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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in
central governments (top executive functions)
and law enforcement agencies

EVALUATION REPORT

GERMANY



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I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in Germany to prevent corruption amongst persons with top executive functions (the Federal Chancellor, federal ministers, parliamentary state secretaries, state secretaries and directors general) and members of law enforcement agencies (Federal Criminal Police Office and the Federal Police). It aims at supporting existing efforts in the country to strengthen transparency, integrity and accountability in public life.

2. With the Anti-Corruption Directive (and its complementary regulations, such as the Anti-Corruption Code of Conduct), Germany has a solid anti-corruption framework in place, with the obligation for all federal agencies to identify areas of activity especially vulnerable to corruption (which is to be followed by further measures to assess whether existing safeguards are sufficient) being an especially strong feature. Nevertheless, as this framework focuses on the federal administration as a whole, there are a number of areas in which the current regulations and policies need to be complemented to target the specific integrity issues faced by persons in top executive functions. In this spirit, the establishment of a code of conduct specifically for persons with top executive functions would be an appropriate complement to the existing handbook for federal ministers and parliamentary state secretaries. More attention would in this context also need to be paid to the prevention of conflicts of interest, both while in office (by introducing clear provisions and guidance on this issue for federal ministers and parliamentary state secretaries and requiring persons with top executive functions to disclose conflicts between their private interests and official functions in an *ad hoc* manner as well as by introducing a requirement to disclose their financial interests) and thereafter (by considering to extend the length of the current cooling off period for federal ministers and parliamentary state secretaries and providing for more transparency and consistency in the decisions taken in this respect relating to state secretaries and directors general).

3. Moreover, a particular emphasis is placed in this report on transparency, with further rules to be adopted to ensure that sufficient information is disclosed on interactions of persons with top executive functions with lobbyists and other third parties seeking to influence the government's legislative and other activities. Connected thereto, the report acknowledges the important efforts made to improve transparency of the legislative process with the 2018 Agreement to Increase Transparency of the Legislative Process, but also finds that this should be further enhanced by additionally disclosing substantive external inputs received before the formal launch of the consultation process. Furthermore, the report expresses strong criticism of the current framework for providing access to information. The authorities are therefore urged to have an independent and thorough analysis conducted of the Freedom of Information Act, with a particular focus on the scope of exceptions, the system of fees and the enforcement of the act, and to take additional measures in light of the findings of this analysis, where necessary.

4. As regards law enforcement, the Federal Criminal Police Office and the Federal Police have built up a good practice to prevent corruption within their own ranks, with in particular the corruption risk assessments carried out at certain intervals, the appointment of contact persons for the prevention of corruption, the clear procedures and guidance on gifts and secondary activities being worth mentioning in this respect. That being said, there is still some room for improvement. The current Anti-Corruption Code of Conduct would benefit from

being made more tailored to the work of the Federal Criminal Police Office and the Federal Police, with further efforts to be undertaken in the Federal Police to structure and tailor its integrity training to the needs and risks of different staff categories, as based on a revised code of conduct. Also, in the Federal Police, screening processes of new recruits are to be strengthened (as is already being foreseen), and measures are to be taken to provide for a more pro-active internal oversight. Furthermore, the report welcomes the internal and external channels available to staff of the Federal Criminal Police Office and the Federal Police to report confidentially on misconduct, but nevertheless finds that the protection of whistleblowers should be strengthened beyond the protection of their identity. When it comes to complaints received from members of the public, it is recommended to publish information on complaints received, action taken and sanctions imposed. In this connection, the German authorities are also invited to reflect on the experience of other GRECO member states in setting up separate investigative or complaints review bodies, to avoid the impression of the “police investigating the police”.

II. INTRODUCTION AND METHODOLOGY

5. Germany joined GRECO in 1999 and has been evaluated in the framework of GRECO's First (in March 2002), Second (in July 2005), Third (in December 2009) and Fourth (in October 2014) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017.¹

6. The objective of this report is to evaluate the effectiveness of the measures adopted by the German authorities to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Germany, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Germany shall report back on the action taken in response to GRECO's recommendations.

7. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Germany from 9 to 13 December 2019, and reference was made to the responses by Germany to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Ms Kateřina HLAVÁČOVÁ, Police Officer, Department of Internal Control, Police Presidium (Czech Republic), Mr Richard NESS, Superintendent, Police Scotland (United Kingdom), Ms Natasa NOVAKOVIC, President of the Commission for Resolution of Conflict of Interest (Croatia) and Mr Philippe POIRIER, Holder of the Research Chair in Parliamentary Studies of the Chamber of Deputies of Luxembourg, Associate Professor in Political Science at the Collège des Bernardins (Luxembourg). The GET was supported by Mr Björn JANSON, Deputy Executive Secretary of GRECO and Ms Tania VAN DIJK of the GRECO Secretariat.

8. The GET met with the State Secretary of the Federal Ministry of the Interior, Building and Community, Mr Klaus Vitt, and held interviews with representatives of the Federal Chancellery, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Finance, the *Bundestag* Administration, the *Bundesrechnungshof* (Court of Audit) (via phone conference), the Federal Commissioner for Data Protection and Freedom of Information, the *Bundeskriminalamt* (Federal Criminal Police Office), the *Bundespolizei* (Federal Police) and the Office of the Public Prosecutor General of Berlin. In addition, the GET met a representative of the law firm GÖRG.² Finally, the GET spoke with representatives of civil society (*Abgeordnetenwatch*, Lobbycontrol and Transparency International Germany), trade unions (BDK/*Bund Deutscher Kriminalbeamter*, GdP/*Gewerkschaft der Polizei* and VBoB/*Verband der Beschäftigten der obersten und oberen Bundesbehörden*) and the media.

¹ More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

² For all its executive agencies, the Federal Ministry of the Interior, Building and Community has appointed an "ombudsperson against corruption", which can receive confidential reports of suspicions of corrupt behaviour (see paragraph 163). Since 1 January 2015, this function has been performed by three lawyers of the law firm GÖRG.

III. CONTEXT

9. Germany is one of the founding members of GRECO, having been a member since its establishment on 1 May 1999. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention of and fight against corruption³. Germany had a positive track record in implementing GRECO recommendations in the First and Second Evaluation Round, with 66% of recommendations fully implemented in the First Evaluation Round (and 33% partly) and 83% of recommendations fully implemented in the Second Evaluation Round (and 17% partly). In the Third Evaluation Round the efforts of the authorities initially stalled, in particular in relation to recommendations on transparency in the financing of political parties and election campaigns. In the end 45% of the recommendations issued in this round were implemented (with 50% partly implemented and 5% not). Germany is currently undergoing a non-compliance procedure regarding the implementation of the recommendations of the Fourth Evaluation Round on corruption prevention in respect of Members of Parliament, judges and prosecutors, with 37,5% of recommendations having been implemented (and 37,5% partly implemented and 25% not), highlighting particular difficulties in the implementation of the recommendations pertaining to corruption prevention in respect of Members of Parliament.

10. In international surveys, Germany is among the group of European countries generally perceived as less affected by corruption. In Transparency International's 2019 Corruption Perceptions Index, Germany occupies 9th place out of the 180 countries included in the survey (with only small deviations to either 10th, 11th or 12th place in the last five years).⁴ In the 2019 Eurobarometer, respondents in Germany perceived corruption to be less of a problem in their country than the EU average: 53% of respondents thought that corruption was widespread in Germany (EU average: 71%) with 35% of respondents saying that corruption had increased in recent years (EU average: 42%).⁵ Nine percent of respondents consider themselves to have been personally affected by corruption in their daily life (EU average: 26%). The only category in the 2019 Eurobarometer where respondents in Germany believe corruption is more prevalent than the EU average is private companies (with 43% of respondents in Germany believing corruption is widespread vis-a-vis an EU average of 37%).

11. As regards more specifically the central government (top executive functions), a parliamentary [Committee of Inquiry](#) was set up following a 2018 report by the *Bundesrechnungshof* (Federal Court of Audit) on the large-scale hiring of consultants by the Ministry of Defence, including possible conflict of interest therein.⁶ The final [report](#) of this

³ Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

⁴ In 2019, Germany scored 80 (out of a total score of 100, with 0 equating highly corrupt and 100 meaning very clean), see: Transparency International, [2019 Corruption Perceptions Index](#).

⁵ European Commission, [Special Eurobarometer 502](#) (2019).

⁶ Reportedly, the *Bundesrechnungshof* (Federal Court of Audit) calculated (on the basis of a sample of 56 contracts amounting to 93.3M EUR) that the Ministry of Defence had likely paid more than 150M EUR annually on consultancies in 2015 and 2016, with indications that in several cases the need for external services had not been substantiated and some relatively large contracts had being directly awarded. The Committee of Inquiry also focused in this context on potential conflicts of interest in the awarding of contracts, in particular to

Committee was endorsed on 16 September 2020, but has not yet been debated in the *Bundestag*. More generally, there seems to be an increasing focus in the media in recent years on the close relationship between persons with top executive functions and businesses, and, in this context, the lack of transparency of the impact of outside influence over the federal government's agenda, including through the lobbying by persons formerly occupying top executive functions. Partly in response to this, in 2015 new rules were adopted restricting former federal government officials in the type of employment they can take up in a certain period following their departure from public office. There however appears to be wide public support to further regulate and provide for more transparency of lobbying.⁷

12. When it comes to law enforcement agencies, the police enjoy a high level of trust among citizens, with only about one in eight respondents perceiving corruption to be common among police and customs officers in Germany (compared to an EU average: 26%) and German police services being considered to reliably protect companies from crime.⁸ These studies and surveys include the law enforcement agencies in the *Länder* (the *Landespolizei*) as well as the Federal Criminal Police Office (*Bundeskriminalamt*) and Federal Police (*Bundespolizei*) which the part on law enforcement of this report focuses on. Corruption cases in the Federal Criminal Police Office and Federal Police are indeed rare, as also highlighted in the annual reports on the prevention of corruption of the Federal Ministry of the Interior, Building and Community.⁹

associates of the then State Secretary of the Ministry of Defence, a former director of a consultancy firm. See for example for further background: the [Article](#) of 7 February 2020 in *Der Spiegel (Magazin)* and the [Article](#) of 25 September 2018 in *Der Spiegel*.

⁷ [Article](#) of 19 April 2019 in *Der Spiegel*.

⁸ See respectively the abovementioned Eurobarometer (2019) and the GAN Business Anticorruption Portal, ([Germany Corruption Report](#), last updated in January 2018).

⁹ The annual reports on the prevention of corruption of the Federal Ministry of the Interior, Building and Community include information on cases of corruption in all federal agencies, including the Federal Criminal Police Office and Federal Police. See for example, for 2018: [Prevention of Corruption in the Federal Administration: Annual report for 2018](#), p.19-21.

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

13. The Federal Republic of Germany is a federal parliamentary republic, with a multi-party system. The Constitution, known as the *Grundgesetz* or Basic Law, divides legislative powers between the Federation and the 16 constituent states (*Länder*). Federal legislative power is vested in the *Bundestag* (the German parliament), with the *Länder* participating in the legislative process and administration of the Federal Republic through the *Bundesrat*, a separate constitutional body (comprising members appointed by the respective *Länder* governments).¹⁰

The President

14. The Head of State of the Federal Republic of Germany is the Federal President. By his/her actions, the President represents the state itself. S/he cannot be a member of the government or legislative body of the Federation or a *Land* or hold any other remunerated office.¹¹ S/he is expected to give direction to general political and societal debates in Germany, but not of a party-political nature. The President is elected for a five-year term (renewable once) by secret ballot, by the Federal Assembly (*Bundesversammlung*), a special constitutional body convened solely for the purpose of electing the President, which mirrors the aggregated majority of the *Bundestag* and the parliaments of the 16 federal states (*Länder*).¹²

15. As a rule, presidential orders and directions require the countersignature of the Federal Chancellor or the competent Federal Minister in order to be valid (Article 58, *Grundgesetz*).¹³ The President represents the country at home and abroad, formally concludes treaties with foreign states on behalf of Germany, formally accredits and receives envoys, formally appoints and dismisses federal judges¹⁴, federal civil servants and officers of the armed forces (unless otherwise provided by law), has the power to pardon offenders in certain criminal and disciplinary cases¹⁵ and promulgates declarations of a state of emergency by the

¹⁰ For further information on the *Bundestag*, see also GRECO's Fourth Round Evaluation Report in respect of Germany (in particular, paragraphs 16-19).

¹¹ S/he may also not engage in any trade or profession or belong to the management or supervisory board of any for-profit enterprise (Article 55, *Grundgesetz*).

¹² Persons entitled to vote in the elections for the *Bundestag*, having reached the age of forty, are eligible to be elected as President (Article 54, *Grundgesetz*). Since 19 March 2017, Frank-Walter Steinmeier has been the President of the Federal Republic of Germany.

¹³ The exception to this is the appointment or dismissal of the Federal Chancellor (who is appointed by the Federal President if s/he receives the votes of a majority of the members of the *Bundestag* and dismissed upon request of the *Bundestag*, after a majority of its members has elected a successor), the dissolution of the *Bundestag* in cases when the person proposed to become Federal Chancellor does not receive the vote of a majority of the members of the *Bundestag* or for the request to a Federal Minister to continue to manage the affairs of his/her office until a successor has been appointed.

¹⁴ For the procedure preceding the appointment of federal judges by the Federal President, see the Fourth Round Evaluation Report in respect of Germany, paragraphs 109-111.

¹⁵ Pardoning power by the Federal President in criminal cases is in effect nowadays limited to decisions taken by a court at *Land* level when "exercising federal jurisdiction". This essentially concerns such offences as espionage, treason against the external security of the state, forming a terrorist organisation and offences defined in the Code of Crimes Against International Law. The *Länder* are responsible for pardoning criminal offenders in all other cases. Presidential pardons in disciplinary cases concern disciplinary decisions against federal civil servants

Bundestag (Articles 59, 60 and 115a, *Grundgesetz*). The President also countersigns laws (Article 82, *Grundgesetz*) or may veto a law by refusing to countersign it.

16. It also falls upon on the Federal President to propose a candidate for the office of Federal Chancellor, following consultations with each of the parliamentary groups in the *Bundestag*. The Federal President has to do so in the first session of a newly elected *Bundestag* (or when the Federal Chancellor has resigned or died).¹⁶ Following election by a majority of all members of the *Bundestag* by secret ballot, the President formally appoints the Federal Chancellor (Article 63, *Grundgesetz*). The Federal President also appoints and dismisses Federal Ministers upon proposal of the Federal Chancellor and approves the rules of procedure of the Federal Government, following their adoption by the Federal Government (Articles 64-65, *Grundgesetz*).

17. GRECO agreed that a head of State would be covered by the Fifth Evaluation Round under the "central government (top executive functions)" where that individual actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on the appointment of individuals to top executive functions.

18. The GET notes that the powers of the Federal President of Germany are mostly of a formal or ceremonial nature. S/he does not participate actively and regularly in day-to-day governmental functions, nor advises thereon. More specifically, the appointments by the Federal President are always either based on the proposal of or needing the approval of another constitutional body. This is also the case for his/her proposal of a candidate for the office of Federal Chancellor, which would need to be approved by a majority of all members of the *Bundestag*.¹⁷ As to the Federal President's power to refuse to countersign a law and thereby effectively vetoing it, the GET was told that this is a rare occurrence: it has only happened eight times in the history of the German Federal Republic, for the last time in 2006. A President would reportedly only do so if either the content of the law or the process by which it had been adopted would manifestly not be in line with the *Grundgesetz*. In view of the above, the Federal President of Germany, as the country's Head of State, cannot be considered as exercising a top executive function and therefore does not fall within the framework of the current evaluation round.

and military personnel. In practice, all pardons follow a similar process involving a petition for a pardon, which is investigated by the pardoning authority (for criminal sanctions, this is the Federal Ministry of Justice) and presented to the Federal President with an overview of the background and personal and economic circumstances of the petitioner. In the period 2010 - 2017, former Federal President Wulff and former Federal President Gauck have respectively issued 14 and 10 decisions on pardons involving federal civil servants and military personnel, with one decision on a criminal pardon having been taken. No information was available on the pardoning decisions of the current Federal President.

¹⁶ The *Bundestag* may however disregard the President's proposal (which has – to date – never happened), in which case the parties in the *Bundestag* may themselves propose a candidate, who is then again to be elected by a majority of all members of the *Bundestag* and whom the President would then be obliged to appoint. If the *Bundestag* fails to elect a Federal Chancellor of its own choosing by a majority of all its members within two weeks of the first ballot, on the 15th day the President is free to appoint as Federal Chancellor the candidate who received the most votes (leading to a minority government) or dissolve the *Bundestag* (Article 63, *Grundgesetz*).

¹⁷ Exceptionally, the Federal President would be able to appoint the candidate who has not been approved by a majority of *Bundestag* members if any candidate of the *Bundestag*'s own choosing fails to get an absolute majority within the first two weeks of the first ballot, which to date has never occurred.

The government

19. The Federal Government (*Bundesregierung*) *strictu sensu* comprises the Federal Chancellor and the Federal Ministers (Article 62, *Grundgesetz*). The Federal Chancellor is the head of the government. As indicated above, s/he is appointed by the President, after being elected by a majority of all members of the *Bundestag* on the proposal of the President. The government's tenure is linked to the Chancellor's tenure: when the Chancellor's term of office ends, the government's term ends.

20. The Federal Chancellor is the only member of the federal government elected by the *Bundestag*. The Federal Ministers are chosen by the Federal Chancellor and formally appointed by the Federal President: no approval of the *Bundestag* is necessary. Apart from being constitutionally bound to appoint a Minister of Defence, a Minister of Economic Affairs and a Minister of Justice, the Federal Chancellor can decide on the number of ministers and the distribution of duties between them. At any point in time, the Chancellor may ask the President to dismiss a minister or to appoint a new minister (the President has to oblige: S/he cannot refuse the Chancellor's request to dismiss or appoint a minister). Both the Chancellor and Federal Ministers may hold parliamentary mandates, and usually do so in practice.¹⁸

21. Article 65 *Grundgesetz* defines how the executive branch functions. The Chancellor is responsible for all government policies: S/he decides on the political direction of the government (*Richtlinienkompetenz*) and decides on the scope of each minister's duties. Within these boundaries, ministers are free to carry out their mandate. Differences of opinion between Federal Ministers are to be resolved within the government. The Rules of Procedure of the Federal Government (*Geschäftsordnung der Bundesregierung* or *GOBReg*), issued on the basis of Article 65, fourth sentence, *Grundgesetz* and approved by the President, regulate the work of the Federal Government, *inter alia* as regards the co-operation between the Chancellor and Ministers and between ministers, the collegial principle for government decisions (Section 28, *GOBReg*) or the quorum needed for taking decisions (i.e. at least half of the ministers including the Chancellor or – in his/her absence – the Vice-Chancellor). It is complemented by the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien* or *GGO*). The government is bound in its activities by law and justice (Article 20(3), *Grundgesetz*), meaning that administrative decisions require a sound legal basis and are to be taken in line with the process provided for by law. Measures and decisions taken by the government can be challenged before a court (Article 19(4), *Grundgesetz*). Except for disputes of a constitutional nature (which fall within the remit of the Federal Constitutional Court), administrative courts have jurisdiction in these matters (unless an issue has been explicitly allocated to another court by a federal statute).

22. Following the elections of 24 September 2017, an agreement to form a grand coalition was reached between the CDU/CSU (*Christlich Demokratische Union Deutschlands / Christlich-Soziale Union in Bayern*) and the SPD (*Sozialdemokratische Partei Deutschlands*). The 24th Federal Cabinet of Germany (informally known as Merkel IV) took up office on 14 March 2018. Alongside the Federal Chancellery, there are 14 federal ministries, in addition to the Chief of Staff of the Chancellery, who is a federal minister for special affairs without a portfolio. Besides the female Federal Chancellor, there are nine male ministers and six female ministers. This ratio is in line with the objectives pursued by the Committee of Ministers'

¹⁸ In the current government, ten members of the government (out of 16) have a parliamentary mandate.

[Recommendation Rec\(2003\)3](#) on balanced participation of women and men in political and public decision-making.

23. The Federal Chancellor and his/her ministers (as well as parliamentary state secretaries, see further paragraph 25 below) have access to classified information by virtue of their office, and do not have to undergo a security check.¹⁹ Current regulations also do not foresee any checks on the personal suitability of ministers and parliamentary state secretaries for their position. In the process of forming a government, as an unwritten rule, ministers would be expected to raise all relevant facts and circumstances (including potential conflicting private interests) with the Federal Chancellor at their own initiative. It was furthermore stated that members of the Federal Government are accountable to the *Bundestag* (as reflected by the right of parliamentary inquiry under Article 44 of the *Grundgesetz*) and would, as “persons of public interest”, be subject to intense media scrutiny (and would often have already been so in the past, having held high-level political offices before). Preferably it would not be left to media alone to examine the background of members of the government and parliamentary state secretaries (in particular for persons who are less in the public eye). The GET would welcome if candidates for positions of federal ministers (and parliamentary state secretaries) undergo a check concerning any integrity issues as part of their appointment process, to address issues which could be seen by the public as compromising their capacity to perform public service in an impartial manner. The GET trusts that further consideration will be given to this practice where warranted.

Political appointees in executive functions

24. Other than members of the government, there are several categories of political appointees serving the executive: parliamentary state secretaries (who in the Federal Chancellery and Ministry of Foreign Affairs have the title “Minister of State” / *Staatsminister*), and politically appointed civil servants, namely state secretaries and directors general. According to the authorities, they are involved to a high level of responsibility in the work of the government and are performing top executive functions. They are therefore regarded as PTEFs for the purpose of this report.

25. Parliamentary state secretaries (including ministers of state) are appointed by the Federal President, upon proposal by the Chancellor, in consultation with the ministers to whom they are assigned (Section 2, Act governing the Legal Status of Parliamentary State Secretaries). The GET refers to its observations on the lack of integrity checks (see paragraph 23 above), which are of equal relevance for the position of parliamentary state secretaries. Parliamentary state secretaries must be members of the *Bundestag*.²⁰ They assist members of the government to whom they have been assigned in the fulfilment of their governmental tasks. As such, they liaise with the *Bundestag* (and their committees and political groups), as well as the *Bundesrat*, where needed. The minister decides which tasks to delegate to each parliamentary state secretary. In carrying out these tasks, the parliamentary state secretary can represent the minister before the *Bundestag*, *Bundesrat* and in sessions of the government. Parliamentary state secretaries (including ministers of state) are answerable to ministers, but are not formally part of the chain of command of a ministry. They may be

¹⁹ Pursuant to section 2 of the Security Clearance Check Act, constitutional bodies do not have to undergo a security clearance to be provided with access to classified information.

²⁰ This requirement may however be waived when appointing a parliamentary state secretary to the Federal Chancellery (Section 1, Act governing the Legal Status of Parliamentary State Secretaries).

dismissed at any time (or request to be dismissed) by the Federal President on proposal of the Chancellor, with the agreement of the relevant minister. Their term in office automatically ends when they cease to be a member of the *Bundestag*.

26. In addition, the authorities indicate that PTEFs in Germany include state secretaries (these include both state secretaries with civil servant status and state secretaries exempt from the agreed pay scale²¹) and directors general, who are appointed by the President or someone designated by him/her, following a discussion on staffing within the government (in accordance with section 15 *GOBReg*). The GET was told that both state secretaries and directors general would usually come from within the federal civil service, becoming politically appointed following a career in the civil service. Outside appointees were however not unheard of either.²² State secretaries provide the internal direction of a ministry directly below ministerial level. They are usually responsible for a clearly defined policy area of the ministry. Directors general in turn head a functionally defined area of responsibility and provide an important link between the executive and working level. The GET was told that with the appointment of a new minister, some state secretaries and directors general would stay in position. This was however more likely to happen for the latter category than the former. In order for a new minister to have a state secretary or director-general within his/her ministry “suspended” by the Federal President, a minister would have to show that the “political relationship of trust” was no longer working.

27. Unlike members of the government and parliamentary state secretaries, state secretaries and directors general are subject to a security clearance check to be allowed access to information related to their position.²³ These positions usually require the second highest security clearance. The focus of this check is on the reliability of the person in carrying out security-sensitive activities and not necessarily on integrity issues (unless relevant for the aforementioned objective). The GET would welcome if, in particular for those recruited from outside, closer attention is paid to integrity issues as a part of their appointment process, to address any issues that could potentially compromise (or be perceived to compromise) their capacity to perform public service in an impartial manner.

28. The function of “adviser”, “special adviser” or “political adviser” does not exist in the German system of government. Parliamentary state secretaries take on some of the tasks usually associated with those of a political adviser in other countries, by liaising with the *Bundestag* and its political groups, while state secretaries and directors general take on some

²¹ Exceptionally, service contracts can be concluded with state secretaries, which means that they do not have the status of federal civil servants and, as they are employed outside the Collective Agreement for the Public Service (*TVöD*), are exempt from the agreed pay scale. In such cases, a clause will be inserted in the service contract, declaring that the rights and obligations of federal civil servants, for example as regards confidentiality, secondary employment and liability, apply *mutatis mutandis*. In the text hereafter, the term “state secretaries” will be used to signify both categories of state secretaries, both with civil servant status and without civil servant status, in the understanding however that state secretaries with civil servant status are the rule.

²² For example, in 2014 a former director of the consultancy company McKinsey was appointed as state secretary at the Ministry of Defence to oversee the re-equipment of the German military.

²³ There are three levels of security clearance: confidential, secret or top secret. For these levels, respectively a simple security check, an extended security check or extended security check with security investigations will be carried out by the *Bundesamt für Verfassungsschutz* (the Federal Office for the Protection of the Constitution, Germany’s domestic intelligence service). Politically appointed civil servants generally require the second highest security clearance (but in certain ministries the position of state secretary or director general would require access to “top secret” information, entailing a more intensive security check). The security clearance requires the consent of the person concerned and is valid for a period of five years.

of the advisory tasks associated with the administration within a ministry itself. The GET learned that the cabinets of Federal Ministers are relatively small in that they usually only comprise an office manager, spokesperson(s) and one or more secretaries.

29. If there is a need for certain expertise not available within a ministry itself, external consultants can be hired. External consultants would however be considered to advise the ministry (not the minister him/herself) and the hiring of such consultants would be subject to the normal public procurement rules within a ministry. The GET has noted that the hiring of external consultants has come under increased scrutiny following a 2018 report by the *Bundesrechnungshof* on the hiring of consultants by the Ministry of Defence, which led to the setting up of a special Parliamentary [Committee of Inquiry](#) (see context). The [final report](#) of this committee was recently endorsed by the parliamentary committee of defence, but is yet to be debated by the *Bundestag*. Pending this debate, the GET welcomes the information that procurement proceedings have been tightened at the Ministry of Defence in the meantime.

30. Ministers can also set up advisory councils (by ministerial order).²⁴ Members of such councils are technical experts, who are usually appointed for a period of four or five years, by the minister in question (or in certain cases by the President, upon nomination of the government).²⁵ The advisory councils generally give advice to decision-makers from a technical perspective (e.g. by producing studies, expert reports and opinions). The GET however does not consider the members of these councils to be PTEFs (by virtue of their membership of a council) for the purpose of this report.

Remuneration of persons with top executive functions

31. The range of salaries for PTEF is as follows (the average gross monthly wage in Germany amounts to approximately 4 212 €/month)²⁶:

Position	Salary
Chancellor	20 300 €/month
Minister	16 500€/month
Parliamentary state secretaries / state ministers	12 700 €/month
State secretaries with civil servant status ²⁷	14 600 €/month
Directors general	12 200 €/month

²⁴ Examples of such councils include the German Advisory Council on the Environment at the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the Germany Advisory Council on Global Change, the “Economic Wise Men” (the German Council of Economic Experts), the Advisory Council on the Assessment of Developments in the Health Care System and the Advisory Council of Consumer Affairs.

²⁵ The decrees by which these councils are set up provide that they are independent in their functioning and in some cases contain provisions on the incompatibility of membership of the council in question with certain other functions (e.g. being a member or civil servant of the federal government or of one of the *Länder* or some other corporate body under public law, trade union or employers’ organisation) in order to prevent certain conflicts of interest.

²⁶ These salaries are examples of married ministers/parliamentary state secretaries/state secretaries with civil servant status/directors general who have no children and with a spouse who is not in the public service (per data of 1 March 2020).

²⁷ As indicated above, it is also possible to employ state secretaries outside the Collective Agreement for the Public Service (*TVöD*), which means that they would be exempt from this agreed pay scale.

32. The abovementioned remuneration is calculated in accordance with the coefficient provided in the Act governing the Legal Status of Members of the Federal Government and the Act governing the Legal Status of Parliamentary State Secretaries.²⁸ It is taxed as personal income under the Income Tax Act. Members of the government who are simultaneously members of the *Bundestag* and parliamentary state secretaries will have their parliamentary remuneration reduced by 50 percent, in accordance with the Act on Members of the *Bundestag* (*Abgeordnetengesetz*).²⁹

33. In addition, an official expense allowance of €12 271 is provided to the Chancellor and €3 681 to ministers annually. The Chancellor is furthermore entitled to service accommodation (which ministers may also be provided with, but currently none are). Members of the government are also provided with reimbursement of relocation expenses and travel expenses, and daily allowances during business trips and are provided with an official vehicle for professional and personal use (as are parliamentary state secretaries).

34. Following their departure from office, members of the federal government and parliamentary state secretaries receive a transitional allowance of at least six months to a maximum of two years. In the first three months following their departure, this transitional allowance amounts to their full official salary; thereafter it amounts to 50% of their official salary.

35. State secretaries and directors general are provided with a family allowance (the amount of which depends on his/her marital status and number of children) and a so-called ministerial allowance (due to their assignment at one of the highest public authorities), which amounts to €553 and €434 respectively.

Anticorruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy

36. The main anti-corruption policy document at federal level is the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (hereafter "the Anti-Corruption Directive"). The current version of the Anti-Corruption Directive dates back to 2004 (with a revision currently being prepared by the Federal Ministry of the Interior, Building and Community in close consultation with all federal ministries).³⁰ The Anti-Corruption Directive prescribes *inter alia* that all federal agencies shall identify areas of activity especially vulnerable to corruption, which is to be followed by an assessment as to whether existing safeguards are sufficiently effective to counter the risks.³¹ In addition, the Anti-

²⁸ According to this coefficient, the Federal Chancellor receives (for example) one and two-thirds of the basic salary of pay grade B11 of the Federal Remuneration Regulation B with ministers receiving one and one third of this basic salary.

²⁹ The amount of reduction may however not exceed 30% of their ministerial/parliamentary state secretary salary.

³⁰ The GET was informed that the revisions were aimed at enabling measures to prevent corruption which are both practical and effective and would *inter alia* address staff and task rotation, in order to provide employers more flexibility (e.g. as regards rotation periods and waiting periods) tailored to the specific local conditions of the areas of activity identified as being especially vulnerable to corruption.

³¹ To facilitate this process a recommendation on the identification of areas of activity especially vulnerable to corruption is appended to the Anti-Corruption Directive and a handbook and questionnaire is made available to federal agencies. The Directive furthermore outlines the assignment of special contact persons for corruption

Corruption Directive is said to serve as a model for the 16 *Länder* and to influence strategies of the private sector.³²

37. The Anti-Corruption Directive is complemented with an Anti-Corruption Code of Conduct and Guidelines for supervisors and heads of public authorities. The Anti-Corruption Directive, Code of Conduct and Guidelines for supervisors and heads of public authorities are compiled in one brochure "[Rules on Integrity](#)" (*Regelungen zur Integrität*), which also contains further guidance to each of the provisions of the Anti-Corruption Directive (called recommendations for prevention of corruption), additional circulars and administrative regulations on such issues as gifts, sponsoring (etc.), as well as relevant excerpts of the German Criminal Code, the Freedom of Information Act and useful internet links. This brochure (which was last updated in 2018) is made available to all employees in the public sector (and the public at large) on the website of the Ministry of the Interior, Building and Community.

38. Federal agencies are required to report to the Ministry of the Interior, Building and Community on an annual basis on the implementation of the Anti-Corruption Directive. On this basis, the Ministry of the Interior, Building and Community publishes an annual report (covering more than half a million employees in 953 federal offices) on the prevention of corruption in the federal administration.³³

39. The GET appreciates the approach of the Anti-Corruption Directive, as complemented by the Anti-Corruption Code of Conduct and the Guidelines for supervisors and heads of public authorities, in that it combines assessments, awareness raising, counselling and other preventive tools. It considers the identification of areas of activity in the federal administration vulnerable to corruption (even if not necessarily including the work of PTEFs), coupled with the follow-up measures to be taken, an especially strong feature of this Directive and a good practice. This may well inspire other GRECO member States.

Ethical principles and rules of conduct

40. As already mentioned above, as part of the above-mentioned Anti-Corruption Directive, an Anti-Corruption Code was adopted by the Federal Government in 2004. This Anti-Corruption Code of Conduct is targeted to staff of the federal public administration and sets out nine principles of conduct to which short explanations are added.³⁴ Infringements of

prevention, measures to be taken in the area of public procurement, staff awareness, reporting obligations, the inclusion of anti-corruption clauses in public contracts awarded by federal agencies and the regulations on sponsoring of activities of the federal administration by the private sector, as well as the use of such measures as "multiple eyes" (or in the words of the Directive "the principle of greater scrutiny") and rotation.

³² Reference is *inter alia* made in this respect to the anti-corruption initiative "Together Against Corruption", set up in 2010, which comprises representatives of the largest federal ministries and chief compliance officers of various large and medium-sized companies. The group meets twice a year to discuss challenges related to corruption, to work out solutions and strategies to address these challenges and to publish guides on the prevention of corruption (for example, on [effective compliance measures](#) and on [accepting rewards and gifts](#)).

³³ In this context, the federal agencies *inter alia* report on positions identified as especially vulnerable to corruption as well as the number of investigations conducted in respect of suspicions of corruption and the sanctions imposed. See the annual report on prevention of corruption in the federal administration (footnote 9 above).

³⁴ These nine principles include such objectives as showing through behaviour that the person does not tolerate or support corruption, separating one's job strictly from one's private life and checking whether private interests might conflict with work duties, helping one's workplace in detecting and clearing up corruption.

the Code by federal civil servants can lead to disciplinary measures. In addition, the Anti-Corruption Directive includes guidelines specifically for supervisors and heads of public authorities (such as ministers, state secretaries and directors general), outlining measures to be taken to minimise risks of corruption in their area of influence.³⁵ Both documents (the code and the guidelines) are available to the public in hard copy and electronically on the website of the Federal Ministry of the Interior, Building and Community.

41. Furthermore, ministers and parliamentary state secretaries who are members of the *Bundestag* are subject to the Code of Conduct for Members of the *Bundestag*, which forms an integral part of the Rules of Procedure of the *Bundestag*.³⁶ In addition, various legal provisions (on ancillary activities and post-employment restrictions pursuant to the Act on the legal status of Federal Ministers and the Act on the Legal Status of Parliamentary State Secretaries) set out certain enforceable integrity standards (see paragraphs 74, 78, 82 and 85 below).

42. In view of the GET it is not clear that the Anti-Corruption Code of Conduct is also applicable to federal ministers and parliamentary state secretaries.³⁷ The explanations to the code make frequent references to “employees” and “staff” and the nine principles set out are in the view of the GET not the ones most pertinent to the functions of ministers and parliamentary state secretaries. It also noted that the code is currently not included in the introductory file (Handbook or *Handreichung*, see paragraph 46) for new ministers and parliamentary state secretaries. It was however reassured that this would be done for a next update of the file. The authorities emphasised that the anti-corruption principles the Federal Government imposes on the federal administration also apply to the government’s own exercise of office. By heading federal agencies, federal ministers (and parliamentary state secretaries) would be considered as “staff” of these authorities. In light of this and the regulations outlined in other sections of this report (e.g. on official secrecy beyond the term in office, receipt of gifts, post-term employment, secondary activities), the authorities do not see a need for a separate code of conduct for PTEFs.

43. Notwithstanding the assurances of the authorities that the current code is already applicable to ministers and parliamentary state secretaries and that a separate code of conduct would have little added value, the GET would see much benefit in a specific code of conduct for PTEFs, in line with GRECO’s practice. Such a code should be targeted to the corruption risks and integrity issues most pertinent to their positions (i.e. conflicts of interest, outside activities, post-employment restrictions, gifts etc.). It should include issues which have not yet been covered in existing regulations (e.g. dealing with lobbyists and other third parties seeking to influence government business) and be complemented with explanations to

³⁵ The Guidelines set out a number of examples of flaws which could lead to corruption (e.g. inadequate supervision, blind trust in senior staff or those with specialised functions etc.) and outlines that this can be counteracted by increased awareness and education, various organisational measures (rotation, four-eyes principle, increased supervision etc.). It also provides a list of indicators and warning signs, which together with the surrounding circumstances, could point to a risk of corrupt behaviour.

³⁶ See the Fourth Round Evaluation Report in respect of Germany, in particular paragraphs 47-49. In this Evaluation Report, GRECO acknowledges the Code of Conduct (which is also readily available to the public), which regulates several key areas such as transparency of secondary activities and income as well as donations, but regrets that it “fails to comprehensively address general principles of behaviour/ethics and certain specific issues such as conflicts of interest (...), incompatibilities, use/misuse of information and of publication resources and interaction with third parties such as lobbyists”.

³⁷ The GET has also noted that in the context of the [review](#) of the implementation by Germany of the United Nations Convention against Corruption (CAC/COSP/IRG/2019/CRP.20, 13 December 2019), the German authorities have been encouraged “to specify the application of the [Anti-Corruption] Directive to Ministers”.

provide guidance on situations that PTEFs may be faced with whilst carrying out government business. The code should also cover state secretaries and directors general. Such a document should be published, in order to inform the public as to what conduct should be expected from PTEFs. Last not be least, it should be coupled with some form of enforcement. In light of the foregoing, **GRECO recommends (i) that a specific code of conduct for persons with top executive functions be adopted, complemented with appropriate guidance regarding conflicts of interest and other integrity-related matters (e.g. gifts, outside activities, third party contacts, lobbying etc.) and (ii) that such a code be coupled with a mechanism of control and enforcement.**

Institutional framework

44. The Federal Ministry of the Interior, Building and Community is designated as the lead agency for promoting integrity and preventing corruption within the Federal Government (and within this ministry, Division DG I 3 takes the lead on these issues), and is as such responsible for drafting and maintaining rules on corruption prevention and integrity for the entire federal administration. It is supported in its work by other bodies and organisational structures, such as units responsible for internal audits and/or the prevention of corruption in other ministries and the Federal Chancellor's Office, bodies responsible for authorising secondary employment and the acceptance of gifts and/or the Agency for Civil Education.

45. Furthermore, in accordance with the Anti-Corruption Directive, each federal agency (including all ministries) is required to appoint contact persons for corruption prevention, who can *inter alia* be charged with advising the management on corruption prevention issues, keeping staff members informed on corruption prevention matters and monitoring and assessing any indications of corruption.³⁸ Under the auspices of the Federal Ministry of the Interior, Building and Community, a network of contact persons across the federal administration would come together annually to discuss issues pertinent to the prevention of corruption in the federal administration.

Awareness

46. Upon taking up their position, members of the government and parliamentary state secretaries swear an oath, which in general terms refers to performing duties conscientiously and in accordance with the laws of the Federation.³⁹ They are subsequently provided with a handbook (*Handreichung*), which refers to the various obligations of ministers and parliamentary state secretaries. This handbook is updated for each new legislative term.⁴⁰ Aside from general issues relating to the position of a federal minister or parliamentary state secretary (e.g. remuneration, healthcare, caretaker government etc.), the most recent version of the handbook of December 2017 (as provided to the GET) contains a catalogue of the

³⁸ These contact persons are independent and cannot be instructed when carrying out their tasks as a contact person, have a wide-ranging right to be given all information necessary for carrying out their tasks and may not be delegated any powers to carry out disciplinary measures (and cannot themselves lead any disciplinary investigations either).

³⁹ In accordance with Article 64 of the *Grundgesetz*, the Federal Chancellor and other members of the government take the following oath before the *Bundestag*: "I swear that I will dedicate my efforts to the well-being of the German people, promote their welfare, protect them from harm, uphold and defend the Basic Law and the laws of the Federation, perform my duties conscientiously and do justice to all. (So help me God).".

⁴⁰ As indicated above, with the next update the Anti-Corruption Code of Conduct will also be included in the handbook.

applicable rules in relation to permitted and prohibited secondary activities (see also paragraph 74), the acceptance of gifts (see paragraph 78), confidentiality of information, including when testifying before a court (see paragraph 82), official travel, and the cooling-off period after leaving office (see paragraph 85), with reference to the applicable legislation.

47. The handbook contains contact details for the legislative department of the Ministry of the Interior, Building and Community, which is the main contact point for questions of ministers and parliamentary state secretaries on the issues covered by the handbook. The GET was told that the cabinets of various ministers and parliamentary state secretaries would contact the Ministry of the Interior, Building and Community to ask for additional copies of the handbook and on occasion also with questions on its content. If on this basis the legislative department of the Ministry would find that any issue would need additional attention or clarification, it would request a meeting of directors general to be convened to have it raised there.

48. When it comes to state secretaries and directors general, those coming within the federal administration will have throughout their career benefited from various training seminars on integrity and/or the prevention of corruption. The GET learned that, in 2018, 2 953 supervisory staff received training on integrity issues.⁴¹ Upon taking up their position, they are provided with the Anti-Corruption Code of Conduct and informed of the applicable regulations (when they come from outside the federal civil service). Further guidance is provided by the contact persons for corruption prevention in each executive body at federal level, who would brief state secretaries and directors general upon taking up their positions (regardless of whether they come from within the federal administration or from the outside) and provide advice thereafter (on a confidential basis, if need be). The contact persons can also advise ministers and parliamentary state secretaries, if so requested. The advice dispensed by contact persons for corruption prevention is compiled in a [compendium](#) of frequently asked questions and published on the website of the Federal Ministry for the Interior, Community and Building.

49. The GET appreciates the role of anti-corruption contact persons in the regular provision of guidance and advice (including that this role is disassociated from disciplinary proceedings, that their advice is regularly sought, including reportedly by state secretaries and directors general) and the role of the legal department of the Ministry of the Interior, Building and Community in clarifying legal provisions contained in the handbook for ministers and parliamentary state secretaries. Nevertheless, specifically when it comes to ministers and parliamentary state secretaries, it finds that more should be done to raise their awareness of the applicable integrity standards, in a similar manner as is being done for state secretaries and directors general. The GET considers that they should be systematically briefed upon taking up their position (and at regular intervals thereafter) about the integrity standards applying to them and within their ministry, as well as the conduct expected of them in terms of conflicts of interest, gifts, secondary activities, post-employment restrictions. It should additionally also address various issues that need to be further regulated, such as contacts with lobbyists and other third parties seeking to influence government decision-making.

⁴¹ It should be noted however that the statistics do not differentiate between the grade of the supervisory staff and it is thus not clear how many state secretaries or directors general have now (or previously, before they held their current position) participated in these trainings. The GET was told that for the reporting year 2019 the survey would be amended, to clarify whether the leadership of a ministry was trained, made aware or informed.

Therefore, **GRECO recommends that a systematic briefing on integrity issues be given to ministers and parliamentary state secretaries upon taking up their position and at regular intervals thereafter.**

Transparency and oversight of executive activities of central government

Access to information

50. The Freedom of Information Act (FOIA), which entered into force on 1 January 2006, provides citizens with the right of access to official information held by federal agencies. The authorities emphasise that this does not just represent a right to receive information on certain topics, but also a right to receive all relevant documents available in the files of the administration. Access to information can be denied for four main categories of reasons (Sections 3-6, FOIA): the protection of specific public interests⁴², the protection of official decision-making processes by the authority concerned, the protection of personal data, or the protection of intellectual property or business and trade secrets. In refusing access to information, the authority concerned must specify the exemption, which is limited to the duration of the process. Pursuant to section 1 of the FOIA, provisions in other legislation on access to official information take precedence, which means that other (more recent) federal laws have built on the exemptions of the FOIA.

51. In addition to the aforementioned written exemptions, whether in the FOIA or other legislation, the authorities indicate that “the protection of the core area of executive responsibility” is one of the unwritten reasons preventing access to information. On this issue, the Federal Constitutional Court has issued several judgments that the protection of the core area of executive responsibility derives from the principle of the separation of powers and serves as the Federal Government’s protection vis-à-vis the Parliament.⁴³ In line with these judgments, the Federal Government has the right of initiative, consultation and action which is beyond the reach of inquiry. It protects, in particular, the Federal Government’s decision-making. Therefore, consultations of the cabinet, preparation of decisions by the cabinet or ministers do not fall under the FOIA. Pursuant to the Section 22(3) *GOBReg*, cabinet meetings are confidential (with their minutes classified as “secret” and only published after 30 years).⁴⁴

52. Fees can be charged for the provision of information under the FOIA, up to a maximum of €500. Such fees explicitly do not apply to the furnishing of basic items of information. Requests for accessing information have to be replied to within one month. Decisions not to provide the requested information and/or undue delays can be challenged through an

⁴² Section 3 of the Freedom of Information Act provides a list of protected public interests, including situations in which disclosure would have detrimental effects on international relations, security interests, monitoring of regulatory authorities, the course of judicial proceedings, would endanger public safety, would compromise consultations between authorities or the fiscal interests of the federal government or if a third party obtained or transferred this information in confidence (and s/he still has an interest in confidential treatment of this information (etc.).

⁴³ The Federal Constitutional Court (*Bundesverfassungsgericht* / BVerfG) first ruled on the core area of executive responsibility in 1984 (*BVerfGE* 67, 100). Additional rulings followed in 2004 (*BVerfGE* 110, 199), 2009 (*BVerfGE* 124, 78) and 2012 (*BVerfGE* 131, 152).

⁴⁴ Agendas and so-called top agenda items (“TOP-1-Listen”) are however being published on the government’s website, as well redacted extracts from the minutes, including adopted decisions. In addition, the government’s press officer reports every Wednesday at the government’s press conference on the subjects discussed at the cabinet meeting and there is a session of the *Bundestag* following cabinet meetings allowing for the questioning of members of the government on agenda issues and other current political issues.

administrative appeal to the authority concerned (after three months of the FOIA request having been made), in accordance with the Code of Administrative Procedure (*VwGO*), and ultimately through court proceedings. Furthermore, anyone considering that their right to access to information has been violated may appeal to the Federal Commissioner for Freedom of Information (who is also the Federal Commissioner for Data Protection). The Federal Commissioner has the right to object to the authority concerned and can mediate, but s/he does not have enforcement powers.

53. Furthermore, on 13 July 2017, a new Open Data Act came into effect (a part of the E-Government Law). This law requires all agencies of the direct federal administration to proactively publish all data as open data (“open by default”). While this does not include an individual right to access government data, when administrative processes or daily practices result in the generation or gathering of administrative data, publication under open data principles is the standard, while exceptions may still apply (similar to those applying under the Freedom of Information Act).⁴⁵ Moreover, in December 2016, Germany announced its participation in the Open Government Partnership (OGP) and adopted its second OGP Action Plan on 4 September 2019. This plan *inter alia* aims to strengthen Germany’s open data policy and was developed in consultation with civil society organisations.⁴⁶

54. Notwithstanding the positive initiatives mentioned in the previous paragraph, the GET finds that the system for disclosing information held by federal authorities in Germany can be improved. Starting with the legislation itself, the GET finds the broad grounds for declining requests under the FOIA (and the extensive use made of them in practice) problematic. In this context it has taken note of the comments of different Federal Commissioners for Freedom of Information on the need to more clearly delineate and restrict the exemptions under the FOIA.⁴⁷ This issue is further compounded by the possibility to add exemptions in other (newer) legislation (which from the perspective of legal clarity is hardly a desirable practice). This has *inter alia* meant that the *Bundesrechnungshof* (the Federal Court of Audit) is now excluded from the obligation to provide information to journalists and the general public under the FOIA.⁴⁸ The GET finds this regrettable: At a minimum, notifications of on-going audits and final reports (or summaries thereof) should be made accessible to the public.⁴⁹

55. Furthermore, the GET finds the interpretation of some of these grounds for declining requests for information too broad. In applying these exemptions, it is not tested if the public interest served by the disclosure would outweigh the interest of maintaining the exemption. In this respect, the GET recalls [recommendation Rec\(2002\)2](#) of the Committee of Ministers to member States on access to official documents, which provides that limitations of the right of

⁴⁵ The Open Data Act relates primarily to data digitally recorded by the administration (for example, the traffic on motorways or the registration of vehicles), which will in future be made systematically available free of charge in machine-readable format.

⁴⁶ The second OGP Action Plan of Germany contains a number of measures *inter alia* to further strengthen Germany’s open data policy, to open up foreign policy archives and to support regional open government efforts. For the first time, the *Länder* also contributed to the Action Plan.

⁴⁷ See for example the relevant sections in the third (2010-2011, pp. 10-11), fourth (2012-2013, pp. 12-13) and seventh (2018-2019, p. 6) [activity reports](#) of the Freedom of Information Commissioner.

⁴⁸ A more recent exemption was added by the Act on Further Tax Incentives for Electric Mobility and Amending Further Tax Provisions of 12 December 2019, which added a provision to the Fiscal Administration Act on the confidentiality of consulting provided by the supreme federal and state financial authorities. The results of this consulting would nevertheless usually be published in the Federal Tax Gazette.

⁴⁹ The GET notes that the former Federal Commission for Freedom of Information has been very critical of the exemption of the *Bundesrechnungshof*, see the fourth activity report (2012-2013, pp. 13-14).

access to official documents “should be set down precisely in law, be necessary in a democratic society and be proportionate (...)” and these limitations can be applied “unless there is an overriding interest in disclosure”. Similar provisions are included in the [Council of Europe Convention on Access to Official Documents](#) (CETS 205). This convention has however not been ratified by Germany and the GET encourages the authorities to do so.

56. Furthermore, the GET is concerned with the fees (up to €500) being charged for accessing information, which in certain cases can act as a deterrent and undermine the purpose of the Act. The authorities indicate that while many, if not the majority, of FOIA requests are processed free of charge, complying with these requests requires collecting information from many files and disclosing a significant number of documents, redacted to protect the legitimate interests of third parties.⁵⁰ The GET indeed welcomes that according to statistics collected by the Ministry of the Interior, Building and Community in around 80% of freedom of information requests no fees were being charged. However, it also found that this number did not include requests which had been retracted after being informed of the charges.⁵¹ In addition, the lack of respect of some federal agencies for the statutory time limit in which information is to be provided, the weak powers of the Federal Commissioner for Freedom of Information to have the objective of the law enforced (which differ from his powers as Federal Commissioner for Data Protection) and the length of time and costs that would usually be associated with having a request enforced through a court further compound the concerns of the GET.⁵²

57. Some interlocutors met by the GET pointed to a “basic stance against the disclosure of information”⁵³ of certain federal agencies.⁵⁴ The GET takes this criticism seriously. It considers that an efficient system of access to public documents and information is an essential tool for demanding accountability from governments and fighting corruption through knowledge. In order not to compromise the principle of free access to information, any exemptions need to be interpreted and applied restrictively. Fees should not act as an impediment, and access should be provided to an expeditious and inexpensive review procedure.⁵⁵ In this context, the GET notes that some of the *Länder* have adopted transparency laws which may serve as inspiration for reforms at federal level, as also recommended by the Federal Commissioner for Freedom of Information in his most recent activity report.⁵⁶ In light of the foregoing

⁵⁰ In this context, the authorities also indicate that most of the applicants using the FOIA (as far as apparent from the data they provide voluntarily) are journalists, lawyers, foundations and applicants who file multiple requests. Requests of individual citizens without a specific social or economic interest are decreasing.

⁵¹ It should be noted that there is a lot of discretion for the authority concerned, with some federal agencies answering complex inquiries mostly free of charge and others outlining in their confirmation of receipt of request that the inquiry could cost up to €500, which would likely act as a disincentive.

⁵² The GET notes that the current Federal Commissioner for Freedom of Information has recommended that his institution be given the authority to issue binding orders and impose sanctions, so that applicants would no longer have to take their request for information to court. See the seventh activity report (2018-2019, p. 6). It also notes that in the recent review of the implementation by Germany of the United Nations Convention against Corruption Germany is *inter alia* recommended to “Strengthen oversight of the operation of the IFG” (IFG = *Informationsfreiheitsgesetz*: Freedom of Information Act).

⁵³ In effect, this quote comes from a (previous) Federal Commissioner upon presenting his second activity report on the Freedom of Information Act in 2010.

⁵⁴ This is for example also illustrated by the use of copyright legislation to prevent publication of certain reports.

⁵⁵ See also the abovementioned Convention on Access to Official Documents (CETS 205) and Recommendation Rec(2002)2 of the Committee of Ministers to member States on access to official documents on these matters.

⁵⁶ In his most recent seventh activity report (2018-2019, p. 6), the Federal Commissioner for Freedom of Information recommended the *Bundestag* to develop a transparency law, requiring to proactively publish certain information.

paragraphs, **GRECO recommends that (i) the Freedom of Information Act be subject to an independent and thorough analysis, with a particular focus on the scope of exceptions under this act and other more recent legislation, the application of these exceptions in practice, the system of fees and the enforcement of the act and (ii) in light of the findings of this analysis, additional measures be taken to improve public access to information at federal level, where necessary.**

Transparency of the law-making process

58. Section 41 *GGO*, provides that before drafting any law which impinges on the interests of the *Länder* or local councils, the views of the *Länder* and national associations of local authorities should be obtained. Furthermore, draft laws must be sent to the *Länder*, national associations of local authorities and representatives of the *Länder* to the Federation as early as possible, if their interests are affected (Section 47, *GGO*). Beyond the interests of the *Länder* the *GGO* also provides that all draft laws have to be submitted timely to central and umbrella associations, as well as the expert community at federal level. The timing, scope and selection is left to the discretion of the lead ministry at federal level (Section 47, paragraph 3, *GGO*). Federal ministries are at liberty to conduct oral hearings with stakeholders and draft laws can be made available to the press and other entities not officially involved in the preparation (Section 48, *GGO*).

59. Important efforts have been made to improve transparency of the law-making process with the Agreement to Increase Transparency of the Legislative Process adopted by the Federal Government on 15 November 2018. With this agreement, all federal ministries make draft laws and ordinances publicly accessible in the form in which they were sent to any bodies for consultation, together with the comments received thereto.⁵⁷ Also, once the Federal Government takes a decision agreeing to the text of a draft law or ordinance, the agreed version of the draft is published immediately after this decision has been taken. Issue papers received at an earlier stage can be made public as well, but this is not a requirement under the Agreement.

60. The GET supports and appreciates the Agreement to Increase Transparency of the Legislative Process and understands the wish to protect certain aspects of the decision-making process of the Federal Government (bearing also the abovementioned judgments of the Federal Constitutional Court in mind). However, it takes the view that this protection should not extend to draft legislative provisions directly influenced (or even drafted) by third parties (lobby or interest groups) in the period before the start of the official consultation process. The GET heard several examples of this practice. Excluding such submissions from the transparency requirements of the Agreement greatly undermines the practical value of this initiative. The GET regards this issue to be closely linked to the lack of regulation of contacts between PTEFs with lobbyists and other third parties seeking to influence the government's decision-making, which mirrors to some extent the criticism expressed in the Fourth Evaluation Round Report⁵⁸). It however represents a different facet of this issue, specifically linked to the legislative process, which needs to be tackled accordingly. In light of the

⁵⁷ Until a central platform has been established, publication of draft laws and comments received thereto will be published on the respective ministry websites. This practice was already tested in the 18th legislative term, but has now been formalised in the 19th legislative term and is also referred to in GRECO's [Second Compliance Report](#) of the Fourth Evaluation Round in respect of Germany, paragraphs 8 and 10.

⁵⁸ See Fourth Round Evaluation Report in respect of Germany, paragraph 30.

foregoing, **GRECO recommends that substantive external inputs to legislative proposals and their origin, which are received before the formal launching of consultations, be identified, documented and disclosed.**

Third parties and lobbyists

61. There are few rules in place to provide for more transparency on the contacts of PTEFs with lobbyists and other third parties seeking to influence decisions or actions of the government. In discussing this issue with the authorities, reference was made to Annex 2 of the Rules of Procedure of the *Bundestag*, which provides for registration on a list of the *Bundestag* President of not only associations lobbying the *Bundestag* but also those lobbying the Federal Government. In its Fourth Round Evaluation Report GRECO however already outlined the weaknesses of these provisions.⁵⁹ In addition, these provisions will only be of limited practical value in providing transparency on the interactions of PTEFs with lobbyists, when such contacts take place outside the *Bundestag*.

62. Lobbying seems to be an important part of the political process in Germany, whether through professional lobby organisations or direct contacts between representatives of large enterprises and members of the government or high-level civil servants or a combination of both (whereby former politicians are engaged as lobbyists to make use of their contacts with former colleagues).⁶⁰ While acknowledging that under the right conditions lobby groups can make useful contributions to well-informed decision-making, the GET is concerned about the lack of transparency surrounding these contacts in Germany. The GET was indeed presented on-site with various examples of lobbying practices relating to the car, defence, energy and banking sectors. In some of these cases, contacts between lobbyists and PTEFs or the influence on the final outcome were only brought to light by the media.⁶¹ Citizens have a right to know which actors influence the making of political decisions. Civil society organisations met by the GET were unanimous in their support of a lobby register, as are reportedly many citizens⁶², in addition to further regulations providing transparency which PTEFs have interacted with lobby representatives.⁶³

63. To uphold the public trust democratic decision-making process, in line with relevant Council of Europe standards, the GET finds it indeed import to have a robust framework to ensure transparency of lobbying (not only of federal ministers but also of parliamentary state secretaries, state secretaries and directors general, considering their involvement in policy

⁵⁹ *Ibid*, paragraphs 32-33. GRECO's criticism *inter alia* focused on the registration being voluntary, that it did not include other players than associations (e.g. enterprises, self-employed lobbyists, lawyers, think-tanks etc.), that non-registered associations could still be heard by committees etc. In later [Compliance Reports](#), GRECO acknowledged that the transparency of lobbying had been enhanced to some extent in particular by limiting permanent access to the *Bundestag* premises by interest groups to only those associations who had been registered on the list of the President of the *Bundestag*, but found that this only partly addressed the concerns underlying the recommendation.

⁶⁰ See for a detailed analysis of lobbying practices by the defence industry: Transparency International Germany, [Defence Industry Influence in Germany: Analysing Defence Industry Influence on the German Policy Agenda](#) (October 2020).

⁶¹ See for example [Article](#) of 20 December 2017, *Der Tagesspiegel*.

⁶² See footnote 7 above.

⁶³ The GET was told that such a lobby register should *inter alia* identify which lobbyists represent which lobby associations, which topics or draft policies / legislation are being lobbied and any public office previously held by lobbyists, with some civil society organisations also advocating for more transparency of the sources of finance of lobbyists.

making).⁶⁴ Direct contacts between representatives of businesses (i.e. without the involvement of professional lobby organisations) and PTEFs also appears to be commonplace in Germany, and any regulation of lobbying should therefore explicitly include all third parties seeking to influence government's decision-making. Therefore, **GRECO recommends (i) that detailed rules be introduced on the way in which persons with top executive functions interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.** The GET notes the recent agreement reached between parliamentary groups of the governing coalition to introduce draft legislation for a lobby register at the *Bundestag*. This will reportedly include the federal government at a later stage of the legislative process. The GET hopes that this will be a good point of departure for implementing the aforementioned recommendation.

Control mechanisms

64. Nearly all federal ministries have established internal audit units (to perform regular audits, inventory audits, system audits, occasional audits and/or follow-up audits). The authorities emphasise that the audits are not repressive measures but aim to support the work of administration, to help improve the culture, quality, effectiveness and efficiency of administrative activities. Lawfulness, correctness, safety, efficiency, safeguarding the future, appropriateness/effectiveness and impact orientation are criteria applied depending on the focus of the audit.

65. Furthermore, the government is subject to financial and economic control by the Federal Court of Audit (*Bundesrechnungshof*). The *Bundesrechnungshof* is an independent auditing authority (Section 114 (2), *Grundgesetz*), which audits the accounts of the government and determines "whether public finances have been properly and efficiently administered by the Federation". It reports annually to the *Bundestag* and the *Bundesrat*, as well as to the government. It selects its audits matters at its own discretion and decides on the scope of its audits, pointing to vulnerabilities in administrative processes. In the case of the handling of external contracts by the Ministry of Defence mentioned earlier in this report, this for example led to the establishment of a parliamentary committee of inquiry (see below). The GET welcomes in particular that the *Bundesrechnungshof* has also looked into certain aspects of corruption prevention and the implementation of corruption prevention measures in individual federal agencies or institutions, in particular regarding areas at high risk of corruption (e.g. procurement, grants and construction measures).⁶⁵ As already mentioned before, the GET regrets the 2013 legislative amendments exempting the *Bundesrechnungshof* from the remit of the Freedom of Information Act and finds that at notifications of on-going

⁶⁴ [Recommendation CM/Rec\(2017\)2](#) of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision-making.

⁶⁵ For example, it has examined the scope of the Federal Government's requirements as regard integrity in the federal administration (i.e. preventing corruption, accepting rewards and gifts, sponsoring and the use of external parties), recommending that the scope of these provisions be defined more uniformly and should include all parts of the federal administration; it has examined (in 2012 and 2013) how ten different federal authorities have carried out the threat and risk analyses (pursuant to the Anti-Corruption Directive, referred to in paragraph 36 above), uncovering methodological weaknesses with regard to some of the risk assessment procedures, which it followed up on in 2016 to see whether improvements had been made; and is currently examining whether the recipients of federal institutional funding (which in certain cases also have to apply the Anti-Corruption Directive) are applying the Anti-Corruption Directive correctly.

audits and final reports (or summaries thereof) should be made accessible to the public (and preferably published pro-actively).

66. Further external control is evidently carried out by the *Bundestag*. As indicated before, the government is collectively responsible for its political actions to the *Bundestag* (Section 28, *GOBReg*). There are several stipulated procedures in place to exercise this control, e.g. the right to ask questions of and receive information from the government (i.e. the right of interpellation), the right to cite and gain access to and hear members of the government. A particular powerful form of scrutiny is the setting up of parliamentary committee of inquiry.⁶⁶ As indicated above, early 2019 a special committee of inquiry was set up by the Parliamentary Committee of Defence (see context).⁶⁷ The ultimate tool at the hands of the *Bundestag* to express its disagreement with the government is to seek a “constructive vote of no confidence” (i.e. whereby a majority in the *Bundestag* seeking to topple the government must agree directly on a replacement candidate for Federal Chancellor).⁶⁸

67. It should be noted that there is no ombudsperson’s institution at federal level. Pursuant to Article 45c of the *Grundgesetz*, a Parliamentary Committee on Petitions has been established in the *Bundestag* which deals with requests and complaints by citizens.⁶⁹ The Committee has special rights of access to and information from the federal authorities. The GET learned that requests and complaints received by the Committee generally fall into two types: petitions concerning legislation and those concerning federal authorities. If a petition has more than 50 000 supporters (e.g. electronic petitions by interest groups), it will need to be debated in a public session. Generally, the Committee on Petitions would ask the responsible ministry for a statement, on which basis it is decided what follow up will be given. The GET was told that in the last 10 years the Committee had not received any petitions alleging corruption on the side of federal authorities, but would receive petitions linked to integrity issues from time to time. Lobbying is reportedly one of the issues mentioned more frequently in this context by petitioners.

68. In respect of parliamentary committees, the GET noted that members of the government who are MPs and parliamentary state secretaries are not prohibited from serving on *Bundestag* committees overseeing the exercise of executive powers. Even if the GET would have preferred for this to be explicitly prohibited, it accepts the assurances of the German authorities that this would not happen in practice. More in general, the GET is mindful of the

⁶⁶ Committees of inquiry can be set up, pursuant to Article 44 of the *Grundgesetz*, by a motion of a quarter of the members of the *Bundestag*. Parliamentary inquiries can investigate possible abuse, mismanagement, inactions or incorrect actions by the federal government, federal agencies, politicians and/or civil servants. They have the power to call witnesses and experts and have access to all files and records of federal agencies. During the 18th legislative term of the *Bundestag* (2013-2017) five different committees of inquiry were set up, looking *inter alia* into the neo-nazi terror group *Nationalsozialistischer Untergrund (NSU)*, the extent and background of foreign secret services spying in Germany (the NSA affair), the so-called Cum-Ex transactions (i.e. short sales around the dividend date aimed at multiple reimbursements of taxes) and the scandal surrounding the fuel consumption and gas emissions of motor vehicles. In the current 19th legislative term, two committees of inquiry have been set up so far (in addition to the special committee of inquiry of the Parliamentary Committee of Defence), namely into the December 2016 terrorist attack on Berlin and the handling of a toll programme for the German motorways.

⁶⁷ The Parliamentary Committee of Defence has pursuant to Article 45a of the *Grundgesetz* the right to constitute itself as a committee of inquiry at any time in order to ensure effective parliamentary scrutiny of the armed forces.

⁶⁸ Since 1949, only two constructive votes of no confidence have been attempted (in 1972 and 1982), and only one (whereby Helmut Kohl was voted into office in October 1982) has been successful.

⁶⁹ Pursuant to Article 17 *Grundgesetz* every citizen has the right to address the legislature with written requests or complaints.

concerns GRECO already expressed in its Fourth Round Evaluation Report about the dual mandate of some MPs (as members of the government), in particular in relation to the ability of the *Bundestag* to hold the government to account. At that time, GRECO invited the authorities to “reflect on the possibilities to extend MPs’ incompatibilities to include any function in the executive branch of power, as is the case in many other European States”.⁷⁰ In a similar vein, GRECO invites the authorities to do the same for the incompatibilities of members of the government vis-à-vis the legislative branch of power, in particular given that parliamentary state secretaries already act as a liaison to the *Bundestag*.

Conflicts of interest

69. While there is no legal definition of the concept of conflict of interests, several mechanisms serve to prevent and expose conflicts of interest, namely (1) the rules governing the prohibition of certain activities (see paragraph 74 and further below); (2) the Federal Administrative Procedure Act; (3) rules on public procurement; and (4) the Anti-Corruption Code of Conduct.

70. The Federal Administrative Procedure Act (*Verwaltungsverfahrensgesetz / VwVfG*) contains rules on excluding persons from administrative proceedings⁷¹ when they themselves (or their relatives) are participants⁷² in these administrative proceedings (Section 20, *VwVfG*) or when the impartiality of the person who is to act on behalf of the administrative authority can be questioned (Section 21, *VwVfG*).⁷³ In such situations, a person is to recuse him/herself or can be asked to do so by the head of the authority in question (or, if it concerns the head of the authority, by the supervisory authority). A breach of these rules would render the administrative act flawed. Anyone disadvantaged by a flawed administrative act can challenge it before an administrative court (Sections 44 and 45, *VwVfG*). However, in discussing the Federal Administrative Procedure Act on site, it became clear that these provisions would only be of minor importance to PTEFs: It would be rare for them to engage in such administrative proceedings, with their decisions being to the direct benefit detriment of an individual.⁷⁴ As one interlocutor said “If we are outside administrative proceedings, we are in the political realm, in the form of parliamentary accountability”.

⁷⁰ See Fourth Round Evaluation Report in respect of Germany, paragraph 60.

⁷¹ An administrative proceeding is defined in Section 9 of the Law as an “activity of the authorities having an external effect and directed to the examination of basic requirements, the preparation and adoption of an administrative act or to the conclusion of an administrative agreement under public law; it shall include the adoption of the administrative act or the conclusion of the agreement under public law”.

⁷² This prohibition is extended to people officially representing a participant in administrative proceedings (or being relatives of the person representing the participant), being gainfully employed or active on the management / supervisory board of a participant in administrative proceedings, as well as persons who outside their official capacity have furnished an opinion or have otherwise been active in the matter. For the purpose of the Act, anyone who may benefit or suffer directly as a result of the action or the decision shall be considered equal to a participant in proceedings.

⁷³ To this end Section 21 of the *VwVfG* stipulates that if there are “grounds to justify fears of prejudice in the exercise of official duty, or if a participant in administrative proceedings maintains that such grounds exist, anyone who is to be involved in these proceedings on behalf of an authority shall inform the head of this authority or the person appointed by him/her and shall at his/her request refrain from such involvement. If the fear of prejudice relates to the head of the authority, the supervisory authority shall request him/her to recuse him/her when s/he has not already done so on his/her own accord”.

⁷⁴ There would nevertheless be exceptions (e.g. decisions by a minister on individual cases).

71. In addition to general administrative proceedings, special conflicts of interest provisions are included in the context of the public procurement, specifically the Ordinance on the Award of Public Contracts (*Verordnung über die Vergabe öffentlicher Aufträge / VgV*).⁷⁵ However, it would be relatively rare for a minister or parliamentary state secretary to be directly involved in such proceedings (but perhaps less so for a state secretary and/or a director general).⁷⁶ Finally, the Anti-Corruption Code of Conduct instructs persons to whom it applies to “Separate your job strictly from your private life” and to “Check whether your private interests might conflict with your work duties”.⁷⁷

72. The GET finds that the current rules on conflicts of interest would benefit from being complemented. It has already indicated that it would welcome more attention being paid to potential conflicts of interest when forming the government (see paragraph 23 above). It considers that this is also needed in respect of conflicts of interest as they occur when ministers and parliamentary state secretaries are in office. Certain specific conflicts of interest are regulated in the Act governing the Legal Status of Members of the Government and the Act governing the Legal Status of Parliamentary State Secretaries (for example as regards secondary activities and post-term employment, see further below). These however clearly do not and cannot cover all situations in which a minister’s (or parliamentary state secretary’s) interests could influence the objective and impartial exercise of his/her official functions. Even if one was to accept that the more general provision in the Anti-Corruption Code of Conduct would also be applicable to ministers (see in this respect the GET’s observations in paragraph 42), this Code provides little guidance for ministers on how to identify and manage such situations. While it is clear that state secretaries and directors general are covered by the Anti-Corruption Code of Conduct, the GET is of the firm opinion that also for these categories of persons there should be an unequivocal obligation to disclose various situations of conflicts as they occur (on an *ad hoc* basis) as a necessary additional safeguard. These rules should form part of the code of conduct recommended above (see recommendation i) and should include practical advice and real-life examples of situations that can arise. Therefore, **GRECO recommends that (i) clear provisions and guidance be introduced for ministers and parliamentary state secretaries on the prevention and management of conflicts of interest and (ii) a requirement of *ad hoc* disclosure be introduced in respect of persons exercising top executive functions in situations of conflicts between their private interests and official functions, when they occur.**

⁷⁵ This Ordinance (section 6) *inter alia* prohibits members of an executive body or employees of the contracting authority (or a procurement service providing acting in the name of the contracting authority) who have “a direct or indirect financial, economic or personal interest that could compromise their impartiality and independence of the procurement procedure” from participating in this procedure.

⁷⁶ For example, in the proceedings before the Committee of Inquiry of the *Bundestag* surrounding the hiring of external consultants at the Ministry of Defence and the flaws identified therein by the *Bundesrechnungshof*, the former Minister of Defence Ms von der Leyen explained, while not denying that errors had been made in awarding certain contracts, that the hiring of external consultants fell to a “lower hierarchical level”.

⁷⁷ The explanations provided to this provision of the Code *inter alia* prescribe “check every procedure for which you are also responsible to see whether your private interests or those of your relatives or of organisations to which you feel obliged could lead to a conflict with your professional obligations. Avoid any appearance of possible partiality. If you recognise, given a specific official task, that your obligations and your private interests or the interests of third parties to whom you feel obliged might come into conflict, inform your supervisor so that he or she may respond appropriately (e. g. by releasing you from activities in a specific instance).”

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

73. As indicated before, most ministers in the federal government are simultaneously members of the *Bundestag*.⁷⁸ A parliamentary mandate is neither a pre-condition for taking up the office of Federal Chancellor or minister, nor an obstacle thereto. In this respect, the GET refers to its observations above (paragraph 68) on the dual mandates of members of the government. Parliamentary state secretaries in turn are required to be members of the *Bundestag* (with the exception of parliamentary state secretaries assigned to the Federal Chancellor, for whom this requirement can be waived) (Section 1, Act governing the Legal Status of Parliamentary State Secretaries).

74. Other than parliamentary mandates, the *Grundgesetz* (Article 66) provides that neither the Federal Chancellor nor a federal minister may hold “any salaried office or engage in any trade or profession or belong to the management or – without the consent of the *Bundestag* – the supervisory board of an enterprise conducted for profit”. A similar provision is included in the Act governing the Legal Status of Members of the Government (Sections 4 and 5). The latter also prohibits the membership of an “administrative board of an enterprise”⁷⁹, to act as a paid arbitrator, to provide paid extrajudicial expert opinions, to hold any unpaid honorary positions in the public sector (for which the federal government may however allow exceptions) and/or to simultaneously be a member of the government of a *Land*. Pursuant to Section 7 of the Act on the Legal Status of Parliamentary State Secretaries, the incompatibilities applying to members of the federal government are extended to parliamentary state secretaries (in cases of membership of administrative and supervisory boards permission has to be given by the federal government). The GET welcomes the attention paid to the provisions on incompatibilities in the aforementioned handbook (as provided to federal ministers and parliamentary state secretaries upon taking up their position), which provides a clear outline of what sort of positions and activities are permitted or prohibited.

75. Upon recommendation of the Federal Ministry of the Interior, Building and Community, members of the federal government and parliamentary state secretaries have furthermore pledged to waive compensation (i.e. reimbursement of travel costs etc.) for serving on an administrative or supervisory board of a company (including those which they by their function are statutorily required to serve on).⁸⁰

⁷⁸ In the current 16-member government (Federal Chancellor, 15 ministers and the Head of the Federal Chancellery), only 6 do not have a parliamentary mandate.

⁷⁹ With the consent of the *Bundestag* or the federal government, the Federal Chancellor or a federal minister may, by way of exception be appointed to the supervisory or administrative board of an enterprise (Article 66 of the *Grundgesetz*, Section 5 of the Act governing the Legal Status of Members of the Government), if the Federation has an interest in being able to exert its influence there. Membership of the board of directors of an enterprise is however completely precluded. Permissions granted by the *Bundestag* can be looked up in the [documentation and information system](#) of the *Bundestag*. The Federal Government can in turn also give permission to hold an unpaid honorary position in the public sector, but only if this is not to the detriment of the public interest. For ministers who are also MPs (as are parliamentary state secretaries) such membership of supervisory or administrative boards would form part of the disclosure requirements under the Code of Conduct of the *Bundestag* and published accordingly.

⁸⁰ It is emphasised that already before members of the government or parliamentary state secretary could not receive any remuneration for sitting on the board of a supervisory or administrative board; now they have agreed to also waive any compensation for time or money spent in the context of such activities.

76. As regards state secretaries and directors general, they are explicitly prohibited from exercising a parliamentary mandate in parallel (Section 40, Federal Civil Servants Act) and, pursuant to section 99 of the Federal Civil Servants Act, have to seek authorisation for any paid secondary employment. This includes unpaid secondary employment, if this entails holding a secondary position, commercial or freelance activities – or assistance to these activities – or joining a body of a company other than a co-operative. Permission for the secondary employment shall be refused if there is a concern that the secondary employment might interfere with service-related interests.⁸¹ Authorisation is issued for five years, but may be revoked if the secondary employment is found to interfere with service-related interests after approval has been given. Various types of outside activities do not require authorisation.⁸²

Contracts with state authorities

77. Other than the provisions on decision-making in procurement (see paragraph 71 above), there are no explicit prohibitions on members of the federal government, parliamentary state secretaries, state secretaries and directors general, to enter into contracts with state authorities. Given that there is currently no information available on financial interests of PTEFs, it is unclear if there are any particular issues in this respect. Pending a tightening of the rules on conflicts of interest pursuant to recommendation vi above, the GET encourages the German authorities to keep potential risks under review to see if in addition to the regulations on decision-making in public procurement there is a need for more specific rules on contracts with federal authorities, directly or through holdings in a company.

Gifts

78. Aside from sections 331-335 of the Criminal Code on bribery, members of the government and parliamentary state secretaries must notify the federal government of any gifts they receive in relation to their office (even after their public service ends).⁸³ No notification is necessary under the procedural rules of the Act governing the Legal Status of Members of the Federal Government, if the material value of a gift does not exceed approximately 150 €. The same rule applies if the gift is added to the federal assets or the recipient keeps the gift and pays the equivalent value within a reasonable period of time to the Federal Treasury. However, if a gift has some sort of political significance, it would nevertheless have to be declared and require an extensive report, even if of a small value. The federal government then decides on the use of this gift.

79. As outlined in the handbook, the notification is to be submitted to the head of the Federal Chancellery and is to include a proposal for the use of the gift. The GET appreciates the clear procedure on the acceptance of gifts, including the additional guidance provided on the sort of items which are to be considered gifts (e.g. certain benefits to family members, admission tickets to certain events etc.).

⁸¹ Such interference would be considered to be present when the secondary activity takes more than one-fifth of the regular working hours, when the remuneration exceeds 40% of a civil servant's annual salary, when it may influence the civil servant's neutrality)

⁸² This includes the management of a civil servant's own assets; writing, scientific, artistic or lecturing activities; independent expert activities related to teaching or research carried by teaching staff at public and *Bundeswehr* institutions of higher education and by civil servants at research institutes; and activities to safeguard professional interests in trade unions or professional associations or in self-help facilities for civil servants (Section 100, Federal Civil Servants Act).

⁸³ This is prescribed by Section 5 of the Act governing the Legal Status of Members of the Federal Government, which applies *mutatis mutandis* to parliamentary state secretaries.

80. State secretaries and directors general are in turn covered by the provisions on gifts in the Federal Civil Servants Act, which *inter alia* provides that (even after their civil service employment ends) civil servants may not demand or accept any rewards, gifts or other advantages or the promise of such for themselves or third persons in connection with their position. Exceptions can be made to this but shall require the approval of the highest service authority or competent body. Violation of this provision requires that the gift, reward or other advantage is handed over to the employer of the person who received it (unless it was already ordered to be seized in the context of criminal proceedings or otherwise surrendered to the state). The provisions of the Federal Civil Servants Act are complemented with further guidance provided by the “Circular on the ban on accepting rewards or gifts in the federal administration”. This is included in the abovementioned brochure “Rules on Integrity”.⁸⁴

Misuse of public resources

81. The misuse of public resources may constitute a criminal offence of theft, embezzlement, fraud and/or abuse of trust (Sections 242, 246, 263 and 266, Criminal Code).

Misuse of confidential information

82. The Act governing the Legal Status of Members of the Federal Government (Section 6) requires ministers and the Federal Chancellor, even after termination of their public office, to maintain confidentiality concerning matters of which they have become aware in their official capacity. This does not apply in respect of official communications, or information which is common knowledge or by its nature does not require to be kept confidential. Even when no longer in office, (former) members of the federal government may not testify (in or outside a court) or make statements concerning such matter without the consent of the federal government. These provisions apply *mutatis mutandis* to parliamentary state secretaries.

83. For state secretaries and directors general, section 67 of the Federal Civil Servants Act provides that civil servants are to maintain confidentiality concerning official matters of which they have become aware in the course of their official activities. This provision explicitly continues to apply after the termination of their civil service appointment. Confidentiality does not need to be maintained in the course of official communication, when it concerns information which is common knowledge or which by its nature does not require confidentiality or when it concerns a reasonable suspicion of corruption (which is to be reported).

84. The duty of confidentiality furthermore follows from sections 203 and 353b of the Criminal Code on violation of private secrets, respectively breach of official secrecy and special obligation of secrecy.

⁸⁴ The circular outlines as a general principle that staff in the public service cannot accept any gifts in relation to their office or official activities. Exceptions are possible but only in cases where there is no risk of the staff concerned being influenced and require prior approval from the employer. Acceptance of cash is not permitted under any circumstances. The circular contains an explicit explanation of what constitutes a gift (including for examples the use of vehicles, the provision of a certain position after leaving the public service, awarding of trips etc.), the manner of requesting approval and tacit approval of exemptions from the ban on gifts (minor gifts with a value of up to €25 EUR, certain hospitality, minor service to expedite official business etc.). The circular further outlines that civil servants face disciplinary sanctions if violating the ban on gifts (with the possibility of depriving certain civil servants from their pension entitlements) and may also face prosecution under the bribery provisions in appropriate cases.

Post-employment restrictions

85. The Act governing the Legal Status of Members of the Federal Government (sections 6a and 6b) requires members of the federal government (and former members of the government) to notify the federal government if they intend to take up remunerated or other employment outside the public service (whether self-employed or salaried) within 18 months of leaving office.⁸⁵ These provisions apply *mutatis mutandis* to parliamentary state secretaries. The obligation to notify explicitly arises as soon as the member (or former member) of the government or parliamentary state secretary begins preparations for taking up such employment or is promised such employment and at least one month before taking up such employment.⁸⁶

86. The Federal Government may prohibit, either wholly or in part, the taking up of the notified employment, if there are concerns that this employment will interfere with public interest. It takes a decision upon the recommendation of an advisory body. This body comprises three members appointed by the President on the proposal of the federal government, at the start of the legislative period of the *Bundestag*, who work in an honorary capacity.⁸⁷ This advisory body is free to undertake further investigations before giving its recommendation. The future employment is assumed to interfere with the public interest, if it is pursued in an area in which the member of the government or parliamentary state secretary was active during his/her term in office or may otherwise undermine public trust in the integrity of the federal government. A prohibition can be imposed for a period not exceeding one year, which can in exceptional circumstances be extended to 18 months in cases where public interests would be seriously comprised.⁸⁸ The decision of the federal government to deny, partly deny or allow the notified employment is made public.

87. For state secretaries and directors general, section 105 of the Federal Civil Servants Act requires retired civil servants and former civil servants who are entitled to a civil service pension to notify their last employer in the civil service of any remunerated or other employment outside the public service, prior to its commencement, which is connected to their civil service employment in the last five years before they retired/left the public service and which may interfere with service-related interests. The duty to notify ends three years after reaching the standard retirement age and five years in any other cases of termination of the civil service employment. The new employment can be prohibited when there are concerns that it will interfere with service-related interests. This prohibition can be imposed for a maximum period up until the duty to notify ends.

88. The GET learned that the notification obligation for federal ministers and parliamentary state secretaries has only been in force since July 2015. The previous government stepping down in 2017 was therefore the first to be affected by this new

⁸⁵ Members and former members of the government are to notify the Head of the Federal Chancellery. Parliamentary state secretaries in turn are to notify the member of the federal government to whom they are or were assigned, who in turn is to notify the Head of the Federal Chancellery.

⁸⁶ Annex 11 to the aforementioned handbook (provided ministers and parliamentary state secretaries upon taking up their positions) gives additional guidance, explaining what employment would be covered by a duty to notify, the timescale of the notification, the content of the notification as well as the process of prohibiting certain employment.

⁸⁷ The current members of this advisory body are a former caucus leader of the *Bundestag* (and member of a *Land* government), a former federal minister and a former Federal Constitutional Court judge, who were initially appointed in 2015 and reappointed in 2018.

⁸⁸ The GET heard that 18 months would for example be imposed after an especially long term in office with an unaltered allocation of duties, close dovetailing of activities during and after leaving office etc.

regulation. Since then (up until July 2020), in 26 cases former federal ministers and parliamentary state secretaries have notified the federal government about their intention to take up employment after their term in office (with some notifications containing more than one employment). In ten cases the federal government prohibited some or all of the intended employment for a defined period of time.⁸⁹ When it comes to state secretaries and directors general, the authorities indicate that the federal government does not keep comprehensive statistics on the abovementioned notifications. Cases are recorded in the personnel files of the persons concerned.

89. The GET welcomes the establishment of the cooling-off period for federal ministers and parliamentary state secretaries, as well as the long-established post-employment restrictions for federal civil servants. Having said that, it sees the cooling-off period for ministers and parliamentary state secretaries as a first step following a previously unregulated situation, which made certain controversial steps from government positions possible. It concurs with some of the criticism it heard on-site in respect of these cooling off periods. When it comes to federal ministers and parliamentary state secretaries, it finds the cooling-off period relatively short, especially compared to the one applicable to state secretaries and directors general (i.e. three to five years).⁹⁰ The GET also notes that the 18 months' period is only meant to apply when public interests would be seriously compromised and has to date never been imposed. It takes the view that there are certainly posts in the private sector which – in relation to the (former) position of a federal minister or parliamentary state secretary – would warrant a longer mandatory cooling-off period than the current 12 to 18 months.

90. The GET also heard criticism of the composition of the advisory body and the lack of sanctions for failing to follow the decisions of the federal government imposing a cooling-off period. As regards the advisory body, it learned that currently two of the three members are former leading politicians. It accepts the reasoning of the authorities that this has led to greater acceptance among (former) federal ministers and parliamentary state secretaries of the recommendations the advisory body has made. However, now that the new cooling off period has been in place for a few years, the GET would find it advisable if the profiles of the members of the advisory body would be reassessed, to increase the public trust placed in the recommendations of this body. Similarly, even if to date it has not happened that a decision on a cooling-off period has not been followed, it would welcome if a similar reflection takes place as regards the lack of an enforcement mechanism.

91. Turning to state secretaries and directors general, there seems to be a large discretion on the part of superiors as to which positions state secretaries and directors general would be allowed to take up (or not). The GET takes the view that it would be useful to take further

⁸⁹ The GET was provided with several examples. Former minister Gabriel sought to take up various activities (teaching, journalism, board memberships etc). In line with a recommendation by the advisory body, the federal government decided on 20 June 2018 to prohibit him to take up the proposed position on the management board of the joint venture established by Siemens and Alstom and allowed the other activities. Former parliamentary state secretary Wittke sought to take up the post of chief executive officer of a national interest group of property owners (*Zentraler Immobilien Ausschuss*). The federal government decided on 18 December 2019, following the recommendation of the advisory body, that Mr Wittke would not be allowed to take up this post for 16 months following this departure from office.

⁹⁰ The GET learned that the difference between the length of the cooling off period between politically appointed civil servants (three to five years) and ministers/parliamentary state secretaries (12-18 months) takes into account that civil servants normally have life tenure with their activities usually ending on the grounds of old age (following which they receive a pension). Federal ministers and parliamentary state secretaries hold their offices for a more temporary period of time.

measures to avoid inconsistencies across different sections of the federal administration (e.g. that the hierarchical superior provides recommendation, with the decision itself to be taken by a different body). The GET also heard criticism on-site about a lack of enforcement of Section 105 of the Federal Civil Service Act. In the absence of further information, it was not in a position to assess this, but found that this did point to a lack of transparency. Given the prominence of state secretaries and directors general in decision-making processes in the federal administration, this would need to be addressed. In light of the foregoing paragraphs, **GRECO recommends that (i) measures be taken to ensure consistency and transparency of the decisions authorising new occupations of state secretaries and directors general following their public service, and (ii) it be considered to extend the length of the cooling-off period for ministers and parliamentary state secretaries, to change the composition of the advisory body and to introduce sanctions for failing to comply with decisions of the federal government on these matters.**

Declaration of assets, income, liabilities and interests

Declaration requirements

92. Members of the government and parliamentary state secretaries are under no obligation by virtue of their public office to divulge details of their personal finances, be it assets, income, liabilities or interests. Members of the federal government who are also members of the *Bundestag* (as are parliamentary state secretaries) are however subject to disclosure obligations of the *Bundestag*. These disclosure obligations mainly target activities and income, which GRECO in its Fourth Round Evaluation Report recommended to be extended to other categories of information, such as significant assets (including shares in enterprises in which a member of the *Bundestag* has less than 25% voting rights) and liabilities.⁹¹

93. For state secretaries and directors general, no declaration requirements exist, other than those in the context of the rules of secondary employment (and income received thereof) and for the purpose of security clearances (to access certain confidential information, see paragraph 83 above).

94. The GET takes the view that the transparency over financial and business interests of federal ministers and parliamentary state secretaries (and state secretaries and directors general, as appropriate) needs to be considerably enhanced (in particular to disclose potential conflicts of interest), beyond the disclosure requirements resting upon some members of the government and parliamentary state secretaries as members of the *Bundestag*. Declarations of assets, income, liabilities and financial interests should be made at the beginning of their mandate and at regular intervals thereafter and be made public. In this context, it should also be considered to have such reports covering partners' and dependents' interests, even if it is understood that such information need not be made public for privacy reasons. Furthermore, in line with GRECO's practice, some form of review by the authorities of the information provided in the financial declarations would be necessary. This would provide additional safeguards and *inter alia* ensure that the public has access to accurate information.

⁹¹ For further details see the Fourth Round Evaluation Report in respect of Germany, paragraphs 72-82 and the subsequent [Compliance Reports](#).

95. The authorities have stated that requiring PTEFs to declare financial interests would be in breach of Article 2(1) *Grundgesetz* in conjunction with Article 1 *Grundgesetz*.⁹² Taken together these constitutional provisions provide individuals with the right to determine the use of their personal data.⁹³ This right may only be restricted in case of overriding general interests. The GET however finds that these constitutional provisions have not been an impediment to having MPs disclose some of their assets and interests (even if GRECO found in its Fourth Evaluation Round that the categories of information disclosed by MPs would need to be extended). In this context, the GET also notes that other GRECO member States have found appropriate solutions in line with their own constitutional provisions, which are in some cases similar to those of Germany.⁹⁴ Therefore, **GRECO recommends (i) that persons with top executive functions be required to declare their financial interests publicly on a regular basis; (ii) that it be considered to include financial information on spouses and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public); and (iii) that the declarations be subject to an appropriate review.**

Accountability and enforcement mechanisms

Non-criminal accountability mechanisms

96. As indicated before, pursuant to Article 8 of the Act governing the Legal Status of Members of the Federal Government, no disciplinary proceedings can be instituted against members of the federal government. This also applies to parliamentary state secretaries, pursuant to the Act governing the Legal Status of Parliamentary State Secretaries. The GET understood that for the most part parliamentary oversight is relied upon to hold federal ministers and parliamentary state secretaries to account. In this respect, it also notes that the *Bundestag* is reliant upon the will of the Federal Chancellor to dismiss an individual minister or parliamentary state secretary for misconduct or take the extreme option of attempting to topple the entire government through a “constructive vote of no confidence”. As already outlined in paragraph 43, GRECO has recommended that a future code of conduct be accompanied by credible enforcement.

97. For state secretaries and directors general, the Federal Disciplinary Act (*Bundesdisziplinargesetz*) applies. Responsibility for initiating and conducting disciplinary proceedings rests with the supervisor of the federal civil servant concerned (for state secretaries, this would be the Minister him/herself, who can delegate this task). The Federal Disciplinary Act outlines two types of disciplinary proceedings: disciplinary measures imposed by an administrative order (i.e. reprimand, fine or pay cut) and more serious disciplinary measures imposed by the disciplinary chamber of the relevant administrative court (i.e. demotion or removal from office). In cases where removal from office appears likely, Section 38 of the Federal Disciplinary Act provides that the civil servant in question can be provisionally suspended and part of his/her pay withheld. Any disciplinary measures imposed

⁹² Article 2(1) *Grundgesetz* provides “Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law”, with Article 1(1) outlining “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”.

⁹³ This right comprises the protection of the individual against the unrestricted collection, storage use or communication of their personal data. This basic right guarantees an individual the essential power to determine whether his/her personal data is to be disclosed and how such data is to be used.

⁹⁴ It is also recalled that the European Court of Human Rights has found financial disclosures an interference with the right to privacy, but also found that this was justified. See, for example, the case [Wypych v. Poland](#) (October 25, 2005, application no. 2428/05).

can be appealed. For disciplinary measures imposed by an administrative order, preliminary objection proceedings must be conducted in-house before any court proceedings are initiated.

Criminal proceedings and immunities

98. Members of the government and parliamentary state secretaries have no immunities linked to their function, other than those provided to them as members of parliament (for which Article 46 of the *Grundgesetz* provides that arrest or questioning of a member of the *Bundestag* is not possible without the consent of the *Bundestag*, unless s/he is caught *in flagrante delicto* or in the course of the day following the commission of the offence).⁹⁵ State secretaries and/or directors general do not enjoy any immunity.

Statistics

99. The authorities indicate that there are no known cases of members of the government, parliamentary state secretaries, state secretaries or directors general having committed a criminal offence or having been removed from office on grounds of corruption or related misconduct in the last five years

⁹⁵ See for further details in this respect the Fourth Round Evaluation Report in respect of Germany, paragraph 94.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement/police authorities

Overview of various law enforcement authorities

100. The federal structure of the Federal Republic of Germany gives the 16 federal states, the *Länder*, the main authority over policing. At the same time, the *Grundgesetz* also provides for federal authority in certain central areas of law enforcement. Consequently, Germany has 16 different police forces at the level of the *Länder* (the *Landespolizei*, with some differences in organisation between them) and three federal law enforcement agencies (the Federal Criminal Police Office or *Bundeskriminalamt*, the Federal Police or *Bundespolizei*, and the Parliamentary Police or *Polizei beim Deutschen Bundestag / Bundestagpolizei*). This evaluation will focus on the first two of these law enforcement agencies at federal level:

- Federal Criminal Police Office (*Bundeskriminalamt* or BKA) is Germany's central criminal investigation agency, regulated by the Act on the Federal Criminal Police Office (*Bundeskriminalamtgesetz*). It conducts criminal investigations into certain serious federal or international crimes⁹⁶, may perform tasks related to countering the risk of international terrorism⁹⁷ and carries out tasks related to the protection of certain persons and buildings, as well as witnesses. It can investigate cases at the request of a competent *Land* authority, by order of the Federal Ministry of the Interior, Building and Community and/or at the request of, or on instructions from the Federal Prosecutor General. It has a staff of approximately 6 500 persons;
- Federal Police (*Bundespolizei* or BPol), the uniformed federal police and border guard, which is regulated by the Federal Police Act and the Ordinance on the Competence and Jurisdiction of the Federal Police Authorities. The Federal Police is *inter alia* responsible for border control, railway policing, maritime and aviation security. It also provides counter-terrorism forces, protects certain federal government buildings, airports and foreign embassies and serves as the federal reserve force to deal with major disturbances and other emergencies beyond the scope of the *Landespolizei*. On 1 January 2019, it had a staff of 46 196 (including 7 218 cadets).

101. Both the Federal Police and Federal Criminal Police Office are civil organisations subordinate to the Federal Ministry of the Interior, Building and Community. The Federal Ministry of the Interior, Building and Community carries out supervision over the two agencies, but they carry out their duties within their remit independently in the majority of cases and enjoy broad operational independence.

⁹⁶ According to Section 4 of the Federal Criminal Police Office Act, this includes internationally organised crime (trafficking in weapons, ammunition, explosives, drugs or pharmaceutical products, as well as associated offences, including money laundering); politically-motivated crimes directed against the life or freedom of the Federal President, members of the Federal Government, *Bundestag* or Federal Constitutional Court, or foreign guests of such bodies or foreign diplomats in Germany; certain cybercrime offences; terrorist offences and/or coercion of constitutional bodies; murders, manslaughter, genocide, crimes against humanity, war crimes, kidnapping for ransom, hostage taking, offences causing public danger and/or offences under the Weapons Act or the War Weapons Control Act, if the offence has been committed outside of Germany and the place of jurisdiction has not been established yet; counterespionage and closely related offences as well as offences pursuant to the Code of Crimes against International Law.

⁹⁷ The Federal Criminal Police Office may perform tasks related to countering risk from international terrorism, where the risk affects more than one *Land*, the *Land* police authority having jurisdiction cannot (yet) be identified, or a *Land* requests the Federal Criminal Police Office to take charge.

The Federal Police and Federal Criminal Police Office in numbers

	Total	Male	Male %	Female	Female %
Federal Police (BPol)⁹⁸	46 196	35 841	77,6%	10 355	22,4%
Federal Criminal Police Office (BKA)	6 418	3 860	60,14%	2 558	39,86%

Access to information

102. The Federal Police and Federal Criminal Police Office, as any other federal public authority, fall under the Freedom of Information Act (as outlined in paragraph 50 and further above). As indicated before, restrictions apply *inter alia* in case disclosing that information would have detrimental effects on “the course of judicial proceedings, a person’s entitlement to a fair trial or the pursuit of investigations into criminal, administrative and disciplinary offences” (Section 3, FOIA). The GET refers to its observations in this respect in the first part of this report. The Code of Criminal Procedure (Sections 475 and further) outlines under which conditions those directly affected by criminal proceedings may inspect files held by judicial authorities and access information in the context of criminal proceedings. These rules take precedence over the Freedom of Information Act.

103. Both the Federal Police and the Federal Criminal Police Office use various means to inform the citizens: through their websites and those of the Ministry of the Interior, by means of press releases, annual reports and through social media updates (with both agencies having their own social media channels). The Federal Criminal Police Office releases statistics on crimes reported and investigated on its website (compiled on the basis of the individual data sets of the Criminal Police Offices *Länder*), as well as the federal situation report on corruption.⁹⁹ These statistics are complemented by the Federal Police (where appropriate given its mandate).

Public trust in law enforcement authorities

104. Various national surveys are conducted (differing fundamentally in the way they are carried out and the questions asked) which assess the trust placed in law enforcement authorities.¹⁰⁰ The trust in the police (and justice system) is usually higher than in other public and political institutions in Germany. It should be noted however that unless explicitly stated in these studies usually no distinction is made between the federal police and other police organisations (e.g. those in the *Länder*). Likewise, the 2019 Eurobarometer on Corruption shows that 69% would turn to the police to complain about a corruption case (EU average: 58%). The Eurobarometer also refers to a much smaller proportion of German citizens (12% vs EU average of 26%) who believe that bribery and the abuse of power is widespread in police and customs.¹⁰¹

⁹⁸ These are figures from 1 January 2019 and include 7 218 police cadets.

⁹⁹ See the [police crime statistics](#), and the [federal situation report on corruption](#) of the Federal Criminal Police Office.

¹⁰⁰ For example, the [German Victimisation Survey](#), which *inter alia* measures trust in the effectiveness of police activities, the conduct of the police and possible experiences in contact with the police; the German General Social Survey ([ALLBUS](#)), which is conducted biennially and includes trust placed in law enforcement authorities at regular intervals.

¹⁰¹ 2019 Eurobarometer, see footnote 5.

Trade unions and professional organisations

105. Various trade unions are active at federal level: AfE (*Alternative für Euch*), BDK (*Bund Deutscher Kriminalbeamter*), DPoIG (*Deutsche Polizeigewerkschaft*), GdP (*Gewerkschaft der Polizei*), *Unabhängige and Freie Wählerliste*, VDoB (*Verband der Beschäftigten der obersten and oberen Bundesbehörden*) and *Ver.di (Vereinte Dienstleistungsgewerkschaft)* all have members from the Federal Criminal Police Office. In the Federal Police, the aforementioned GdP, DPoIG and BDK are active.

106. Discussions on-site pointed to an overall satisfaction of representatives of the trade unions with the corruption prevention mechanisms in the police. This satisfaction extended also to recruitment and selection procedures. The main issues for the trade unions at the moment are reportedly the recruitment drive (in light of pending retirements) and whether various procurements (e.g. for body cams, police weapons etc.) meet the real needs of the Federal Criminal Police Office and/or the Federal Police.

Anticorruption and integrity policy

Anti-corruption policy

107. There is no dedicated anti-corruption strategy specifically for federal law enforcement agencies, but the Federal Criminal Police Office and the Federal Police – as agencies subordinate to the Federal Ministry of the Interior, Building and Community – fall within the remit of the Directive concerning the Prevention of Corruption in the Federal Administration (the Anti-Corruption Directive, see paragraph 36 and further above). Representatives of the Federal Criminal Police Office and Federal Police have reportedly been involved in drafting the Directive and have since taken various measures to implement the Directive.¹⁰²

Risk management measures for corruption prone areas

108. The aforementioned Anti-Corruption Directive prescribes that all federal agencies are “to take measures to identify areas of activity which are especially vulnerable to corruption at regular intervals and as warranted by circumstances. The use of risk analyses shall be considered for this purpose”. On this basis, all staff assignments in the two agencies have been assessed for their respective vulnerability for corruption, respectively in 2018 for the Federal Criminal Police Office and in 2013 for the Federal Police (for all its offices).¹⁰³ The assessment identified 660 positions in the Federal Criminal Police Office and 1979 positions in the Federal Police to be especially vulnerable to corruption. The results of this assessment were communicated to the different departments, managerial staff and employees concerned, and registered in the personnel management system. In addition to the compulsory measures already in place (i.e. intensified administrative and operational supervision, the principle of greater scrutiny/“multiple eyes”, transparency, further training and regular briefings by supervisors), further protective measures were imposed or proposed by the Internal Audit in both agencies where needed. These for example include inspections and random checks by supervisors, staff or task rotation and/or other organisational measures.

¹⁰² These measures include the designation of contact persons to advise management and individual staff members on integrity issues, the identification of areas of activity especially vulnerable to corruption, the provision of corruption prevention training etc.

¹⁰³ This assessment is repeated every five years in the Federal Criminal Police Office and will be carried out in full for all offices in the Federal Police in 2021 (due to major organizational and staff changes).

109. The GET learned that in addition to the abovementioned assessment of the risks of corruption, which is carried out according to the specifications of the Federal Ministry of the Interior, Building and Community, there are more general risk analyses carried out by the Internal Audit of the Federal Police, looking at a wider variety of risk categories (i.e. the risk of deviating from standards). One of risks categories examined in this context is also corruption. As the occasion demands (e.g. in case of a transfer of tasks, creation of new posts or organisational units), targeted risk assessments are carried out, involving the responsible Internal Audit Division.

Code of ethics

110. The provisions of the Federal Civil Servants Act provide the general framework for federal civil servants working for the Federal Criminal Police Office and the Federal Police. This act for example prescribes that federal civil servants are to “perform their duties impartially, for the good of the community” and contains additional provisions on such issues as secondary employment and gifts / other benefits. All police officers and some categories of administrative officials are federal civil servants. For other employees, rights and obligations are outlined in the Collective Bargaining Agreement for the Public Service (which contains various professional obligations and includes provisions on secondary employment and gift / other benefits, mirroring those of the Federal Civil Servants Act).¹⁰⁴

111. Ethical principles are further enshrined in the Anti-Corruption Code of Conduct, which is an annex to the Anti-Corruption Directive. As already indicated in the first part of this report (see paragraph 40) the Anti-Corruption Code of Conduct sets out nine principles of conduct to which short explanations are added.¹⁰⁵ Infringements of the Code can lead to disciplinary measures. As indicated before, the Directive also contains Guidelines for supervisors and heads of public authorities, which are also applicable to the Federal Criminal Police Office and Federal Police, placing an emphasis amongst other things on staff awareness and education, various organisational measures that can be taken, warning signals of corruption.

112. As is clear from the above, there is no bespoke code of conduct for either the Federal Criminal Police Office or the Federal Police. In discussing this issue on site, the GET was told that the Anti-Corruption Code of Conduct was generally fit for purpose in the two police agencies. Reference was also made in this respect to the mission statement of the Federal Police.¹⁰⁶ The GET was informed that in trainings the Code would be used as a basis on which to build, with different examples and guidance being given targeted to the group being trained. Anything more specific than the current Code was considered not be exhaustive, *inter alia* because it would not be able to give specific guidance for the work carried out by different units, in particular in the Federal Police (e.g. immigration or procurement).

¹⁰⁴ Around 31% of staff in the Federal Criminal Police Office are contracted employees, performing a wide variety of functions.

¹⁰⁵ These nine principles of conduct include such issues as showing through behaviour that the person does not tolerate or support corruption, separating one’s job strictly from one’s private life and checking whether private interests might conflict with work duties, helping one’s workplace in detecting and clearing up corruption etc.

¹⁰⁶ The mission statement of the Federal Police *inter alia* states “Openness, honesty and mutual acceptance characterize our co-operation. We treat each other fairly and tolerantly” and “We promote personal responsibility at all levels through co-operative leadership. Humanity and exemplary behaviour create mutual trust.”

113. The GET considers the work of the police to be quite different from other parts of the federal administration, with a specific need for legitimacy. It is therefore the firm opinion that the Federal Criminal Police Office and Federal Police should either create their own code of conduct or ensure that the Anti-Corruption Code is complemented with additional provisions, tailored to the specifics of the two agencies, detailing the policing principles and standards of expected behaviour that will promote, reinforce and support the highest standards from everyone in who works in policing. The development of a tailor-made code (or codes) for the Federal Criminal Police Office and Federal Police would provide a valuable tool in guiding officers in ethical questions – more so than the current text of the Anti-Corruption Code is able to do – but also in informing the general public on the standards to be expected from the police. The values and mission statements of the respective organisations may form a basis for such a document, which will have to take sufficient and coherent account of certain corruption risks for law enforcement officers, notably by providing written guidance on ethical dilemmas. The new provisions should preferably be prepared in close cooperation between management, employees, unions and other interested stakeholders. Moreover, once adopted, a code needs to be properly conveyed to all staff members, be coupled with oversight and enforcement measures and be given broad publicity. **GRECO recommends (i) that the Anti-Corruption Code of Conduct be expanded with standards of behaviour for the Federal Criminal Police Office and the Federal Police, tailored to the specifics of these two agencies, and that these standards be complemented with concrete examples and explanations of the conduct expected of police officers and (ii) that it be accompanied by effective oversight and enforcement.** A code of conduct requires training for its implementation, as further discussed below, and is also in itself an excellent tool for training.

Handling undercover operations and contacts with informants and witnesses

114. Undercover operations for the investigation of serious and organised crime are regulated by the Code of Criminal Procedure (Sections 100a-100j), which provides that this may be used to investigate criminal offences of “substantial significance”, in the sphere of illegal trade in drugs or weapons, counterfeiting money or official stamps, in the sphere of national security, on a commercial or habitual basis, by a member of a gang or in some other organised way or if there are any indications that a serious crime will be repeated. Undercover operations are subject to consent from the public prosecutor’s office. “Common guidelines of the respective *Land* Ministers/Senators of Justice and Ministers/Senators of the Interior on the use of informants and the deployment of confidential informants and undercover investigators in law enforcement activities” have been adopted: the instructions and guidance issued pursuant to these guidelines are classified documents. In the Federal Police, the implementation, co-ordination and monitoring of the abovementioned investigative instruments are centralised at its headquarters.

115. Rules on the protection of witnesses and other persons who cooperate with judicial authorities are further detailed in the Witness Protection Harmonising Act (*Zeugenschutz-Harmonisierungsgesetz*), in addition to the Federal Criminal Police Office Act (Sections 7 and 66) regulating the competences and powers of the Federal Criminal Police Office as regards witnesses.

Advice, training and awareness

116. For the Federal Criminal Police Office, as recommended by the Anti-Corruption Directive, corruption prevention has been an integral part of its in-house training as of 2005.

To this end a special training strategy has been developed (most recently updated in 2019). This strategy outlines a range of specific courses (2 hours each) on corruption risks tailored to different risk groups (i.e. staff working in areas especially vulnerable to corruption, supervisory staff, liaison officers and newly recruited staff in their orientation period), using practical examples from working for the Federal Criminal Police Office, as well as more general courses on corruption prevention for different levels of staff (generally 90 minutes) and targeted trainings on request for different staff units. The corruption prevention seminars are provided by the Internal Audit of the Federal Criminal Police Office, with around 500 members of staff participating in these seminars each year. The specific courses for the different risk groups are mandatory, the other training courses are optional. In addition to this, the Federal Criminal Police Office offers an e-learning programme on corruption prevention (from the Federal Academy of Public Administration) on its intranet, and various oral and written briefings on corruption prevention.

117. For the Federal Police, corruption prevention is also an integral part of initial and further training provided by the Federal Police Academy. Various specific courses on corruption prevention are provided to different target groups and e-learning modules on corruption prevention are made available to all staff. The specific courses include refresher training seminars (of 3 to 5 days each) for staff in areas at risk of corruption, for the contact persons on corruption prevention and for managerial staff, as well as special training for staff of the Internal Audit. To standardise the training provided by the corruption prevention contact persons, supplementary teaching materials have been made available by the Internal Audit in May 2020 (with a reminder that each contact person is to offer at least one advanced training measure per year, lasting at least 30 minutes). Furthermore, staff members are informed in writing on the rules on the prevention of corruption when they are first recruited and through regular (annual) briefings thereafter.

118. The GET came away with a positive impression of the training provided by the Federal Criminal Police Office, as also outlined in the training strategy. Seminars are short, but appear to be to the point, tailored, practical and mandatory for different risk groups (or – when provided upon request – targeted to different staff units, project groups or divisions). The GET also has a similar impression of various ad-hoc awareness raising measures at the Federal Police, through the use of the intranet, but also – as it heard on-site – pod-casts (e.g. around Christmas time on the issue of gifts), e-learning, newsletters, flyers etc. When it comes to the training on integrity provided to staff of the Federal Police, the GET appreciates the decentralised approach, in that some trainings are provided by the corruption prevention persons at their own initiative (including reportedly for senior management of the Federal Police), which has the advantage that they focus on situations closely associated with the work of the training participants.

119. However, unlike the Federal Criminal Police Office, the Federal Police does not have a strategy for integrity training of different potential risk groups. The GET found that these trainings are in some parts of the organisation rather of an *ad hoc* nature and driven by the initiatives of the 184 contact persons, even with the standardised teaching materials made available to these contact persons and the obligation for each contact person to provide at least one advanced training per year. The GET finds that the approach of the Federal Police would benefit from a clearer structure, outlining which integrity trainings different groups of staff should as a minimum undergo. The trainings should be targeted to the risks associated with their work, focusing for example on conflicts of interests, “friendship” corruption,

handling of confidential information, use of social media etc., as needed and appropriate for the target group in question). In light of the foregoing, **GRECO recommends that the initial and in-service training on integrity for the Federal Police be enhanced, to better structure and tailor this training to the needs of and risks associated with different staff categories.** In both agencies, such training should be based on the revisions of the code of conduct, and ideally be scenario-based, including examples and explanations of the expected conduct, and encourage discussion on ethical decision-making, creating a culture where staff feel valued, listened to and are well led.

120. As indicated before, each federal agency is pursuant to section 5 of the Anti-Corruption Directive required to assign a contact person, who can provide advice to staff and management on integrity issues. As described above, these contact persons are also involved in the provision of training on integrity matters. Within the Federal Criminal Police Office, the head of the Internal Audit division had been assigned this task, further assisted by five staff members, but in July 2020 this task was disassociated from the internal audit, by the establishment of a separate sub-section on corruption prevention. Given that there are situations in which staff members are unlikely to raise certain ethical dilemmas with the same persons who are also responsible for following up internally on such matters, the GET appreciates this development. In 2018, advice was sought in 269 instances on a wide variety of issues (e.g. hospitality, secondary employment, travel expenses, complimentary tickets, staff discounts).

121. In the Federal Police in turn, the advisory role has been decentralised (bearing also in mind the size of the agency), as a local contact person is “more likely to give a face to corruption prevention than a contact person in a remotely located higher-level authority”. As indicated before, there are 184 corruption prevention persons in the Federal Police (who have this function next to their day-to-day work). The GET was told that, even if the corruption prevention contact persons work separately from the internal audit units (which, as indicated above, is welcomed), there were regular exchanges of experience and information, including through special seminars organised by the internal audit. Furthermore, in addition to corruption prevention contact persons, staff members can seek confidential advice from their staff representatives or their supervisor.

Recruitment, career and conditions of service

Recruitment requirements and appointment procedure

122. Staff of both the Federal Criminal Police Office and Federal Police fall into two employment categories: civil servants (which include all law enforcement officers and certain administrative staff) and contracted staff (employees hired under the Collective Agreement for the Public Service). For the Federal Criminal Police Office, around 55% of the staff are police officers, 14% are administrative civil servants and 31% contracted employees. For the Federal Police, around 84% of the staff are police officers (including police cadets), 4% administrative civil servants and 12% contracted employees.

123. Selection and appointment procedures for federal civil servants (law enforcement officers and other federal civil servants) are governed by the Federal Civil Servants Act and

various ordinances.¹⁰⁷ Both the Federal Civil Servants Act (Section 8 and 9) and the respective ordinances require all job announcements in principle to be made public and all recruitment decisions to be taken on the basis of suitability, qualifications and professional achievements.¹⁰⁸ The Federal Civil Servants Act furthermore explicitly allows for foreign nationals to be recruited to the civil service (i.e. those from the EU, European Economic Area or a third country for which Germany and the EU have recognised professional qualifications by treaty), and both the Federal Criminal Police Office and Federal Police indeed employ foreign nationals as police officers.

124. The GET notes that the Federal Criminal Police Office Careers Ordinance provide that “in areas in which women are employed in smaller numbers than men, they should be specifically addressed by the vacancy notice”; no similar provisions are included in the Federal Police Careers Ordinance. The representation of women in the Federal Criminal Police Office indeed nudges just short of 40% (which falls only slightly to 35% in the higher police grades), and in the Federal Police at under 23% (which falls to 17,4% for all police officers and just under 10% at higher police grades in the Federal Police). The GET underlines the importance, not only to keep statistics but also to promote gender balance and greater diversity in the police. It finds heterogeneity of additional importance in hierarchical organisations like the police, as it can break possible codes of silence, prevent groupthink and, as such, may have positive effects on the prevention of corruption. It was informed that in recent years this issue had received increased attention in the Federal Police, with targeted recruitment of underrepresented groups and improvements of working conditions, which has reportedly already led to a small increase in the number of women represented in executive positions.¹⁰⁹ The GET welcomes this, but in light of the statistics mentioned above, it urges the Federal Police to keep this issue under close scrutiny, in order to take further measures where needed to motivate women (and other underrepresented groups) to join the Federal Police and to increase their representation at higher levels.

125. Career entry points for law enforcement officers (i.e. not administrative staff) in the Federal Police are at intermediate, higher intermediate and higher grades. Law enforcement officers in the Federal Criminal Police Office are only employed at higher intermediate and higher service grades. Applicants to the Federal Police and Federal Criminal Police Office must comply with fixed criteria, set out in the career ordinances of the two organisations, such as age and school qualifications, which are checked automatically.¹¹⁰ If the applicant passes this

¹⁰⁷ The legal framework includes the Federal Careers Ordinance (*Bundeslaufbahnverordnung*, BLV) and – for the Federal Police – the Federal Police Careers Ordinance (*Bundespolizei-Laufbahnverordnung*, BPolLV), in conjunction with the Federal Police Officers Act (*Bundespolizeibeamten-gesetz*, BPolBG), and - for the Federal Criminal Police Office – the Federal Criminal Police Office Careers Ordinance (*the Kriminal-Laufbahnverordnung/KrimLV*), in conjunction with the Federal Criminal Police Office Act (*Bundeskriminalamtgesetz* or *Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten*).

¹⁰⁸ A few exceptions are allowed to this principle, e.g. for top management positions or when posts have to be filled internally. Vacancy notices must be published for a period of at least two weeks.

¹⁰⁹ Examples of special communication campaigns targeting women are the [communication campaign](#) of the Federal Police on social media and the participation of the Federal Police in the [Girls' Days campaign](#).

¹¹⁰ To be admitted to the preparatory or induction period (“*Vorbereitungsdienst*”) for the intermediate grades at the Federal Police an applicant must be at least 16 years’ old (and younger than 28 years’ old) (with possibilities to increase this age limitation in case of maternity leave, military service etc.); for the higher intermediate grades and higher grades at the Federal Police the maximum age limit is 34 years’ old and at the Federal Criminal Police Office 32 years’ old. For admittance to the preparatory or induction period for higher intermediate grades at the Federal Criminal Police Office and Federal Police a school qualification entitling the applicant to study at a

stage, s/he will be invited for different tests and an interview. The vetting of applicants is conducted in parallel (see paragraph 127 and further below). If the applicants pass this stage, they are recruited as “revocably appointed civil servants” and subsequently undergo an induction course. This induction period lasts two and half years for the intermediate level (for the Federal Police), three years at higher intermediate level and two years at higher level. Upon passing the final exam of the induction course, if there are suitable vacancies available, the recruits start their work on probation. This probation period normally lasts three years. Following a successful probation period, police officers are appointed for an indefinite period.

126. Responsibility for the appointment and promotion of staff of the Federal Criminal Police Office up to grade 16 lies with the Federal Criminal Police Office itself. For posts in grade A16 and above on the federal pay scale, it is the Federal Ministry of the Interior, Building and Community which conducts the procedure. Responsibility for the appointment and promotion of staff up to grade A13 of the Federal Police lies with the Federal Police headquarters, regional headquarters of the Federal Police and the Federal Police Academy. For posts of A13 to A15, it lies with the Federal Police Headquarters and for posts A16 and above, the Federal Ministry of the Interior, Building and Community. Accordingly, the heads of the Federal Criminal Police Office and Federal Police are appointed by the Federal Minister of the Interior, Building and Community.

127. Applicants for positions in the Federal Criminal Police Office are checked against entries in police databases and their suitability is assessed through various tests (including physical aptitude and health, which also includes a drugs test) and interviews. The latter includes various questions on possible financial difficulties, court or disciplinary proceedings and integrity issues. In addition, the GET heard that the Federal Criminal Police Office would have a look at social media accounts of the applicant at the final stages of the selection process. Furthermore, employment as a police officer in the Federal Criminal Police Office requires undergoing a simple security clearance check (Ü1), in accordance with the Security Clearance Check Act (*Sicherheitsüberprüfungsgesetz*), as carried out in participation with the Office for the Protection of the Constitution.¹¹¹ Higher levels of clearance (i.e. Ü2 and Ü3) are needed for certain types of positions within the police with access to more sensitive and secret information (security marking “*Vertraulich*” and higher).

128. The purpose of the security vetting process pursuant to the Security Clearance Check Act is to establish whether an individual poses a security risk that precludes his or her employment in a sensitive area.¹¹² The vetting process requires the consent of the vetting subject (and, where appropriate, his/her co-subject). First, the vesting subject is to complete

university or college is required; for higher grades the applicant has to have an university or college degree in a relevant field. Apart from these requirements regarding age and education, applicants must have German or other EU citizenship, have an understanding of democracy, be medically fit for police service, be willing to work anywhere in Germany, have their financial affairs in order, have a clean criminal record, a driving license, swimming certificate, command of English as a second language, good communication, social, team and conflict management skills and not have any tattoos on their face, neck and hands. Body modifications (piercings etc.) can be considered an obstacle in the recruitment.

¹¹¹ The Security Clearance Check Act recognises three types of security vetting: a simply security clearance check (also known as Ü1, Section 8 of the Act), an enhanced security clearance check (Ü2, Section 9 of the Act) and an enhanced security clearance check with security investigations (Ü3, Section 10 of the Act).

¹¹² This includes doubts as to the reliability of the vetting subject, his/her exposure to a particular danger (especially his/her vulnerability to blackmail, any grooming and/or recruitment attempts by foreign intelligence services, organised crime groups or extremist organisations) or doubts as to his/her commitment to a free democratic order.

a security declaration and submit this to the authority concerned with his/her consent to have the security clearance check carried out. Following a successful security clearance check, vetting subjects are briefed by security protection officers on the rules governing their access to classified material and sign an agreement to abide by these rules. The security clearance checks are updated after five years and repeated in full after 10 years. Briefing interviews are furthermore held at regular intervals and when the need arises.

129. Unlike positions in the Federal Criminal Police Office, not all positions in the Federal Police require a security clearance pursuant to the Security Clearance Check Act. Candidates for a position in the Federal Police are however required to obtain a police clearance certificate (i.e. an excerpt from the Federal Central Criminal Register containing information on all known proceedings, including convictions). The Federal Police would also inquire with the police office of the applicant's place of residence, which could lead to further inquiries.¹¹³ An entry in the Federal Central Criminal Register would not necessarily exclude a potential recruit from joining the Federal Police: the implications of each entry will be assessed for the intended recruitment. In addition, a check of the records of the intelligence services and the police (*Landespolizei*) in an applicant's place of residence will be carried out.

130. Having one's personal finances in order is furthermore a prerequisite for employment with the Federal Police. This is assessed on the basis of information from the candidate (e.g. that they are currently able to meet their financial obligations, that there are no insolvency proceedings against them in the last five years). As part of the selection process, candidates will be asked questions on ethical issues and undergo a medical check, but no drug screening will take place (unless there are indications of drug consumption). For certain specific positions in the Federal Police, which require access to more sensitive information, security clearance checks will have to be carried out, in accordance with the Security Clearance Check Act.¹¹⁴

131. The GET notes that screening of staff members of the Federal Criminal Police Office is obligatory in respect of all posts and also carried out at regular intervals after recruitment. That said, the screening mechanism of the Federal Police is somewhat weaker, because not all positions require access to sensitive information (and therefore do not require a security clearance under the Security Clearance Check Act), is not repeated at regular intervals (unless a person carries out tasks that require security clearance under the Security Clearance Check Act) and, for example, does not include checks of social media accounts, a drug test etc. As regards the latter point, given that the use of drugs makes law enforcement officers dependent on criminal activities, the GET would find it necessary for all new recruits to the Federal Police to be tested, in a similar manner as is done in the Federal Criminal Police Office and that both organisations implement a proportionate random drug testing and a "with cause" drug testing policy to be used when information is received that an employee is abusing drugs.

132. The GET understands that the differences in screening of new recruits between the two organisations is largely due to the differences in numbers of recruits to be screened (with new recruits in the Federal Police outnumbering those of the Federal Criminal Police Office

¹¹³ The GET was however told that not all *Länder* would respond to these inquiries, due to differences in the legal bases for the transmission of data.

¹¹⁴ Security vetting is not needed for material classified as "restricted" ("*Nur für den Diensgebrauch*"), but persons with such access are required to sign an agreement to protect official secrets.

with a factor 20). Plans to enhance the screening of potential new recruits to the Federal Police are however underway. The GET heard that legislative amendments were currently being discussed in the *Bundestag*, which would envisage enhanced screening also for all new recruits to the Federal Police (and at regular intervals thereafter). Given that the Federal Police also recruits nationals from other EU member states (as does the Federal Criminal Police Office), on whom information may not always be as readily available in German databases, the GET would welcome such enhanced screening. In light of the foregoing, **GRECO recommends strengthening the screening processes of new recruits in the Federal Police and repeating such screening processes at regular intervals throughout police careers.**

Performance evaluation and promotion to a higher rank, transfers and termination of service

133. All federal civil servants of the Federal Criminal Police Office and Federal Police are subject to standardised regular appraisals (at intervals not exceeding three years), by their supervisors. Contracted employees at the Federal Criminal Police Office and Federal Police are not regularly appraised. Guidelines on performance assessment are applicable to these appraisals both in the Federal Criminal Police Office and in the Federal Police, which also prescribe the assessment criteria. Appraisals do not have an automatic effect but are taken into account when decisions are taken on promotion or assignment to a higher-paid post. The content of the appraisal is disclosed to the officer concerned, who may contest the appraisal, request its amendment and submit written objections.¹¹⁵

134. For certain positions in the Federal Criminal Police Office and Federal Police, staff members can be promoted (advancing to a next pay grade) while remaining on the same position; promotion to management or leadership positions require staff members to apply to an internal vacancy. The GET welcomes that, when discussing human resource proceedings in both the Federal Criminal Police Office and Federal Police with the trade unions, these proceedings were considered to be overall fair and competitive.

Rotation

135. In both the Federal Police and the Federal Criminal Police Office, there is a system of regular rotation, which is used both as an instrument of staff development¹¹⁶ and a corruption prevention tool (as explicitly outlined in point 4.2 of the Anti-Corruption Directive which specifies that the length of time for which a person can be deployed in areas of activity that are particularly vulnerable to corruption should not exceed five years). Most transfers do not take place for corruption prevention reasons but are rather regular occurrences when people take up another position (for career development or other reasons). Staff can be transferred against their will, but only for a limited duration.¹¹⁷ There is a possibility to appeal transfer decisions.

¹¹⁵ S/he may also ultimately submit this for judicial review to an administrative court, but the appraisal – being a value judgment – has limited reviewability with procedural errors or violation of general principles being the only possible grounds for review.

¹¹⁶ For example, as part of the staff development plan in the Federal Police, law enforcement officers in the higher intermediate and higher service grades and staff in higher administrative service grades must have performed various functions to qualify for a promotion to a higher position.

¹¹⁷ During this time the staff member concerned will receive a special allowance, in the form of a reimbursement of travel expenses and a daily allowance.

136. As indicated before, of the 6 418 members of staff of the Federal Criminal Police Office, 660 occupy a post classified as “vulnerable to corruption”. Only in exceptional circumstances will these posts last longer than five years.¹¹⁸ When this happens, the Federal Criminal Police Office takes additional measures to reduce any corruption risks. In the Federal Police, 1 979 posts have been classified “vulnerable to corruption”, for which measures similar as mentioned above for the Federal Criminal Police Office have been taken (with other measures to be taken if rotation is not possible).

Termination of service and dismissal from office

137. After the probation period, law enforcements officers (and other staff hired under the Federal Civil Servants Act) are appointed for an indefinite period. Termination of service is only possible for the reasons outlined in Section 30 of the Federal Civil Servants Act: dismissal¹¹⁹, loss of civil service rights, as a disciplinary measure (in accordance with the Federal Disciplinary Act) or retirement. Decisions terminating the service with the Federal Criminal Police Office or Federal Police can be challenged in court proceedings.

Salaries and benefits

138. The gross annual salary of law enforcement officers at the start of their career is €31 597 for intermediate service (pay grade A7) in the Federal Police, and €36 036 for higher intermediate service (pay grade A9) and €54 631 for higher service (pay grade A13) in the Federal Police and Federal Criminal Police Office. These are basic salaries, with remuneration being further determined by family allowances, as well as credits given for prior experience. Salaries subsequently increase with experience and promotion. Neither law enforcement agency provides any additional allowances (other than in the cases of temporary transfers, as per the above, and aforementioned family allowances).

139. In the Federal Police, each organisational unit is furthermore allocated a certain amount of funds each year, with which superior officers can recognise particularly outstanding performance on the part of an individual or a team. The superior officer must justify to the Human Resources department his/her choice for the recipient individual or team.

Conflicts of interest

140. Several mechanisms serve to regulate, prevent and/or expose conflicts of interest in the Federal Criminal Police Office and Federal Police. In general, the Federal Civil Servants Act (Sections 60 and 61) provide that all federal civil servants are to carry out their tasks impartially, fairly and conscientiously, without seeking their own advantage.¹²⁰ In addition, section 65 of that same act provides that federal civil servants are exempted from official acts which would be directed against themselves (or close family members). Furthermore, the Anti-Corruption Code of Conduct instructs staff to “Separate your job strictly from your private

¹¹⁸ For example, for certain specialism, staff whose active service will shortly end or who will shortly be switching to another organisational unit or a lack of available posts in the same pay bracket at that point in time.

¹¹⁹ Dismissal is possible if the requirements for becoming a federal civil servant are no longer met (for example, a person no longer has German nationality or that of another EU or EEA member state), if s/he refuses to take the oath of office (or an equivalent) or have a position incompatible with that of a federal civil servant, which they have not given up (e.g. seat in the *Bundestag* or European Parliament).

¹²⁰ For other employees, similar obligations are determined under the Collective Bargaining Agreement for the Public Service (*TVöD*).

life” and to “Check whether your private interests might conflict with your work duties”, to which further explanations are provided *inter alia* urging staff members to inform their supervisors of situations in which there is a potential conflict of interest or appearance thereof. More particular situations of conflicts of interest are regulated to various degrees concerning, for example, secondary activities (see paragraphs 142-143 below) or relating in general to administrative proceedings or public procurement (see paragraphs 70-71, in the first part of this report above).

141. In discussing this issue on-site, emphasis was placed on the regulations on gifts and secondary employment as well as instances in which permission to take on secondary employment was denied due to the potential for a conflict of interests. Both in the Federal Criminal Police Office and the Federal Police, staff members are expected to identify potential conflicts of interest themselves and inform their supervisors thereof (who would then decide on mitigating measures), as also outlined in the explanatory notes to the Anti-Corruption Code of Conduct. This issue was said to also be addressed in various training seminars. The GET nevertheless sees a need to further elaborate what could constitute a conflict of interests in the work of the police, beyond the issue of gifts and secondary employment, with more guidance to be provided to staff members. The revision of the Anti-Corruption Code of Conduct with complementary guidance (as recommended in paragraph 113) would clearly serve this purpose.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and post-employment restrictions

142. Secondary employment must be declared and authorised, pursuant to Section 97-105 of the Federal Civil Servants Act (see paragraph 76 above), the Federal Secondary Employment Ordinance (*Bundesnebenständigkeitsverordnung*). For civil service employees a similar obligation is referred to in Section 3(3) of the Collective Bargaining Agreement for the Public Service (*Tarifvertrag für den öffentlichen Dienst* or *TVöD*). The procedure for declaration and authorisation is outlined in the guidance note on authorisation of secondary employment. In both the Federal Criminal Police Office and Federal Police, the staff member would submit a form to his/her supervisor, who would check *inter alia* for a potential conflict of interests between the secondary employment and the staff member’s function. The form with the opinion of the supervisor would then be forwarded to the unit dealing with confidentiality requirements and the internal audit, with ultimately the human resource division taking a decision (which can be challenged before a court).

143. Permission for the secondary employment will be refused if there is a concern that the secondary employment might interfere with service-related interests.¹²¹ In deciding on refusing secondary employment, court decisions in the *Länder* are also taken into account, as it will be the courts in the *Länder* that decide on appeals against such decision. Various types of outside activities do not require authorisation.¹²² Failing to request authorisation would be

¹²¹ Such interference with service-related interests is for example when it takes more than one-fifth of the regular working hours, when the remuneration exceeds 40% of a civil servant’s annual salary or when it may influence the civil servant’s neutrality.

¹²² This includes (Section 100, Federal Civil Servants Act) the management of a civil servant’s own assets; writing, scientific, artistic or lecturing activities; independent expert activities related to teaching or research carried by teaching staff at public and *Bundeswehr* institutions of higher education and by civil servants at research

considered as misconduct and be subject to disciplinary proceedings. The GET welcomes the clear procedure for authorising secondary employment in both organisations, and what appears to be a close follow-up given to these issues.

144. In both the Federal Criminal Police Office and Federal Police, secondary employment is authorised for a maximum of five years, with documentary proof being required every year or every six months of the length of time worked and remuneration received. In the Federal Criminal Police Office, secondary employment has been authorised in 99 cases (in 2016), 99 cases (in 2017) and 191 (in 2018). In the Federal Police, in 2 879 (in 2017), 3 087 (in 2018) and 3 275 (in 2019) cases.

Gifts

145. Pursuant to Section 71 of the Federal Civil Servants Act, civil servants working for the Federal Police and the Federal Criminal Police Office may not demand or accept any rewards, gifts or other advantages or the promise of such for themselves or third persons in connection with their position, even after their civil service employment ends. Exceptions require approval. Violation of this provision are subject to disciplinary proceedings (and, in some cases, criminal proceedings). Similar provisions are contained on the Federal Civil Servants Act are included in Section 3(2) of the Collective Bargaining Agreement for the Public Service (*TVöD*).

146. The provisions of the Act on Federal Civil Servants are complemented with the “Circular on the ban on accepting rewards or gifts in the federal administration”. The circular outlines as a general principle that staff in the public service shall not accept any gifts in relation to their office or official activities. Exceptions are possible (requiring prior approval from the employer) but only in cases where there is no risk of staff being influenced.¹²³ In practice, both in the Federal Criminal Police Office and Federal Police, staff members are required to notify their supervisor of the receipt of any gift with a value of more than €25 € with a special form. The human resource department will ultimately take a decision on whether the gift can be kept or not, after obtaining the views of the supervisor of the staff member concerned and the corruption prevention person. Acceptance of cash is never permitted.

147. The gifts which staff of the Federal Criminal Police Office are offered in the course of their work usually come from representatives of foreign authorities. These range from small, low-cost items to high-value jewellery items. The frequency with which gifts are offered varies from year to year (e.g. 54 gifts declared in 2014 to 23 gifts in 2018). All these gifts were dealt with in line with statutory procedure. For the headquarters of the Federal Police, a total of 268 gifts were declared in 2018 of which 184 were accepted (with permission), 17 refused and

institutes; and activities to safeguard professional interests in trade unions or professional associations or in self-help facilities for civil servants.

¹²³ The circular also contains an explicit explanation of what constitutes a gift (including for example the use of vehicles, the provision of a certain position after leaving the public service, awarding of trips etc.), the manner of requesting approval and tacit approval of exemptions from the ban on gifts (minor gifts with a value of up to the €25, certain hospitality, minor service to expedite official business etc.). The circular further outlines that federal civil servants face disciplinary sanctions if violating the ban on gifts (with the possibility of depriving certain civil servants from their pension entitlements) and may also face prosecution under the bribery provisions in appropriate cases.

67 handed over to the Federal Police.¹²⁴ Awareness of the rules on gifts is raised in both organisations in trainings and through various *ad hoc* measures (such as pod-casts or items on the intranet around Christmas time), with advice reportedly being regularly sought of the corruption prevention contact persons, which is to be welcomed. The GET appreciates the clear policy on gifts and the attention paid to this issue in both the Federal Criminal Police Office and Federal Police.

Misuse of public resources

148. The misuse of public resources may constitute a criminal offence of theft, embezzlement, fraud, and/or abuse of trust (Sections 242, 246, 263 and 266, Criminal Code). Supervision over the use of public resources is the responsibility of direct supervisors of the staff concerned and the internal audits in the Federal Criminal Police Office and Federal Police respectively.

Misuse of confidential information

149. Law enforcement officers are bound by professional secrecy. To this end, Section 67 of the Federal Civil Servants Act provides that civil servants are to maintain confidentiality concerning official matters of which they have become aware in the course of their official activities. This provision explicitly continues to apply after the termination of their civil service appointment. Confidentiality does not need to be maintained in the course of official communication, when it concerns information which is common knowledge or which by its nature does not require confidentiality or when it concerns a reasonable suspicion of corruption (which is to be reported). The duty of confidentiality furthermore follows from Section 353b of the Criminal Code on breach of official secrecy and special obligations of confidentiality. The aforementioned vetting carried out pursuant to the Security Clearance Check Act is specifically focused on the reliability of the staff member in handling sensitive information.

150. Taken together, the Federal Criminal Police Office and the Federal Police have more than 50 000 members of staff, with varying degrees of access to respective IT networks and associated crime and intelligence related databases, dependent on their role. As in any police organisation, the potential compromise to police related information and procedures is a realistic threat. Organised crime groups are constantly looking to expose police sources, techniques and operations. In this light and given the scale of misuse of confidential information in law enforcement organisations in other GRECO member States, the GET noted the relatively few cases of misuse of confidential information in the Federal Criminal Police Office and Federal Police, as reflected in the statistics on disciplinary proceedings. The GET notes the attention given to this issue in the Federal Criminal Police Office. Aside from police officers specifically appointed outside the hierarchy of the specialist departments of the Federal Criminal Police Office to proactively detect offences committed by staff (including specifically the misuse of confidential information), designated data protection officers and the Federal Commissioner for Data Protection and Freedom of Information conduct random IT checks (IT analyses, data query checks by locked screens etc.) and check whether the storage of data is lawful and necessary. The Federal Data Protection Act applies to the Federal

¹²⁴ Gifts handed over to the Federal Police by staff members are offered for sale through the customs authority, in line with federal budgetary regulations, or – in exceptional cases – put on display.

Police as well, but the GET was not informed of similar structures as described for the Federal Criminal Police Office.

Post-employment restrictions

151. Pursuant to Section 105 of the Federal Civil Servants Act, after termination of their civil servants' status, federal civil servants who have worked for the Federal Criminal Police Office and Federal Police have to submit a notification of any remunerated or other employment connected with their previous official activities (in the five years before termination of the civil service employment). If this employment is considered to be adversely affecting the interests of the Federal Police or Federal Criminal Police Office, it can be prohibited. If the notification is not made or the prohibition is not adhered to, the pension rights of the person in question can be affected. In the case of the Federal Criminal Police Office and Federal Police, it is the Central Customs Office deciding on the notifications. The GET welcomes that this is a centralised procedure, limiting possibilities for arbitrariness of decisions. It learned that it was relatively rare for police officers of the Federal Criminal Police Office and Federal Police to seek other employment after the termination of their civil servants' status: generally, police officers would simply retire.

Declaration of assets, income, liabilities and interests

Declaration requirements

152. Staff of the Federal Criminal Police Office and Federal Police are not under any obligation to declare their assets, income, liabilities and/or interests, other than the information provided as part of the security clearance procedure (see paragraph 127 and further above) and remuneration received for certain authorised secondary employment (see paragraphs 142-143 above). Financial declarations can represent an important tool for preventing, monitoring and revealing conflicts of interest and preventing corruption. The GET points to the experience of other GRECO members in this respect, where there is an obligation either for those in top management positions or for those in particularly vulnerable positions, to file financial declarations, and would welcome further reflection by the authorities on this issue.

Oversight mechanisms

Internal oversight and control

153. Both the Federal Criminal Police Office and the Federal Police follow a "Three Lines of Defence" model for their internal controls, whereby the first line of defence is provided by management controls (i.e. control by a supervisor) and internal control measures, the second line of defence by financial process controls, central risk management, safety, health and environmental protection, quality management, corporate security and compliance and the third line of defence by the Internal Audit.

154. The main functions of the Internal Audit (which in the Federal Criminal Police Office is a five-person central unit and comprises a central unit in the Federal Police headquarters and 12 decentralised units in its subordinate entities of in total 35 staff members) are to check the proper and efficient performance of duties, the effectiveness of the organisational and

operational structures, the compliance with the regulations and their practicalities, and the operability of the internal supervisory system. Audits or inspections are carried out on the basis of an annual action plan, with a specific focus on high-risk areas (for example, covert investigations and witness protection for the Federal Criminal Police Office and procurement of vehicles, interpretation and the storage of weapons for the Federal Police). The audits identify potential areas of weakness and make recommendations for their removal.¹²⁵

155. Further oversight in the Federal Criminal Police Office is carried out by the security protection and internal investigations unit (*Geheimschutz, interne Ermittlungen*). This is a unit outside the hierarchy of the specialist departments, reporting directly to the management of the Federal Criminal Police Office. The unit comprises four detectives and is responsible for conducting administrative investigations (i.e. the investigations conducted prior to disciplinary and/or criminal proceedings) and disciplinary investigations. The GET learned that this unit is aided by other officers / units appointed by the Federal Criminal Police Office's management, tasked to detect offences pro-actively (e.g. monitoring of staff and networks of the Federal Criminal Police Office to establish whether service delivery has been compromised).

156. When it comes to the Federal Police, the GET also came away with a positive impression of this "third line of defence", the Internal Audit. The Internal Audit is clearly well-equipped for the purpose of auditing internal operations and procedures and – as mentioned before – is closely involved in the development of corruption prevention measures. Notwithstanding this positive view, the GET has reservations about the current approach to internal oversight. Unlike the Federal Criminal Police Office, the Federal Police does not have a special unit, inspection body or persons responsible for detecting cases of internal misconduct. It appears to take a rather reactive approach to internal misconduct, relying to a large extent on supervisors – the "first line of defence" – in bringing this to light and having the misconduct addressed (ultimately with disciplinary proceedings following an administrative investigation being taken over by the legal department). The GET is of the opinion that a more pro-active approach should be taken in the detection of offences committed by staff of Federal Police. Given the highly sensitive nature of these types of investigations and the need to protect information, this may even necessitate the creation of a new organisational structure with the responsibility for the active detection of offences committed by staff of the Federal Police, provided with comprehensive monitoring capabilities, as a complement to the existing "Three Lines of Defence" Model. As such, **GRECO recommends that measures be taken to provide for stricter internal oversight within the Federal Police, using a pro-active approach with comprehensive monitoring capacities.**

External oversight

157. As outlined in paragraph 101 above, the Federal Ministry of the Interior, Building and Community exercises supervision over both agencies. The agencies report routinely to the Ministry, and there are regularly discussions between the Ministry and the two law enforcement agencies. In addition, as indicated above, the two agencies report separately to the Ministry on the implementation of the Anti-Corruption Directive in the respective organisation.¹²⁶

¹²⁵ In carrying out its audits, the International Professional Practices Framework of the Institute of Internal Auditors are followed.

¹²⁶ See the annual report of the Federal Ministry of Interior, Building and Community on the prevention of corruption in the federal administration (footnote 9 above).

158. Furthermore, the *Bundestag* exercises parliamentary control over the Federal Ministry of the Interior, Building and Community and thereby also over its subordinate agencies.¹²⁷ The chain of oversight also applies in respect of parliamentary control, so for example petitions received by the Committee of Petitions of the *Bundestag* (see paragraph 67 above) relating to the work of the Federal Criminal Police and Federal Police would first be referred to the Federal Ministry of the Interior, Building and Community which then submits this to the Federal Criminal Police Office or Federal Police Headquarters. Furthermore, the *Bundesrechnungshof* (Federal Court of Audit) can assess whether the Federal Criminal Police and Federal Police (see paragraph 65 above) have been properly and efficiently using public finances. The Federal Commissioner for Data Protection has the authority to supervise the way personal data gathered by the Federal Criminal Police Office and Federal Police is processed and can conduct inspections in this area. As indicated in the first part of this report, there is no institution at federal level equivalent to an ombudsperson with a general mandate to protect human rights of citizens at federal level.

159. Finally, criminal investigations handled by the Federal Criminal Police Office (and in specific cases, the Federal Police) are led by the public prosecutor's office, which has the ultimate authority in such proceedings and can issue instructions to the Federal Criminal Police Office (and the Federal Police, for that matter).

Reporting obligations and whistleblower protection

Reporting obligations

160. The authorities indicate that law enforcement officers may be held criminally liable if they fail to report a corruption incidence of which they become aware in their official capacity (pursuant to section 258a of the Criminal Code on obstruction of prosecution or punishment in public office, in conjunction with section 13 of the Criminal Code).¹²⁸ The same may apply in cases of information obtained outside official duty (i.e. in the official's private capacity), when there is a suspicion of a serious crime.

161. Section 67 of the Federal Civil Servants Act furthermore provides that the provisions on confidentiality of information for federal civil servants do not apply when reporting suspicions of corruption pursuant to sections 331-337 of the Criminal Code.¹²⁹ In addition, the Anti-Corruption Code of Conduct outlines "Help your workplace in detecting and clearing up corruption. Inform your supervisor and the contact person for corruption prevention in case

¹²⁷ Issues pertaining to the Federal Criminal Police Office and the Federal Police are dealt with by the Internal Affairs and Community Committee of the *Bundestag*.

¹²⁸ Section 258a of the Criminal Code refers *inter alia* to public officials who are involved in criminal proceedings and who "intentionally or knowingly obstruct, in whole or in part, that another person is being punished or subjected to a measure in accordance with criminal law for an unlawful act", for which a sanction of six months to five years' imprisonment can be imposed (or in less serious cases three years' imprisonment or a fine). Section 13 of the Criminal Code in turn provides "Whoever fails to prevent a result which is an element of a criminal provision is only subject to criminal liability under this law if they are legally responsible for ensuring that the result does not occur and if the omission is equivalent to the realisation of the statutory elements of the offence through a positive act".

¹²⁹ The authorities indicate that this provision was included in the Federal Civil Servants Act to implement article 9 of the Civil Law Convention on Corruption (CETS 174) (which provides "Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.").

of specific indications of corrupt behaviour”. Failure to report suspicions of corrupt behaviour can trigger disciplinary proceedings.

162. Both in the Federal Criminal Police Office and Federal Police, suspicions of corruption and other misconduct can be reported to the contact persons for corruption prevention, namely the head of the Internal Audit in the Federal Criminal Police Office or one of the 184 contact persons appointed in the Federal Police. Moreover, in the Federal Police, submissions of potential misconduct can be made to the confidential reporting unit, which has been specifically set up for this purpose at the Federal Police Headquarters. The confidential reporting unit is directly subordinated to the President of the Federal Police. The unit acts as a sort of letter box for the receipt of information, with the President him/herself designating the responsible office to further process the confidential report.¹³⁰ Reference is made to the possibility of contacting the confidential reporting unit on the intranet of the Federal Police. Reports can be made by phone, through a form on the intranet, by letter or in person. These reports can be anonymised upon request.

163. In addition, staff members of both the Federal Criminal Police Office and Federal Police can make use of the “ombudsperson against corruption”, which has been appointed for this purpose by the Federal Ministry of the Interior, Building and Community for its executive agencies. Since January 2015, this function has been performed by three lawyers from the GÖRG law practice. The reports the “ombudsperson against corruption” receives are forwarded to the internal audit divisions of the Federal Criminal Police Office and the Federal Police, without revealing the identity of the person who made the report. Staff can also make their complaint anonymously, if they so wish (but then would not get feedback from GÖRG on the state of their complaint). Details on how to contact the ombudsperson are published on the intranet of the two agencies and references are made to this possibility in training seminars and other awareness-raising events. Furthermore, use can also be made of the reporting systems, units and free hotlines of the police authorities in the Federal *Länder*, with for example Berlin, Lower Saxony and Baden-Württemberg having set up an anonymous electronic reporting system. This information would then be forwarded to the competent units of the Federal Police and Federal Criminal Police Office (or in case of indications of criminal offences to the appropriate divisions of the *Landespolizei*).

164. The GET welcomes the clear instructions in the Anti-Corruption Code of Conduct to report indications of corrupt behaviour to supervisors and that failure to do can result in disciplinary measures. The GET also appreciates the various internal and external reporting channels made available to staff to report suspicions of corruption and/or other misconduct or crimes, as well as information provided on these channels on the intranet and in training seminars and the clear provisions exempting persons reporting suspicions from regulations on the confidentiality of information.

Whistleblower protection

165. As said above, the GET considers the internal and external channels available to staff of the Federal Criminal Police Office and Federal Police to report confidentially (or anonymously) on suspicions of corruption and other misconduct and the measures taken to

¹³⁰ See also the [Report](#) to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) from 25 November 2015 to 7 December 2015 (p.18), which mentions this as a positive example.

make staff aware of these possibilities, as positive features of this whistleblower system. However, when it comes to the protection offered against retaliation should the identity of the whistleblower become known (e.g. harassment or other punitive or discriminatory treatment), in view of the GET the current framework leaves room for improvement. The mere possibility of transferring whistleblowers to another workplace is not regarded as sufficient.¹³¹ In discussing this issue on-site, the GET was told that the German authorities are currently developing legislation to implement the EU Directive on whistleblowers.¹³² The GET welcomes that possibilities to extend the legislation to other breaches than violations of EU law are being discussed in this context. In anticipation of such legislation, which would address the issue beyond the Federal Criminal Police Office and Federal Police, **GRECO recommends that the protection of whistleblowers in the Federal Criminal Police Office and the Federal Police be strengthened.**

Remedy procedures for the general public

166. Public complaints can be made directly to the Federal Criminal Police Office and Federal Police, by phone, letter, contact form or e-mail. There are no formal requirements attached to these complaints. Calls, letters and e-mails to the Federal Criminal Police Office will be put through to the public relations department, who will record the issue and refer it on to the security protection and internal investigations department, if it obviously relates to misconduct (see paragraph 155 above), or the Internal Audit (if it obviously relates to structural problems or issues related to corruption). For the Federal Police, all complaints are recorded and will initially dealt with by the supervisor of the staff member against whom the complaint is made, after which the case is passed on to an internal audit unit and, if the internal investigation brings misconduct to light, the legal department. Citizens will always get an automatic reply to their complaint, followed by a status report at a later stage. Anonymous complaints are followed up if they appear to concern criminal or disciplinary offences, or otherwise point to structural problems in the Federal Police.

167. If the complainant is not satisfied with the follow-up given to the complaint by the Federal Criminal Police Office or Federal Police, s/he may take their complaints higher up, e.g. the headquarters of the Federal Police (when it concerns one of the regional divisions of the Federal Police) or the Federal Ministry of the Interior, Building and Community. Any person can also address the Petitions Committee of the *Bundestag* (see paragraph 67 above).¹³³

168. Little information is available on the number of complaints received by the Federal Criminal Police Office and Federal Police and the follow up given to such complaints. This makes it difficult to assess the way such complaints are being addressed. As will be discussed further below (see paragraph 175), the GET would welcome both law enforcement agencies

¹³¹ See on measures of protection (such as reversal of the burden of proof in legal proceedings relating to the harm suffered by a whistleblower, interim relief pending the resolution of legal proceedings etc.) Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to member States on the protection of whistleblowers.

¹³² [Directive 2019/1937](#) of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

¹³³ The GET was told that the abovementioned “ombudsperson against corruption” (i.e. the law firm GÖRG) could also be contacted by members of the public. However, as details of this possibility are not published on the website of the Federal Criminal Police Office or Federal Police (but only on the intranet of the two organisations), this would unlikely happen in practice. Exceptionally the “ombudsperson against corruption” might be contacted someone who has worked for the federal administration before.

to improve their recording and reporting on this issue. More in general, the GET notes that complaints in the Federal Criminal Police Office are dealt with by a different department than the department of the police officer against whom the complaint is made. It would welcome if the Federal Police also follows this approach. Furthermore, complaints involving a possible criminal offence committed by a staff member of the Federal Police or the Federal Criminal Police Office will be investigated by a different police agency. Nevertheless, it remains to have reservations about the way complaints are processed, as it is very much a case of “police investigating the police”.¹³⁴ The GET points at the experience of other GRECO member States in this respect, which have either set up separate bodies to investigate police misconduct or provide possibilities for a review of the complaint by a body independent from the police, and invites the German authorities to further reflect on this issue.

Enforcement and sanctions

Disciplinary proceedings

169. The Federal Disciplinary Act (*Bundesdisziplinargesetz*) outlines two types of disciplinary proceedings: disciplinary measures imposed by an administrative order (i.e. a reprimand, a fine or a pay cut) and more serious disciplinary measures imposed by the disciplinary chamber of the relevant administrative court (i.e. demotion and removal from office). In cases where removal from office appears likely, Section 38 of the Federal Disciplinary Act provides that the civil servant in question can be provisionally suspended and part of his/her pay withheld. Any disciplinary measures imposed can be appealed. For disciplinary measures imposed by an administrative order, preliminary objection proceedings must be conducted in-house before any court proceedings are initiated.

Criminal proceedings

170. Staff of the Federal Police and Federal Criminal Police Office do not enjoy immunity or other procedural privileges. They are subject to ordinary criminal procedure. As already indicated before criminal offences committed by staff of the Federal Police or the Federal Criminal Police would not be investigated by the Federal Police or the Federal Criminal Police Office themselves, but by the *Landespolizei* in the Land where the crime is alleged to have been committed, under direction of the public prosecutor.¹³⁵

171. As a rule, disciplinary proceedings are initiated in parallel to the criminal investigation, but usually suspended until the criminal proceedings are concluded. If in criminal proceedings the federal civil servant would be sentenced to a prison for one year, the civil service relationship will be terminated automatically upon the judgment taking effect (Section 41, Federal Civil Servants Act). This will also happen if the federal civil servant is sentenced to six months’ imprisonment for corruption offences in relation to his/her function, endangering the democratic order or the external security of Germany or treason. The disciplinary proceedings shall then be discontinued. However, the disciplinary proceedings may continue if the court

¹³⁴ See paragraph 61 of Recommendation Rec(2001)10 on the [European Code of Police Ethics](#), which reads “public authorities shall ensure effective and impartial procedures for complaints against the police”, with the explanatory memorandum pointing out that “Police investigating the police is an issue which generally raises doubts as to the impartiality”.

¹³⁵ It should be noted that the Federal Police would already in the first place not likely be responsible for criminal investigations due to its mandate.

discontinues the proceedings or pronounces a lighter sentence than the above-mentioned prison sentence. The GET was told that both the Federal Police and Federal Criminal Police Office would conduct their own assessment on how these cases should be dealt with internally (e.g. to see if internal control measures need to be tightened, if there were aspects of the behaviour of the staff member concerned which did not rise to the level of crime but would warrant disciplinary proceedings to be conducted etc.).

Statistics

172. Details of disciplinary and criminal cases related specifically to corruption regarding staff in the federal administration are included in the [annual report](#) from the Federal Ministry of Interior, Building and Community on “preventing corruption in the federal administration”. This report for 2018 for example describes one case of criminal investigations initiated in 2018 against a staff member of the Federal Police for corruption (out of six cases for all federal agencies under the Federal Ministry of the Interior, Building and Community), two cases in which police officers of the Federal Police did not accept the offer of a bribe (of respectively €25 and €50 000) and one case of passive bribery against a staff member of the Federal Police from the previous year having been concluded.¹³⁶

173. Statistics on disciplinary measures taken ([Disziplinarstatistik](#)) by all federal agencies (covering around 280.000 federal civil servants) are published by the Federal Ministry of the Interior, Building and Community on its website. In the course of the on-site visit, the GET learned that, other than through the “*Disziplinarstatistik*” and the description of specifically corruption cases in the abovementioned annual report, disciplinary rulings are not made public (albeit some serious cases may become public knowledge due to court cases).

174. Following the visit, the GET received a list of disciplinary and criminal proceedings undertaken in the last three years for both the Federal Criminal Police Office and Federal Police. For the Federal Criminal Police Office 10 proceedings were brought in 2017, 9 in 2018 and 10 in 2019. These included disciplinary offences such as the wrongful use of communications systems, urinating in public and violation of service instructions on the use of weapons (for which such disciplinary sanctions as reprimands, fines, warning and demotions were imposed) as well as criminal offences of (suspected) sexual coercion, (suspected) infliction of bodily harm, embezzlement and theft. For the Federal Police, 269 cases were mentioned for 2017, 355 cases for 2018 and 326 for 2019. The offences involved a wide range of disciplinary offences ranging from traffic offences, theft, sexual harassment, use of alcohol while on duty, offences against legislation on narcotics, breaches of official secrecy, IT offences (etc.). Roughly a third of these cases also led to criminal proceedings.

175. The GET appreciates the detailed statistics collected as well as the illustrative information included in the annual report on “preventing corruption in the federal

¹³⁶ The on-going investigation concerned a civil servant of the Federal Police, who was involved in procurement and had a secondary job with one of the companies that could be a contractual partner for the Federal Police. When applying for his/her secondary job, the civil servant had provided incomplete or incorrect information in this regard. The civil servant was investigated by the public prosecutor’s office as part of an investigation into procurement and disciplinary proceedings had been initiated. The concluded case concerned a Chinese tourist in transit at the airport, who mistakenly passed border control and to reach his onward flight tried to pass the border control (exit) again. He handed over 200 dollars to the inspecting officer. When he did not receive a receipt, he turned to another officer. The inspecting officer was ultimately sentenced to a suspended prison sentence of one year for bribery and extortion. The civil service relationship was (automatically) terminated.

administration” of the Federal Ministry of the Interior, Building and Community and the publication of “*Disziplinarstatistik*”. Given that the latter however is compilation of all federal ministries and their subordinate agencies, it cannot allow much insight in the handling of disciplinary cases by the Federal Criminal Police Office and Federal Police. The GET was told that this approach was deliberately taken to avoid focusing on individual agencies. As indicated above as regards complaints, the GET would nevertheless welcome more openness in this area. It is clear that the Federal Criminal Police Office and Federal Police enjoy high public trust. The GET considers transparency an essential tool in upholding this trust, reassuring the public of the corrective action taken and dispelling possible preconceptions of protecting the agencies’ image. Consequently, **GRECO recommends that the Federal Criminal Police Office and the Federal Police publish information on complaints received, action taken and sanctions imposed on its staff, including possible dissemination of relevant case-law, while respecting the anonymity of the persons concerned.**

VI. RECOMMENDATIONS AND FOLLOW-UP

176. In view of the findings of the present report, GRECO addresses the following recommendations to Germany:

Regarding central governments (top executive functions)

- i. **(i) that a specific code of conduct for persons with top executive functions be adopted, complemented with appropriate guidance regarding conflicts of interest and other integrity-related matters (e.g. gifts, outside activities, third party contacts, lobbying etc.) and (ii) that such a code be coupled with a mechanism of control and enforcement (paragraph 43);**
- ii. **that a systematic briefing on integrity issues be given to ministers and parliamentary state secretaries upon taking up their position and at regular intervals thereafter (paragraph 49);**
- iii. **that (i) the Freedom of Information Act be subject to an independent and thorough analysis, with a particular focus on the scope of exceptions under this act and other more recent legislation, the application of these exceptions in practice, the system of fees and the enforcement of the act and (ii) in light of the findings of this analysis, additional measures be taken to improve public access to information at federal level, where necessary (paragraph 57);**
- iv. **that substantive external inputs to legislative proposals and their origin, which are received before the formal launching of consultations, be identified, documented and disclosed (paragraph 60);**
- v. **i) that detailed rules be introduced on the way in which persons with top executive functions interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 63);**
- vi. **that (i) clear provisions and guidance be introduced for ministers and parliamentary state secretaries on the prevention and management of conflicts of interest and (ii) a requirement of *ad hoc* disclosure be introduced in respect of persons exercising top executive functions in situations of conflicts between their private interests and official functions, when they occur (paragraph 72);**
- vii. **that (i) measures be taken to ensure consistency and transparency of the decisions authorising new occupations of state secretaries and directors general following their public service, and (ii) it be considered to extend the length of the cooling-off period for ministers and parliamentary state secretaries, to change the composition of the advisory body and to introduce sanctions for failing to comply with decisions of the federal government on these matters (paragraph 91);**

- viii. **i) that persons with top executive functions be required to declare their financial interests publicly on a regular basis; (ii) that it be considered to include financial information on spouses and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public); and (iii) that the declarations be subject to an appropriate review (paragraph 95);**

Regarding law enforcement agencies

- ix. **(i) that the Anti-Corruption Code of Conduct be expanded with standards of behaviour for the Federal Criminal Police Office and the Federal Police, tailored to the specifics of these two agencies, and that these standards be complemented with concrete examples and explanations of the conduct expected of police officers and (ii) that it be accompanied by effective oversight and enforcement (paragraph 113);**
- x. **that the initial and in-service training on integrity for the Federal Police be enhanced, to better structure and tailor this training to the needs of and risks associated with different staff categories (paragraph 119);**
- xi. **strengthening the screening processes of new recruits in the Federal Police and repeating such screening processes at regular intervals throughout police careers (paragraph 132);**
- xii. **that measures be taken to provide for stricter internal oversight within the Federal Police, using a pro-active approach with comprehensive monitoring capacities (paragraph 156);**
- xiii. **that the protection of whistleblowers in the Federal Criminal Police Office and the Federal Police be strengthened (paragraph 165);**
- xiv. **that the Federal Criminal Police Office and the Federal Police publish information on complaints received, action taken and sanctions imposed on its staff, including possible dissemination of relevant case-law, while respecting the anonymity of the persons concerned (paragraph 175).**

177. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Germany to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2022. The measures will be assessed by GRECO through its specific compliance procedure.

178. GRECO invites the authorities of Germany to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.
