsordnung-fuer-leistungen-vol-a-2009,property=pdf,bereich=bmwi,sprache=de,rwb=true,pdf>

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Some local and regional authorities have introduced blacklists or corruption indexes (Korruptionsregister). These lists ensure that companies that have previously proven unreliable are excluded from public procurements. Among the Länder are Hesse, Northrhine-Westfalia, Lower Saxony and the town of Munich.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Public procurement regulations are stipulated in the Law Against Restraints on Competition as well as in the German Construction Contract Procedures and Official Contracting Terms for Award of Service Performance Contracts and, thus, are publicly available to every citizen.

References:

Official Contracting Terms for Award of Service Performance Contracts. <http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/verdingungsordnung-fuer-leistungen-vol-a-2009,property=pdf,bereich=bmwi,sprache=de,rwb=true,pdf>

German Construction Contract Procedures. <http://dejure.org/gesetze/VOB-A/12.html>

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

According to Section 12 of the German Construction Contract Procedures and Section 12 of the Official Contracting Terms for Award of Service Performance Contracts, the results of procurement decisions are to be publicly announced. Section 12 of the German Construction Contract Procedures further outlines what information on the decision and successful bidder is to be made publicly available.

References:

Section 12, German Construction Contract Procedures. <http://dejure.org/gesetze/VOB-A/12.html>

Section 12, Official Contracting Terms for Award of Service Performance

Contracts. <http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/verdingungsordnung-fuer-leistungen-vol-a-2009.ppt?property=pdf.bereich=bmwi.sprache=de.rwb=true.pdf>

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are available to every citizen online and thus accessible at any time. See, for example, the Act Against Restraints on Competition (<http://www.gesetze-im-internet.de/gwb/>).

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are available to every citizen online free of charge.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

Act Against Restraints on Competition. <http://www.gesetze-im-internet.de/gwb/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

All major public procurements are announced on the government website and advertised effectively. Major procurements are advertised more intensively than smaller procurements.

References:

Federal Administration. http://www.bund.de/DE/Ausschreibungen/ausschreibungen_node.html

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Results of major public procurement bids are made public (in newspapers or on the government website). However, the announcement only provides which company won the procurement process. Contract details and conditions are not included.

References:

Interview, Erich Rindtorff, lawyer for public procurement law, SKW Schwarz, Berlin

Federal Administration. http://www.bund.de/DE/Ausschreibungen/ausschreibungen_node.html

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

In principle, all businesses are eligible to compete for privatized state assets. There are, however, exceptions, such as if one business would obtain a monopoly or become the dominant player in the respective business field by acquiring the state assets. In this case, the Law Against Restraints on Competition is applied.

References:

Law on the Privatization of Public-Owned Assets, passed on June 17, 2001. <http://www.gesetze-im-internet.de/treuhg/index.html>

Order for the Acquisition of Territory, passed on Dec. 20, 1995. <http://www.gesetze-im-internet.de/flerwv/index.html>

Law Against Restraints on Competition. <http://www.gesetze-im-internet.de/gwb/BJNR252110998.html#BJNR252110998BJNG000102377>

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:

There are special regulations for every individual case. Besides, the regular law for the civil service applies. Therefore, any civil servant who is involved in the decision or directly benefits from it is prohibited from participating in the privatization process.

References:

Richtlinien für die Angestellten des öffentlichen Dienstes (Code of Conduct for the Civil Service)

Section 71, Act on Federal Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_71.html

Section 42, Act on the Status of Civil Servants. <http://www.gesetze-im-internet.de/beamstsg/BJNR101000008.html>

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations are laid out for every individual case and are regularly enforced. However, sometimes violations only become known after the process is complete. The privatization of the waterworks in Northrhine-Westphalia is an example of conflict of interest regulations being violated.

References:

Information on the privatization of the waterworks in Northrhine-Westphalia. http://www.welt.de/wams_print/article1828978/War_bei_der_Privatisierung_der_Wasserwerke_Korruption_im_Spiel.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Privatization regulations are public by law and, thus, can be accessed by everybody online or by contacting the authority in charge. In the domestic sphere, the Restriction of Competition Act is relevant. However, the law is predetermined by regulations of the European Union.

References:

Information on the privatization of the German Railways (Deutsche Bahn). http://www.monopolkommission.de/sg_46/text_s46.pdf

Restriction of Competition Act. <http://www.gesetze-im-internet.de/gwb/index.html>

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

There is a formal process for advertising privatizations on the government website at www.bund.de as well as in major newspapers. Furthermore, major privatizations are usually subject to lengthy debates in the media long before the privatization process starts. This gives bidders enough time to react and place their bids.

References:

Federal Administration. www.bund.de

Bulletin of the Bundestag: www.ebundesanzeiger.de

Information on the privatization of the German Railways (Deutsche Bahn). http://www.monopolkommission.de/sg_46/text_s46.pdf

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

Section 97, in conjunction with Section 130 of the Restriction of Competition Act, requires the government to publicly announce the results of the privatization process. The results are communicated through the media as well as published on government websites.

References:

Restriction of Competition Act. <http://www.gesetze-im-internet.de/gwb/index.html>

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Privatization regulations can be downloaded from the Internet or requested from the authority in charge and, thus, are accessible immediately or within a short time.

References:

Restriction of Competition Act. <http://www.gesetze-im-internet.de/gwb/index.html>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Privatization regulations can be downloaded free of charge from the Internet or requested by contacting the authority in charge.

References:

Restriction of Competition Act. <http://www.gesetze-im-internet.de/gwb/index.html>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

Generally an ombudsman is defined as an official, usually appointed by the government or parliament but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints reported by individuals. Normally his field of activity covers the entire public sector.

German law does not provide for an ombudsman in terms of the aforementioned definition at the federal level. However, certain comparable mechanisms are enforced. Article 17 of the German Constitution provides for a right to petition, according to which every person shall have the right to address written requests or complaints to competent authorities and the legislature. As a result, the German Bundestag provides for a Petition Committee.

Moreover, some ombudsmen with specific fields of responsibility are installed at the federal level. The parliamentary commissioner for the armed forces, federal commissioner for data security and freedom of information and federal government commissioner for migration, refugees and integration are worth mentioning. In addition, other special petition committees exist.

It should also be noted that the Länder of Western-Pomerania, Rhineland-Palatinate, Thuringia and Schleswig Holstein have installed ombudsmen (Bürgerbeauftragte – commissioners for the citizens) at the state level.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Article 17, German Constitution. http://www.gesetze-im-internet.de/gg/art_17.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P17

Article 19, Paragraph 4, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P19

Section 21, Federal Act on Data Security. http://www.gesetze-im-internet.de/bdsg_1990/_21.html

Petition Committee of the Bundestag. <http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp>

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

68

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Article 45C of the German Constitution provides that the Bundestag shall appoint a Petitions Committee to deal with requests and complaints addressed to the Bundestag pursuant to Article 17. Hence, there is some possible political influence since the Petition Committee is composed of members of the Bundestag. Special roles such as the federal commissioner for data security and freedom of information are also elected by the Bundestag upon the proposal of the government for a tenure of five years. Committee members shall be bound only by law. However, they are under the legal supervision of the federal government.

The political influence in the Länder that have installed ombudsmen varies. Generally, ombudsmen are protected from interference as they are bound only by law, and their term of office is relatively long (between five and eight years). However, the ombudsmen can be dismissed by a two-thirds majority of the members of the respective Land parliament.

Even though there is no unique ombudsman, similar entities and mechanisms exist. These entities are not subordinate to any government agencies.

References:

Section 22, Federal Act on Data Security. http://www.gesetze-im-internet.de/bdsg_1990/_22.html

Article 45C, German Constitution. http://www.gesetze-im-internet.de/englisch_gg/index.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It has been reported that the ombudsmen are not subject to manifest political interference. However, as their appointment depends on the composition of either the Bundestag or Landtag, some political influence has to be acknowledged.

Even though no unique ombudsman exists, the set of equivalent mechanisms is generally protected from political influence. I further note that the indicator does not pertain solely to one single ombudsman but to a "set of agencies," as is the case in Germany.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

It has been reported that the ombudsmen are not subject to manifest political interference. However, as their appointment depends on the composition of either the Bundestag or Landtag, some political influence has to be acknowledged.

Even though no unique ombudsman exists, the set of equivalent mechanisms is generally protected from political influence. I further note that the indicator does not pertain solely to one single ombudsman but to a "set of agencies," as is the case in Germany.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The parliamentary commissioner for the armed forces, the federal commissioner for data security and freedom of information and the federal government commissioner for migration, refugees and integration have a full-time staff at their disposal. Likewise, the ombudsmen of the Länder are equipped with a full-time staff.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Considering that offices of ombudsmen are installed in only four of the 16 Länder and the agencies do not have a long tradition, no conclusive evaluation can be made. However, due to the fact that the appointment of the ombudsmen depends on the composition of the respective Landtag, political party affiliations are presumably taken into account. Moreover, the Petition Committee reflects the composition of the Bundestag.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In the four Länder that have installed ombudsmen, their funding is governed by law. Moreover, it is reported that the funding is adequate. However, regrettably, only four Länder have set up such an agency. The Petition Committee of the Bundestag is provided with adequate sources to fulfill its mandate.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Website of the Petition Committee. <http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsmen and the Petition Committee are required to publish annual reports. These reports are available online. Where ombudsmen are in place at the Länder level, they issue annual reports (<http://www.buergerbeauftragte-mv.de/index.phtml?view=161&SpecialTop=8>).

In my understanding, the question pertains to existing mechanisms. I further note that this is an "in practice" indicator.

References:

Report of the Petition Committee for 2011. <https://www.btg-bestellservice.de/index.php?sid=1ad55bc7c816a90e6aa2ee43a46d3265&navi=1&subnavi=58&anr=20460000>

Report of the ombudsman of Western-Pomerania. <http://www.buergerbeauftragter-mv.de/index.phtml?Aktion=view&ID=161&SpecialTop=8>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As an example, the Bundestag's Petition Committee received 16,849 petitions in 2011. Considering that many petitions pertain to the same subject, the Petition Committee publicly discusses issues of massive interest in the Bundestag.

According to a Constitutional Court's ruling, the Petition Committee has to forward the submissions to the competent bodies that were addressed in the petition. Moreover, the Constitutional Court ruled that there has to be a decision on the merits of the petition. However, the role of the Petition Committee is more that of an intermediary with no judicial authority.

The ombudsmen of the Länder are granted some right of access and information, but generally they exert pressure through the media. If, however, there are sufficient indications of judicial misconduct, the prosecution is obliged to initiate an investigation.

References:

2011 Annual Report of the Petition Committee. <https://www.btg-bestellservice.de/pdf/20460000.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsmen and Petition Committee do not hold any judicial authority. As a result, they are unable to impose penalties on offenders. As noted above, the prosecution has to initiate investigations provided that there are sufficient factual indications that judicial misconduct has occurred.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The Petition Committee of the Bundestag has limited influence on actual government action. Likewise, the ombudsmen of the Länder may comment on grievances, but government reaction depends on political approval. However, the large number of petitions shows that the institutions are well-received by citizens.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The process under which petitions to the Petitions Committee are reviewed is generally rather slow. However, complaints are acknowledged quickly. As far as the ombudsmen of the Länder are concerned, citizens with simple issues can expect a resolution within a month.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Guidelines for the treatment of petitions. <http://www.bundestag.de/bundestag/ausschuesse17/a02/rili.pdf>

Ombudsman of Western-Pomerania. <http://www.buergerbeauftragter-mv.de/>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

As mentioned earlier, the ombudsmen are required to publish their annual reports. The same applies to the Petition Committee of the Bundestag.

References:

Website of the Petitions Committee. http://www.bundestag.de/htdocs_e/bundestag/committees/a02/index.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports are published shortly after the end of the reporting period.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Website of the Petitions Committee. http://www.bundestag.de/htdocs_e/bundestag/committees/a02/index.html

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are accessible online. Access is granted free of charge.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Ombudsmen

Website of the Petitions Committee. http://www.bundestag.de/htdocs_e/bundestag/committees/a02/index.html

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

Article 114, Paragraph 2, of the German Constitution provides that the Federal Court of Audit (Bundesrechnungshof) shall audit the federal public account and determine whether public finances have been properly and efficiently administered. Its composition and tasks are governed by the Act on the Federal Court of Audit. In addition, on the state level, State Courts of Audit (Landesrechnungshöfe) are installed.

References:

Article 114 of the German Constitution. http://www.gesetze-im-internet.de/gg/art_114.html. http://www.gesetze-im-internet.de/englisch_gg/html#GGengl_000P114

Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/index.html

State Courts of Audit. <http://www.rechnungshof-hessen.de/index.php?seite=rechnungshoefe.php&selected=40>

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

91

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

The Federal Court of Audit is an independent body that is bound only by law. No other government institution may instruct it to perform an audit. In addition, judicial independence is granted to its members according to Article 114, Paragraph 2, of the German Constitution and Section 3, Paragraph 4, of the Act on the Federal Court of Audit.

References:

Section 1, Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/_1.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit.

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 114, Paragraph 2, of the German Constitution and Section 3, Paragraph 4, of the Act on the Federal Court of Audit, judicial independence is granted to the members of the Federal Court of Audit. In addition, the head of the Federal Court of Audit is elected for a period of 12 years and cannot be removed before the end of his tenure.

References:

Section 3, Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/_3.html

Article 114, German Constitution. http://www.gesetze-im-internet.de/gg/art_114.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P114

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011, draft), chapter on the Federal Court of Audit

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The workforce of the Federal Court of Audit and its nine subordinate regional audit offices totals 1,300.

References:

Website of the Federal Court of Audit. http://bundesrechnungshof.de/home-en?set_language=en

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

Comments:

Section 5, Paragraph 1, of the Act on the Federal Court of Audit provides that the German Bundestag and Bundesrat shall elect the president and vice president upon a proposal made by the federal government. Thus, there is some political influence. However, as noted above, the head of the Federal Court of Audit is elected for a period of 12 years and cannot be removed before the end of his tenure. The same applies to his deputy. In practice, the federal government seeks approval beyond the parliamentary majority in order to gain broader acceptance. Normally, presidents and vice presidents are elected with a vast majority.

Moreover, Section 3, Paragraph 3, of the Act on the Federal Court of Audit codifies that the other members of the institution must have acquired the qualifications for a career in the higher civil service. In addition, they should have wide-ranging professional experience. The president or vice president and at least one-third of the other members must be qualified to hold judicial office (such as, they must have passed two state examinations).

Since the staff of the Federal Court of Audit comprises civil servants, appointments are to be made based on merit (Article 33, Paragraph 2, of the Constitution). Cronyism and nepotism can be challenged before a court.

Independence is further provided insofar as the members of the Federal Court of Auditors enjoy judicial independence. The regulations on independence and disciplinary measures relating to judges of the Federal Supreme Courts apply accordingly.

The practice follows the legal provisions, and no violations have been reported.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

Sections 3 and 5, Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/index.html

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

Comments:

The Federal Court of Audit receives regular funding that is fairly consistent from year to year. Political considerations are not a major factor in determining the funding.

References:

Annual report for 2010, Page 13. <http://bundesrechnungshof.de/veroeffentlichungen/bemerkungen-jahresberichte/bemerkungen-2010.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

According to Section 97 of the Federal Budget Code, the Federal Court of Audit shall collate each year in the form of "comments" the results of its audit and submit such comments to the Bundestag, Bundesrat and federal government. These "comments" (to be considered as an annual report) are published each year on the website of the Federal Court of Audit. However, some parts of the auditing results are solely disclosed to the government and the institution in question.

References:

Reports are available at the website of the Federal Court of Audit. <http://bundesrechnungshof.de/publications/annual-reports>

Section 97, Federal Budget Code. <http://www.gesetze-im-internet.de/bho/index.html>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Court of Audit does not have authority to give any directives to governmental organizations. It is dependent on the government's willingness to act in accordance with its suggestions. However, according to the auditing order, the Federal Court of Audit shall monitor whether its suggestions are implemented. If there is a failure to act accordingly, this failure has to be documented in the next annual report. Moreover, considering the public nature of at least a substantial part of the auditing, the media can exercise pressure on the policy level. Still, the influence of the Federal Court of Audit is reported to be "unsatisfactory."

References:

Section 52, Audit Order to the Federal Budget Code

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Section 88 of the Federal Budget Code provides that the Federal Court of Audit shall audit the federation's entire budgetary and financial management, including its special funds and enterprises. In principle, there shall be no areas not subject to auditing. Thus, it is given authority to initiate its own investigations. However, some loopholes remain for state-run companies that are organized under private law. The so-called Berlin bank scandal exemplifies the problem. Due to high-risk business (especially in the real-estate sector), the state-run "Berliner-Bankengesellschaft" lost billions of euros. The state of Berlin had to provide 21.6 billion euros to avoid insolvency. The Berlin Court of Audit never had the authority to conduct investigations.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

Report on the Berlin Bank Scandal. <http://frank-zimmermann.net/wp-content/media/zusammenfassung-untersuchungsbericht-bankenskandal.pdf>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Article 114, Paragraph 2, of the German Constitution states that the Federal Court of Audit shall report yearly to the government, Bundestag and Bundesrat. However, there is no legal requirement for the publishing of such reports. Nevertheless, in practice an annual report ("comments") is published on the website of the Federal Court of Audit.

References:

Annual reports of the Federal Court of Audit. <http://bundesrechnungshof.de/veroeffentlichungen/bemerkungen-jahresberichte>

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports are available online.

References:

Annual reports of the Federal Court of Audit. <http://bundesrechnungshof.de/veroeffentlichungen/bemerkungen-jahresberichte>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reports are available online. Access is free of charge.

References:

Annual reports of the Federal Court of Audit. <http://bundesrechnungshof.de/veroeffentlichungen/bemerkungen-jahresberichte>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

97
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Article 108, Paragraph 1, of the German Constitution provides that federal finance authorities shall administer customs duties; fiscal monopolies; taxes on consumption regulated by a federal law, including the turnover tax on imports, the motor vehicle tax and other transaction taxes related to motorized vehicles as of July 1, 2009; and charges imposed within the framework of the European Communities.

The Ministry of Finance serves as such an authority.

According to Article 108, Paragraph 2, the remaining taxes shall be administered by the financial authorities of the Länder. While there is a division of competences between the federal state and the Länder, the Ministry of Finance is the central institution in the realm of tax collection. Local tax and revenue offices are in charge of administering individual taxpayer's taxes.

References:

Article 108, German Constitution. http://www.gesetze-im-internet.de/gg/art_108.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P108

Tax Act. http://www.gesetze-im-internet.de/ao_1977/BJNR006130976.html#BJNR006130976BJNG000101301

Website of the Ministry of Finance. http://www.bundesfinanzministerium.de/nr_103466/EN/Ministry/What-we-do/node.html?_nnn=true

Website of the Federal States' Fiscal Authority. http://www.steuerliches-info-center.de/EN/FinanzverwaltungDerLaender/finanzverwaltungderlaender_node.html

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Ministry of Finance is responsible for all aspects of tax and revenue policy. The agency and local tax and revenue offices have sufficient staff to fulfill their mandate.

References:

Website of the Federal Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

Website of the Federal States' Fiscal Authority. http://www.steuerliches-info-center.de/EN/FinanzverwaltungDerLaender/finanzverwaltungderlaender_node.html

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Ministry of Finance receives regular funding from the overall state budget. In fact, in line with Section 28 of the Federal Budget Code, the Ministry of Finance is responsible for drawing up the federal budget, which contains all of the revenue and expenditures in a financial year. A substantial part of the budget is attributed to the ministry itself.

References:

Website of the Federal Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

Section 28, Federal Budget Code. <http://www.gesetze-im-internet.de/bho/BJNR012840969.html#BJNR012840969BJNG000200319>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

100

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax laws are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another. When a citizen does not approve of the tax authority's decision, the individual can turn to the tax authority. Questions of outstanding importance can be brought before the finance court of the respective Land.

References:

Website of the Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

Website of the University of Hamburg, department of social anthropology, section on taxes and just taxes. http://www.uni-hamburg.de/fachbereiche-einrichtungen/fb16/absozpsy/just_taxes.html

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

According to Article 105, Paragraph 1, of the German Constitution, the federal state has exclusive control over customs duties. Moreover, Article 108, Paragraph 1, of the German Constitution attributes ultimate responsibility to a federal agency. As a result, the Federal Ministry of Finance is responsible for levying customs and excise duties, as well as monitoring cross-border goods traffic. However, the German customs administration has a three-tier structure. The Ministry of Finance is the top-level authority. In the intermediate band, there are federal finance offices and the customs' criminological office. They act as a bridge between the Ministry of Finance and the third layer, which comprises subordinate local offices.

References:

Article 105, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_105.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P105

Article 108, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_108.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P108

Information about the German Customs Administration. http://www1.zoll.de/english_version/index.html

Website of the Federal Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Finance has an adequate full-time staff at its disposal. Subordinated agencies are equipped adequately, as well.

References:

Website of the Federal Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

Information about the German Customs Administration. http://www1.zoll.de/english_version/index.html

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Finance receives a considerable amount of the overall state budget. Funding of subordinated units is ensured by the ministry.

References:

Website of the Federal Ministry of Finance. http://www.bundesfinanzministerium.de/EN/Home/node.html?_nnn=true

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Customs and excise laws are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another. However, there might be individual complaints.

References:

Information about the German Customs Administration. http://www1.zoll.de/english_version/index.html

European Commission, department on taxes and customs, report on the implementation of the customs codex. http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general/community_code/pres_mccc_de.pdf

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

The Federal Court of Audit examines federal financial management. The audit mandate also includes social security institutions and the activities of the federation in private-law enterprises of which it is a shareholder (for example, the Deutsche Bahn AG, formerly the nationalized German Railways, and the Post AG and Telekom AG, formerly the nationalized Post and Telecommunication Office).

References:

Website of the Federal Court of Audit. <http://bundesrechnungshof.de/we-about-us/auditing-and-advisory-functions/test>

Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/index.html

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

85

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

As noted above, the Federal Court of Audit is an independent body that is bound only by law. No other government institution may instruct it to perform an audit. In addition, judicial independence is granted to its members, according to Article 114, Paragraph 2, of the German Constitution and Section 3, Paragraph 4, of the Act on the Federal Court of Audit.

References:

Section 1, Act on the Federal Court of Audit. http://www.gesetze-im-internet.de/brhg_1985/_1.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The workforce of the Federal Court of Audit and its nine subordinate regional audit offices totals 1,300.

References:

Website of the Federal Court of Audit. http://bundesrechnungshof.de/home-en?set_language=en

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Court of Audit receives regular funding that is fairly consistent from year to year. Political considerations are not a major factor in determining the funding.

References:

Annual report for 2010, Page 13. <http://bundesrechnungshof.de/veroeffentlichungen/bemerkungen-jahresberichte/bemerkungen-2010.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Section 88 of the Federal Budget Code provides that the Federal Court of Audit shall audit the federation's entire budgetary and financial management, including its special funds and enterprises. Thus, it is given authority to initiate its own investigations. However, some loopholes remain for state-run companies that are organized under private law. Transparency International noted with concern that the Federal Court of Audit does not necessarily have access to all documentation (especially relating to the practice of procurement in state-owned companies). It was suggested that state-owned companies should include in their statute an all-out right to audit.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

Reports of the Federal Court of Audit. <http://bundesrechnungshof.de/publications/annual-reports>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Federal Court of Audit does not have authority to give any directives to governmental organizations and, thus, is dependent on the willingness of the government to act in accordance with its suggestions. Moreover, the Federal Court of Audit has no authority to impose penalties. However, according to the auditing order, the Federal Court of Audit shall monitor whether its suggestions are implemented. If there is a failure to act accordingly, this failure has to be documented in the next annual report. If there is sufficient indication of commission of a crime, the Federal Court of Audit has to cooperate with the Office of the Prosecutor.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Federal Court of Audit

Reports of the Federal Court of Audit. <http://bundesrechnungshof.de/publications/annual-reports>

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

Citizens can access financial records of state-owned companies. Annual reports are published in the Federal Bulletin, which is accessible online.

References:

Website of the Federal Bulletin. <https://www.ebundesanzeiger.de/ebanzwww/wexsservlet>

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The reports are updated every year.

References:

Website of the Federal Bulletin. <https://www.ebundesanzeiger.de/ebanzwww/wexsservlet>

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Section 264, Paragraph 2, of the German Commercial Code provides that the financial reports shall provide a true and fair view of assets, liabilities and profit situation. Moreover, financial reports have to be prepared in accordance with "generally accepted accounting" principles. The practice follows the legal provisions.

References:

Section 264, German Commercial Code. http://www.gesetze-im-internet.de/hgb/_264.html

Website of the Federal Bulletin. <https://www.ebundesanzeiger.de/ebanzwww/wexsservlet>

Reports of the Federal Court of Audit. <http://bundesrechnungshof.de/publications/annual-reports>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online.

References:

Website of the Federal Bulletin. <https://www.ebundesanzeiger.de/ebanzwww/wexsservlet>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online. Access is free of charge.

References:

Website of the Federal Bulletin. <https://www.ebundesanzeiger.de/ebanzwww/wexsservlet>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

95
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

100

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Article 12, Paragraph 1, of the German Constitution guarantees that all Germans have the right to freely choose their occupation or profession. Moreover, the German Trade, Commerce and Industry Regulations Act codifies that everybody is generally allowed to operate a business without prior permission. However, the running of some businesses require prior permission (such as the running of a nightclub, an amusement hall, etc.).

References:

Article 12, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_12.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P12

Section 1, German Trade, Commerce and Industry Regulations Act. http://www.gesetze-im-internet.de/gewo/_1.html

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Economy

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Recourse to the administrative courts is granted.

References:

Section 40, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0154

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Economy

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As noted above, there is in principle no need to apply for a business license. There is only a duty to notify the authorities, which have to file a notice of receipt within three days (Section 15 of the German Trade, Commerce and Industry Regulations Act). However, some businesses require a business license (Section 33 German Trade, Commerce and Industry Regulations Act). Reports show that the process for starting a company is straightforward. After submission of the necessary documents to obtain a business license, the license is issued immediately.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Economy

Index of Economic Freedom for 2012. <http://www.heritage.org/index/Country/Germany>.

Doing Business Report. <http://www.doingbusiness.org/data/exploreeconomies/germany/#starting-a-business>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost for obtaining business licenses varies but is quite low (less than 100 euros).

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Economy

Information on the process of obtaining business licenses. <http://www.gewerbe-anmelden.info/gewerbeanmeldung.html>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

The German Trade, Commerce and Industry Regulations Act, the Statute Governing Restaurants and other special laws are codifying regulations concerning health standards. The laws are accessible online.

References:

German Trade, Commerce and Industry Regulations Act. <http://www.gesetze-im-internet.de/bundesrecht/gewo/gesamt.pdf>

Statute Governing Restaurants. <http://www.gesetze-im-internet.de/gastg/index.html>

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

The Federal Pollution Control Act or Recycling and Waste Management Act, for example, provide vital safeguards against environmental pollution. The law is accessible online.

References:

Federal Pollution Act. <http://www.gesetze-im-internet.de/bimschg/>

Recycling and Waste Management Act. <http://www.gesetze-im-internet.de/krw-abfg/>

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

The Act on Occupational Safety and Health, the Dangerous Substances Ordinance, technical guidelines and other rules are in force. Furthermore, the Federal Office of Consumer Protection and Food Safety publishes information on requirements for meeting public safety standards.

References:

Act on Occupational Safety and Health. <http://www.gesetze-im-internet.de/arbschg/>

Dangerous Substances Ordinance. http://www.gesetze-im-internet.de/bundesrecht/gefstoffv_2010/gesamt.pdf

Website of the Federal Office of Consumer Protection and Food Safety. http://www.bvl.bund.de/EN/Home/homepage_node.html

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

83

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspectorates are organized within the Länder or municipalities. Business inspections are generally carried out in an even-handed way, though exceptions exist. In addition, the Federal Office of Consumer Protection and Food Safety seeks to improve coordination between the federal government and the Länder to make the communication of risks more transparent and assure equal implementation of standards.

References:

German Trade, Commerce and Industry Regulations Act. <http://www.gesetze-im-internet.de/bundesrecht/gewo/gesamt.pdf>

DW. <http://www.dw.de/dw/article/0,,15137215,00.html>

Website of the Federal Office of Consumer Protection and Food Safety. http://www.bvl.bund.de/EN/Home/homepage_node.html

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspectorates are organized within the Länder or municipalities. Business inspections are generally carried out in an even-handed way, though exceptions exist. In addition, environmental impact assessments are conducted before new industrial plants are approved. These assessments are executed in an impartial manner.

References:

German Trade, Commerce and Industry Regulations Act. <http://www.gesetze-im-internet.de/bundesrecht/gewo/gesamt.pdf>

Law on Environmental Impact Assessment. <http://www.gesetze-im-internet.de/uvpg/index.html>

Information on environmental assessments by the Ministry for the Environment. http://www.bmu.de/english/strategy_legislation/environmental_assessments/doc/46449.php

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspectorates are organized within the Länder or municipalities. Business inspections are generally carried out in an even-handed way, though exceptions exist. Furthermore, the government can demand comprehensive inspections of specific industry branches to ensure the implementation of public safety standards on an ad hoc basis. For example, in 2011, the federal government ordered a thorough inspection of all German nuclear power plants to check their compliance with public safety standards. As a result, several nuclear power plants were shut down.

References:

German Trade, Commerce and Industry Regulations Act. <http://www.gesetze-im-internet.de/bundesrecht/gewo/gesamt.pdf>

Press article on the announcement of inspections of German nuclear power plants. <http://www.tagesschau.de/inland/atommoratorium100.html>

Press article on the outcome of inspections of German nuclear power plants. <http://www.handelsblatt.com/politik/deutschland/sicherheitstest-bundeslaender-wollen-alle-alt-akw-abschalten/4189896.html>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

The German Criminal Code distinguishes between passive acceptance by taking bribes (Section 331 of the German Criminal Code) and taking bribes meant as an incentive to violate one's official duties (Section 332 of the German Criminal Code). It also distinguishes between giving bribes (Section 333 of the German Criminal Code) and giving bribes as an incentive to the recipient to violate his official duties (Section 334).

Other corruption-related criminal offenses can be found starting in Section 299 of the German Criminal Code (business corruption) and in Section 108B and Section 108E of the German Criminal Code (bribery of voters and members of parliament), the Act on International Bribery (Internationales Bestechungsgesetz) and the Act on Bribery within the EU (EU-Bestechungsgesetz).

Section 331, Paragraph 2, of the German Criminal Code provides that a "judge or arbitrator who demands or allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable."

Moreover, the attempted taking of bribes meant as an incentive to violating one's official duties is penalized in Section 332 of the German Criminal Code.

However, there remain loopholes in the anticorruption legislation. It is to be noted that Germany has still not ratified important international agreements concerning the fight against corruption, such as the UNCAC (U.N. Convention Against Corruption, 2003).

References:

Section 331, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_331.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P331

Section 332, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_332.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P332

Section 333, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_333.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P333

Section 334, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_334.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P334

GTZ (2007), The UN Convention Against Corruption and Development Cooperation – Corruption Prevention by More Efficient Law Enforcement? <http://www2.gtz.de/dokumente/bib/07-0876.pdf>

United Nations Office on Drugs and Crime. http://www.unodc.org/images/treaties/UNCAC/Status-Map/2011-05-01_-_UNCAC_Ratification_Map_Larger.jpg

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

Extortion is criminalized in Section 253 of the German Criminal Code.

References:

Section 253, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_253.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P253

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

Offering a bribe is criminalized in Section 333 and 334 of the German Criminal Code.

Section 108E of the German Criminal Code covers bribery-related offenses related to members of the European Parliament, as well as the public assemblies of the federation, Länder, municipalities and municipal associations in Germany. Hence, offenses by and toward members of all European and German (national and regional) public assemblies are covered. Although the offense of active and passive bribery of members of domestic public assemblies is restricted to selling and buying a vote in elections and ballots within the respective public assembly, I suggest the "Yes" score be upheld.

In the GRECO Report referred to below, see Paragraphs 37 to 43.

References:

Section 333, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_333.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P333

Section 334, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_334.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P334

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Receiving a bribe is criminalized in Section 331 and 332 of the German Criminal Code. In addition, Section 108E of the German Criminal Code penalizes the bribing of delegates.

Section 108E of the German Criminal Code covers bribery-related offenses related to members of the European Parliament, as well as to a public assemblies of the federation, Länder, municipalities and municipal associations in Germany. Hence, offenses by and toward members of all European and German (national and regional) public assemblies are covered. Although the offense of active and passive bribery of members of domestic public assemblies is restricted to selling and buying a vote in elections and ballots within the respective public assembly, I suggest the "yes" score be upheld.

In the GRECO Report referred to previously, see Paragraphs 37 to 43.

References:

Section 331, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_331.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P331

Section 332, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_332.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P332

Section 108E, German Criminal Code. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P108e

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

Bribing a foreign official is criminalized in the Act on International Bribery (Internationales Bestechungsgesetz).

References:

Section 1, Act on International Bribery. http://www.gesetze-im-internet.de/intbestg/art_2_1.html

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

Using public resources for private purposes is criminalized in Section 266 of the German Criminal Code. Under certain circumstances, such behavior can also be punished as fraud (Section 263 of the German Criminal Code) or unlawful appropriation (Section 246 of the German Criminal Code).

References:

Section 266, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_266.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P266

Section 266, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_263.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P263

Section 246, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_246.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P246

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

Using confidential state information (not only for private gain) is criminalized in Section 353B of the German Criminal Code.

References:

Section 353B, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_353b.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P353b

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

Comments:

Money laundering is criminalized in Section 261 of the German Criminal Code.

References:

Section 261, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_261.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P261

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Conspiracy to commit a felony is criminalized in Section 30, Paragraph 2, of the German Criminal Code, provided that the crime that is the subject of the conspiracy provides for a minimum sentence of one year of imprisonment.

References:

Section 30, Paragraph 2, German Criminal Code. http://www.gesetze-im-internet.de/stgb/_30.html, http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P30

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

There is no centralized anticorruption agency in Germany. However, certain mechanisms to prevent and prosecute corruption are installed. Public prosecution offices (Staatsanwaltschaft) play a dominant role in the fight against corruption. Prosecution offices have a legal mandate to investigate all crimes, including corruption-related crimes. However, there is no specific anticorruption agency. Instead, there are several agencies working at the federal and state level, such as the Federal Criminal Agency (Bundeskriminalamt); the police as investigative personnel of the public prosecutors; and the tax authorities, reporting suspicious cases to the prosecutors.

References:

Section 152, Paragraph 2, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_152.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1196

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

75

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

Though public prosecutors are installed at the courts, public prosecutors are independent from the judiciary. Section 146 of the Court Constitution Act generally regulates that officials of the public prosecution office must comply with the official instructions of their superiors. Section 147 of the Court Constitution Act further details that the right of supervision and direction shall lie with:

1. The Federal Minister of Justice in respect to the federal prosecutor general and federal prosecutors;
2. The Land agency for the administration of justice in respect to all the officials of the public prosecution office of the Land concerned;
3. The highest-ranking official of the public prosecution office at the higher regional and regional courts in respect to all the officials of the public prosecution office of the given court's district.

The authority to issue directives given to the Ministry of Justice is the subject of debate and was noted with concern by Transparency International.

However, prosecutors are also bound by law. Section 152, Paragraph 2, of the Code of Criminal Procedure provides that the "public prosecution office shall be obliged to take action in relation to all prosecutable criminal offenses, provided there are sufficient factual indications."

References:

Section 147, Courts Constitution Act. http://www.gesetze-im-internet.de/gvg/_147.html, http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#GVGEngl_000P147

Section 146, Courts Constitution Act. http://www.gesetze-im-internet.de/gvg/_146.html, http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#GVGEngl_000P146

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on criminal prosecution

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

As outlined above, the public prosecutors are not fully protected from political interference by law. Incidents of (at least attempted) exercise of influence have been reported. In these cases, influence was exercised informally. It has also been reported that investigations have been perturbed by prosecutors or other investigative personnel. The Council of Europe (Parliamentary Assembly) in its Resolution 1685 therefore recommended the setup of a judicial self-administration system and abolishment of the possibility for ministers of justice to give instructions to the prosecution concerning individual cases.

Notwithstanding the aforementioned weaknesses, political interference is within limits. It is to be noted that the prosecution is bound by law. Section 152, Paragraph 2, of the Code of Criminal Procedure provides that a "public prosecution office shall be obliged to take action in relation to all prosecutable criminal offenses, provided there are sufficient factual indications."

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Council of Europe, Parliamentary Assembly, Resolution 1685 (2009), Allegations of Politically Motivated Abuses of the Criminal Justice System in Council of Europe Member States. <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1685.htm>

Wirtschaftswoche of July 5, 2011, Wie Politiker Staatsanwälte unter Druck setzen. <http://www.wiwo.de/finanzen/wie-politiker-staatsanwaelte-unter-druck-setzen-471818/>

Wirtschaftswoche of July 5, 2011, Richterbund beklagt vorauseilenden Gehorsam. <http://www.wiwo.de/finanzen/richterbund-beklagt-vorausseilenden-gehorsam-471826/>

Wirtschaftswoche of July 5, 2011, Politisches Spiel um Akteneinsicht. <http://www.wiwo.de/finanzen/politisches-spiel-um-akteneinsicht-471819/>

Der Spiegel of Aug. 11, 2003, Empfehlung vom Minister. <http://www.spiegel.de/spiegel/print/d-28210076.html>

Oppong, Finger weg von der Justiz – Für eine Unabhängigkeit der Staatsanwaltschaft. http://www.oppoing.eu/mediapool/65/653900/data/Zeitschrift_fuer_Rechtspolitik_Gewaltenteilung_Unabhaengigkeit_Staatsanwaltsch

Section 152, StPO (Strafprozessordnung – Code of Criminal Procedure). http://www.gesetze-im-internet.de/stpo/_152.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1196

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on criminal prosecution

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The general public prosecutor is defined by law as a political civil servant (Section 54 of the Act on Civil Servants). He can be retired at any time (Section 54, Paragraph 1, No. 5, of the Act on Civil Servants). However, so far, general public prosecutors generally have not been retired without justification. However, some reports say that prosecutors have been substituted or discharged after initiating delicate investigations.

As mentioned above, the Council of Europe (Parliamentary Assembly) recommends in its Resolution 1685 establishment of a judicial self-administration system.

References:

Council of Europe, Parliamentary Assembly, Resolution 1685 (2009), Allegations of Politically Motivated Abuses of the Criminal Justice System in Council of Europe Member States. <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1685.htm>

Press release of the Deutscher Richterbund of Nov. 3, 2008. <http://www.drj.de/cms/index.php?id=499>

Wirtschaftswoche of July 5, 2011, Wie Politiker Staatsanwälte unter Druck setzen. <http://www.wiwo.de/finanzen/wie-politiker-staatsanwaelte-unter-druck-setzen-471818/>

Oppong, Finger weg von der Justiz – Für eine Unabhängigkeit der Staatsanwaltschaft. http://www.oppoeng.eu/mediapool/65/653900/data/Zeitschrift_fuer_Rechtspolitik_Gewaltenteilung_Unabhaengigkeit_Staatsanwaltsche

Section 54, Act on Civil Servants. http://www.gesetze-im-internet.de/bbg_2009/_54.html

Der Generalbundesanwalt. <http://www.generalbundesanwalt.de/de/stellung.php>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | **75** | 50 | 25 | 0

Comments:

Section 122 of the German Law on Judges provides that a prosecutor must have achieved the ability to be a judge in terms of Section 5 of the German Law on Judges. As a consequence, a candidate must have passed the two state examinations. However, in most Länder, the selection procedures are highly competitive, and candidates need to have passed the exams with distinction to become a prosecutor. It should be noted that the appointment of the general public prosecutor (the head of prosecutors) is not free from political interference. The appointment of the general public prosecutor is regulated in Section 149 of the Courts Constitution Act, which says: The federal prosecutor general and federal prosecutors shall be appointed by the federal president on the proposal of the federal minister of justice, which shall require the approval of the Bundesrat.

References:

Section 122, German Law on Judges. http://www.gesetze-im-internet.de/drig/_122.html

Berlin.de. http://www.berlin.de/sen/justiz/struktur/einstellung_ri_sta.html, http://www.justiz.bayern.de/imperia/md/content/stmj_internet/ministerium/minister

Section 149, Courts Constitution Act. http://www.gesetze-im-internet.de/englisch_gvg/index.html

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The 351 public prosecution offices in Germany have professional, full-time staff.

References:

Website of the General Public Prosecutor. <http://www.generalbundesanwalt.de/de/index.php>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Public prosecution offices receive regular funding from the Länder. Even though the prosecutors are paid according to specific legislation (R-Besoldung, Bundesbesoldungsgesetz), the Council of Europe (Parliamentary Assembly) has recommended gradually increasing the salaries of judges and prosecutors. The same recommendation has been made by the German Association of Judges (Deutscher Richterbund). It has been argued that the salaries cannot compete with the income in the private sector.

References:

Council of Europe, Parliamentary Assembly, Resolution 1685 (2009), Allegations of Politically Motivated Abuses of the Criminal Justice System in Council of Europe Member States. <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1685.htm>

Richterbesoldung. http://www.richterbesoldung.de/cms/fileadmin/docs/musterberechnung_r-besoldung2010.pdf

Richterbesoldung. http://www.richterbesoldung.de/cms/fileadmin/docs/driz_teetzmann_0708.pdf

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

There are no reports by the public prosecution offices. However, the Federal Criminal Agency (BKA) issues yearly criminal statistics containing corruption-related crimes and reports on corruption.

References:

Bundeskriminalamt (BKA). http://www.bka.de/nr_193232/DE/Publikationen/PolizeilicheKriminalstatistik/IMKKurzberichte/imkKurzberichte__node.html?__nnn=true

Bundeskriminalamt (BKA). http://www.bka.de/DE/ThemenABisZ/Deliktbereiche/Korruption/Lagebilder/lagebilder__node.html?__nnn=true

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

As mentioned earlier, Section 152, Paragraph 2, of the Code of Criminal Procedure provides that a “public prosecution office shall be obliged to take action in relation to all prosecutable criminal offenses, provided there are sufficient factual indications.” As a result of the principle of mandatory prosecution, law enforcement agencies have an immense workload. The low level of staff coverage is widely criticized. Especially in the field of economic offenses, the staffing is inadequate.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Section 152, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_152.html. http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1196

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on criminal prosecution

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | **75** | 50 | 25 | 0

Comments:

The law does not fully prevent the prosecution office from acting without political interference. On the other hand, the principle of mandatory prosecution applies. However, it has been reported that the prosecution office generally initiates investigations independently.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Wirtschaftswoche of July 5, 2011, Wie Politiker Staatsanwälte unter Druck setzen. <http://www.wiwo.de/finanzen/wie-politiker-staatsanwaelte-unter-druck-setzen-471818/>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Considering the alarmingly low staffing level, the prosecution office operates rather slowly. To ensure the principle of an expeditious trial, the Code of Criminal Procedure was recently amended. Section 257C of the Code of Criminal Procedure provides for negotiation agreements. This amendment has raised serious issues as to the compliance with other principles of the German Criminal Procedure. It was especially noted that negotiation agreements are in sharp contravention with the principle and duty to establish the truth. Section 244, Paragraph 2, of the Code of Criminal Procedure, states: "In order to establish the truth, the court shall, proprio motu, extend the taking of evidence to all facts and means of proof relevant to the decision."

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Section 257C Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_257c.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1684

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011, draft), Page 79

Winfried Hassemer (former president of the Constitutional Court) in a commentary on Jan. 24, 2009, "Deal im Strafverfahren – Geschäfte mit der Wahrheit." <http://www.sueddeutsche.de/politik/deals-in-strafverfahren-geschaefte-mit-der-wahrheit-1.487191>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

In general, citizens can complain to the public prosecution office without fear of recrimination. Nevertheless, as there is no legislation in place protecting so called whistle-blowers or informers, employees might fear losing their job for reporting corruption in their company.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Public Administration

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

83
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

92

77a. In law, there is a general right of appeal.

Yes

No

Comments:

In civil cases, an appeals process exists, according to Section 511 Code of Civil Procedure, when the amount in dispute exceeds 600 euros or the dispute is of significance (if not, the appeal is allowed in the judgment). In criminal cases, a right to appeal on points of fact and law is provided in Section 312 Code of Criminal Procedure. Sections 333 and subsequent sections further provide for a right to appeal only on points of law. In administrative cases, Section 124 Code of Administrative Court Procedure gives a right to appeal. In general, the right to be heard is protected in Article 103, Paragraph 1, of the German Constitution. Violation of this right can be brought to the Federal Constitutional Court.

References:

Section 511, Code of Civil Procedure. http://www.gesetze-im-internet.de/zpo/_511.html

Section 312, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_312.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1887

Section 124, Code of Administrative Court Procedure. <http://www.gesetze-im-internet.de/vwgo/BJNR000170960.html#BJNR000170960BJNG001501308>, http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html#p0580

Article 103, Paragraph 1, German Constitution. http://www.gesetze-im-internet.de/gg/art_103.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P103

Article 93, Paragraph 4A, German Constitution. http://www.gesetze-im-internet.de/gg/art_93.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P93

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 6, Paragraph 1, of the European Convention of Human Rights, every defendant has the right to be tried within a reasonable period of time. Although the fundamental guarantee of an expeditious trial is well-respected in Germany, there is no general answer as to its implementation, since lengths of trials do vary. According to some statistics published on the website of the Federal Court of Justice, appeals proceedings are predominantly resolved within a reasonable amount of time in terms of the European Convention on Human Rights. However, it has to be acknowledged that Germany has been convicted for violations of Article 6, Paragraph 1, by the European Court on Human Rights.

References:

Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Database of the European Court on Human Rights. <http://cmiskp.echr.coe.int/tkp197/search.asp>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

German law provides a scale of fees that determines the minimum costs for legal consultancy. Lawyers, however, are generally at liberty to charge their clients beyond the minimum fees. In cases of mandatory defense (Section 140 of the Code of Criminal Procedure), lawyers are appointed as duty counsel and are paid in accordance with the legal scale of fees.

References:

Lawyers Compensation Act. <http://www.gesetze-im-internet.de/rvg/>

Court Fees Act. http://www.gesetze-im-internet.de/gkg_2004/

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The judiciary is bound by law and justice (Article 20, Paragraph 3, of the German Constitution). Moreover, the principle of nulla poena sine lege (no penalty without a law) applies in criminal trials (for example, a criminal act may be punished only if it was defined by a law as a criminal offense before the act was committed). In practice, the compliance with this principle is well-respected and ensured in legal proceedings, including appeals. Violations of this principle as well as any other procedural safeguard provided in the Code of Criminal Procedure can be brought to the Federal Constitutional Court.

References:

Article 103, Paragraph 2, German Constitution. http://www.gesetze-im-internet.de/gg/art_103.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P103

Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

With the exception of decisions relating to juvenile offenders, prosecution offices are in charge of the enforcement of sentences. Section 451 of the Code of Criminal Procedure reads as follows:

"The sentence shall be executed by the public prosecution office as the executing authority on the basis of a certified copy of the operative provisions of the judgment containing an endorsement of enforceability, to be issued by the registry clerk." Practice follows the legal provisions.

References:

Section 451, German Code of Criminal Procedure. http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2509

Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

94

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

The independence of the judiciary is guaranteed by the Constitution in Article 97, which says judges shall be independent and subject only to the law.

References:

Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Article 97, German Constitution. http://www.gesetze-im-internet.de/gg/art_97.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P97

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Generally, judicial independence is valued highly and therefore is also protected in practice. However, the selection procedure of the highest-level judges (such as those of the federal courts and federal constitutional court) is viewed with skepticism. Half of the selection committee consists of ministers of the Länder, and the other half is elected by the Bundestag. As a result, the composition of the selection committee reflects the composition of the Bundestag. Hence, judges might be selected on the basis of their party affiliation. However, Article 33, Paragraph 2, provides that "every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievement." An alleged violation of this right can be challenged before administrative courts (competitor's complaint). In fact, this happens frequently.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Act on the Selection of National-Level Judges (Richterwahlgesetz). <http://www.gesetze-im-internet.de/riwg/BJNR003680950.html>

Bundestag. http://www.bundestag.de/service/glossar/R/richterwahl_aussch.html

Sueddeutsche.de. <http://www.sueddeutsche.de/politik/rheinland-pfalz-klage-gegen-justizminister-richter-jetzt-ist-zeit-zum-jaermen-1.1054796>

BVerwG, Urteil vom, Nov. 4, 2010, 2 C 16.09. <http://www.bverwg.de/pdf/1343.pdf>

Franfurter Allgemeine. <http://www.faz.net/aktuell/politik/inland/wahl-in-rheinland-pfalz-2011/proteste-gegen-kurt-beck-juristen-begehren-auf-15205.html>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

According to Article 101, Paragraph 1, of the Constitution, extraordinary courts shall not be allowed. No one may be removed from the jurisdiction of his lawful judge. The precise jurisdiction (territorial jurisdiction, etc.) is further detailed in the Courts Constitution Act and in the procedural law. The exact allocation of cases is laid down in a schedule of responsibilities, which is to be published. As a result, the judge or bench that shall exercise jurisdiction can be determined prior to any proceeding. A violation of this right can be subject to a constitutional complaint.

References:

Section 21E, Courts Constitution Act. http://www.gesetze-im-internet.de/gvg/_21e.html, http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0079

Der Bundesgerichtshof. http://www.bundesgerichtshof.de/DE/BGH/Geschaeftsverteilung/geschaeftsverteilung__node.html

Der Bundesgerichtshof. http://www.bundesgerichtshof.de/DE/BGH/Geschaeftsverteilung/Geschaeftsverteilung2011/Zivilsenate2011/zivilsenate2011__node.htm

Bundesverwaltungsgericht. http://www.bverwg.de/enid/Rechtsprechung/Geschaeftsverteilungsplan_2_ssss_4y.html

Bundesverwaltungsgericht. http://www.bverwg.de/enid/9e3e529c586f2906f7890bf70c1ebf96_0/Rechtsprechung/Organisation_des_Gerichts_37.html

Bundessozialgericht. http://www.bsg.bund.de/nr_132172/DE/02_Geschaeftsverteilung/geschaeftsverteilung__node.html?__nnn=true

Bundesarbeitsgericht. http://www.bundesarbeitsgericht.de/download/gvpl_2011.pdf

Bundesfinanzhof. <http://www.bundesfinanzhof.de/gericht/geschaeftsverteilung>

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

The independence of judges is not only guaranteed with regard to their decisions but also their personal status. Judges are appointed for life and can only be dislocated or dismissed through judicial decision in specific circumstances that have to be determined by law. This personal independence is guaranteed by Article 97, Paragraph 2, of the German Constitution.

References:

Article 97, Paragraph 2, German Constitution. http://www.gesetze-im-internet.de/gg/art_97.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P97

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on the Judiciary

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

No case of a physically harmed judge has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

No case of a killed judge has been reported.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Article 20, Paragraph 3, of the German Constitution provides that the judiciary is bound by law and justice. Practice follows the guarantee provided in the Constitution.

References:

Council of Europe: Report by the High Commissioner for Human Rights on his Visit to Germany, 9 – 11 and 15 – 20, October 2006. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The principle of gender equality is well-respected and protected in the judicial system.

References:

Council of Europe: Report by the High Commissioner for Human Rights on his Visit to Germany, 9 – 11 and 15 – 20 October 2006. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

In some cases (those concerning offenses with a minimum sentence of one year or those in which the accused is not able to defend himself), a counsel is mandatory. If the accused does not choose a legal counsel himself, a duty counsel will be assigned and paid for by the state.

References:

Section 141, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_141.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1148

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Considering that the absence of a lawyer in cases requiring a defense is an absolute ground for appeal, the practice follows the provision of Section 141 of the Code of Criminal Procedure. Therefore, if a defendant in a criminal case cannot afford legal counsel, a duty counsel is assigned by the state.

References:

Anwalt Berlin Blog. <http://www.anwalt-berlin-blog.de/2009/08/gibt-es-prozesskostenhilfe-fuer-das-strafverfahren/>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary

Sections 141 and 338, German Code of Criminal Procedure. http://www.gesetze-im-internet.de/englisch_stpo/index.html

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The expenditure necessary to pursue a legal suit depends on the value of the claim. Moreover, according to Sections 23 and 71 of the Courts Constitution Act, local district courts are in charge of disputes concerning claims involving an amount or monetary value not exceeding 5,000 euros. In civil cases before district courts, no legal representation is required, which minimizes the expenses significantly. However, in cases with a monetary value exceeding 5,000 euros or in the second instance before a county

court, legal representation is required. Legal aid can be granted to people who do not have the funds to pay the fees. The granting of legal aid depends on the prospects of success and indigence.

The criteria to be eligible for legal aid are quite generous. Consequently, most citizens who would otherwise not be in a position to afford bringing a suit receive legal aid. Hence, the necessary financial effort is not seen as an obstacle to bringing a legal suit.

References:

Information brochure on legal

aid. <https://services.nordrheinwestfalendirekt.de/broschuerenservice/download/16/Prozesskostenhilfe.pdf>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The principles outlined above apply for corporate bodies, as well.

The necessary financial cost to bring a legal suit is not considered an obstacle for the most part as legal aid can be obtained relatively easily.

References:

Information brochure on legal

aid. <https://services.nordrheinwestfalendirekt.de/broschuerenservice/download/16/Prozesskostenhilfe.pdf>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

The geographic location does not decrease or increase access to court.

References:

Council of Europe, Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), chapter on the judiciary

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Section 122 of the German Law on Judges requires that a prosecutor have achieved the ability to be a judge in terms of Section 5 of the German Law on Judges. As a consequence, a candidate must have passed the two state examinations. However, in most of the Länder, the selection procedures are highly competitive, and candidates need to have passed the exams with distinction.

It is to be noted that the appointment of the general public prosecutor (the head of the prosecutors) is not free from political interference. The appointment of the general public prosecutor is regulated by Section 149 of the Courts Constitution Act: The federal prosecutor general and the federal prosecutors shall be appointed by the federal president on the proposal of the federal minister of justice, which shall require the approval of the Bundesrat (Federal Council of Germany).

Civil service members of the police are also entitled to the principle of the selection of the best candidate. As noted above, Article 33, Paragraph 2, provides that "every German shall be equally eligible for any public office according to his aptitude, qualifications and professional achievement." Appointments can be subject to judicial review.

References:

Article 33, German Constitution. http://www.gesetze-im-internet.de/gg/art_33.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P33

Section 122, Deutsches Richtergesetz – German Law on Judges. http://www.gesetze-im-internet.de/drig/_122.html

Examples. http://www.berlin.de/sen/justiz/struktur/einstellung_ri_sta.html, http://www.justiz.bayern.de/imperia/md/content/stmj_internet/ministerium/ministe

Section 7, Act on the Status of Civil Servants (Beamtenstatusgesetz). http://www.gesetze-im-internet.de/beamtsig/_7.html

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies are budgeted by the Länder. As a result, their resources vary. Nevertheless, a lack of manpower in most public prosecution offices and police institutions can be observed. In fact, the inadequate staffing jeopardizes the fundamental principle of an expeditious trial. As noted in Question 76A, agreements are often negotiated according to Section 257C of the Code of Criminal Procedure.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution

Section 257C, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_257c.html. http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1684

Winfried Hassemer (former President of the Constitutional Court) in a commentary on Jan. 24, 2009, "Deal im Strafverfahren – Geschäfte mit der Wahrheit." <http://www.sueddeutsche.de/politik/deals-in-strafverfahren-geschaefte-mit-der-wahrheit-1.487191>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

As the police are defined as the investigative personnel of the prosecution, their protection from political interference is similar to that of the prosecution.

References:

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution.

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct.13, 2011

Council of Europe, Parliamentary Assembly, Resolution 1685 (2009), Allegations of Politically Motivated Abuses of the Criminal Justice System in Council of Europe Member States. <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1685.htm>

Wirtschaftswoche of July 5, 2011, Wie Politiker Staatsanwälte unter Druck setzen. <http://www.wiwo.de/finanzen/wie-politiker-staatsanwaelte-unter-druck-setzen-471818/>

Wirtschaftswoche of July 5, 2011, Richterbund beklagt voreilenden Gehorsam. <http://www.wiwo.de/finanzen/richterbund-beklagt-vorauselenden-gehorsam-471826/>

Wirtschaftswoche of July 5, 2011, Politisches Spiel um Akteneinsicht. <http://www.wiwo.de/finanzen/politisches-spiel-um-akteneinsicht-471819/>

Der Spiegel of Aug. 11, 2003, Empfehlung vom Minister. <http://www.spiegel.de/spiegel/print/d-28210076.html>

Oppong, Finger weg von der Justiz – Für eine Unabhängigkeit der Staatsanwaltschaft. http://www.oppong.eu/mediapool/65/653900/data/Zeitschrift_fuer_Rechtspolitik_Gewaltenteilung_Unabhaengigkeit_Staatsanwaltsch

Section 152, StPO (Strafprozessordnung – Code of Criminal Procedure). http://www.gesetze-im-internet.de/stpo/_152.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1196

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

There are several ways to complain about police action. First, a disciplinary complaint (Dienstaufsichtsbeschwerde) can be made to the police itself. The disciplinary complaint is derived from the right to address written requests or complaints to competent authorities and the legislature guaranteed in Article 17 of the German Constitution. However, disciplinary complaints trigger only internal investigations. Acts of the police can also be brought to administrative courts for judicial review. Administrative Courts are entitled to render an administrative act (such as a police action) unlawful. Moreover, Article 34 of the German Constitution provides for liability for violation of official duty. In order to receive compensation, recourse to court is granted.

Article 34 of the German Constitution reads as follows:

"If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity."

The principle of mandatory prosecution applies also to offenses committed by the police. If there are sufficient factual indications, the prosecution is bound to initiate investigations (Article 152 of the Code of Criminal Procedure).

References:

Article 17, German Constitution. http://www.gesetze-im-internet.de/gg/art_17.html, http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#GGengl_000P28

Section 113, Code of Administrative Court Procedure. http://www.gesetze-im-internet.de/vwgo/_113.html

Section 152, Code of Criminal Procedure: http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1207

Franfurter Allgemeine. <http://www.faz.net/artikel/C30840/hessen-ein-ombudsmann-fuer-die-polizei-30000921.html>

Hessischer Rundfunk Online. http://www.hr-online.de/website/rubriken/nachrichten/indexhessen34938.jsp?key=standard_document_40166103&rubrik=34954

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In many cases, disciplinary complaints and subsequent investigations do not result in any concrete outcome. However, since administrative courts investigate the facts ex officio, recourse to court ensures that unlawful actions are under consideration. Administrative proceedings are known to be slow.

References:

Council of Europe: Report by the Commissioner for Human Rights on his Visit to Germany. https://wcd.coe.int/ViewDoc.jsp?id=1162763#P489_177642

Database of the European Court on Human Rights. <http://cmiskp.echr.coe.int/tkp197/search.asp>

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The public prosecution is mandated to investigate and prosecute corruption committed by law enforcement officials, too. Internal mechanisms to investigate also exist, and disciplinary complaints on corrupt behavior can be followed up on by superiors.

References:

Section 152, Code of Criminal Procedure. http://www.gesetze-im-internet.de/stpo/_152.html, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1196

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

In general, the public prosecution office independently initiates investigations into allegations of corruption by the police or prosecutors themselves. No case is reported where such investigations were hampered. However, there might be a high number of unreported cases within the prosecution office.

References:

Interview with Dr. Anke Martiny, former senator, board member of Transparency International, Oct. 13, 2011

Transparency International: Die National-Integrity-System (NIS)-Studie (Germany, 2011), Chapter on Criminal Prosecution

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

There is no immunity for law enforcement officials. Civil servants convicted of a crime committed during the execution of their main duties in fact automatically lose their status.

References:

Section 24, Paragraph 1, No. 2, Act on the Status of Civil Servants (Beamtenstatusgesetz). http://www.gesetze-im-internet.de/beamstg/_24.html

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Prosecutors and the police are not immune from criminal proceedings. The Office of the Prosecutor in Cologne, for example, provides a special department assigned only to investigate cases involving civil servants. However, Amnesty International reported that investigations concerning enforcement officials' misconduct are unsatisfactory.

References:

Office of the Prosecutor, Cologne. <http://www.gsta-koeln.nrw.de/>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.