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FIFTH EVALUATION ROUND

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

COMPLIANCE REPORT

GERMANY



Adopted by GRECO
at its 92nd Plenary meeting (Strasbourg, 28 November-2 December 2022)



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

I. INTRODUCTION

1. The fifth GRECO evaluation round concerns “Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies”.
2. This Compliance Report assesses the measures taken by the German authorities to implement the recommendations made in the Fifth Round Evaluation Report on Germany which was adopted by GRECO at its 86th plenary meeting (26-29 October 2020) and made public on 15 December 2020, following authorisation by Germany ([GrecoEval5Rep\(2019\)6](#)).
3. As required by GRECO’s Rules of Procedure,¹ the German authorities submitted a Situation Report containing information on measures taken to implement the recommendations in the Evaluation Report. That report was received on 29 April 2022 and served as a basis for this Compliance Report.
4. GRECO selected Poland (in respect of top executive functions in central governments) and Liechtenstein (in respect of law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Katarzyna NASZCZYŃSKA, on behalf of Poland, and Ms Martina EDLUND, on behalf of Liechtenstein. They were assisted by GRECO’s Secretariat in drawing up this report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and gives an overall appraisal of the level of the member’s compliance with these recommendations. The implementation of any outstanding recommendations (partly or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after this Compliance Report is adopted.

II. ANALYSIS

6. GRECO addressed 14 recommendations to Germany in its Evaluation Report. Compliance with these recommendations is dealt with below.

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

Recommendation i

7. *GRECO recommended (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.*

¹ The compliance procedure for the Fifth Evaluation Round is governed by GRECO’s Rules of Procedure as amended. See Rule 31 revised bis and Rule 32 revised bis.

8. The authorities of Germany report as regards part (i) of the recommendation that a manual providing guidance (*Orientierungshilfe*) regarding conflicts of interest and other integrity-related matters for persons with top executive functions was drawn up in 2021 and handed out to all federal ministers and parliamentary state secretaries upon taking up their position in December 2021. This guidance manual addresses the legal status of Federal Government members and parliamentary state secretaries and contains a collection of provisions related to their fields of activity as well as a new chapter on guidance and regulations on integrity and the avoidance of conflicts of interest. This new chapter includes provisions governing the ban on holding other offices and pursuing outside activities, the ban on accepting rewards or gifts, official secrecy, conflicts of interest, contacts with lobbyists, and employment after leaving office (mandatory cooling-off periods), complemented by practical examples. The guidance manual aims to explain to those holding top executive offices in central government, the legal provisions of the Federal Ministers Act and the Parliamentary State Secretaries Act, including questions as to the interpretation of these rules.
9. The authorities also indicate that the Directive concerning the Prevention of Corruption in the Federal Administration (*Richtlinie zur Korruptionsprävention in der Bundesverwaltung*) and the code of conduct which is annexed to the Directive have been included in the above-mentioned guidance manual. The Federal Ministry of the Interior and Community is currently revising the Directive and its annexes, seeking to overhaul the code as such in order to make it clear that compliance with the code of conduct is mandatory for all those working in federal offices and to underscore the particularly high integrity standards involved. The authorities believe that the legal framework in place² helps avoid any conflict of interest and serves as a systematic prevention strategy, and that a separate code of conduct is therefore not necessary.
10. As to part (ii) of the recommendation, the authorities stress that a control mechanism is already in place, as federal ministers and parliamentary state secretaries can be held accountable by Parliament at any time. Parliament has the right to set up committees of inquiry with far-reaching authority and MPs are also entitled to ask members of the government questions in Parliament.³ Other effective control and enforcement mechanisms include existing legal provisions, e.g. the criminal law and the Freedom of Information Act (*Informationsfreiheitsgesetz*). Violations of any of the above-mentioned regulations have legal consequences which may culminate in the dismissal of the federal minister or parliamentary state secretary concerned by the Federal Chancellor.⁴
11. GRECO welcomes the adoption of a specific guidance manual for members of the Federal Government and parliamentary state secretaries which covers integrity matters referred to in the recommendation. The clarification to be introduced in the Anti-

² This includes the Act on the Legal Status of Federal Ministers (Federal Ministers Act; *Bundesministergesetz*, BMinG), the Act on the Legal Status of Parliamentary State Secretaries (Parliamentary State Secretaries Act; *Gesetz über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre*, ParlStG) and the Act on Federal Civil Servants (*Bundesbeamtengesetz*, BBG).

³ In the 19th legislative period (2017-2021), 3 committees of inquiry were established and 35 major interpellations, 11.677 minor interpellations, 5.150 oral questions and 25.671 written questions were asked in Parliament. Interpellations and questions as well as answers are published on the *Bundestag's* website.

⁴ Section 9 of the Federal Ministers Act and section 4 of the Parliamentary State Secretaries Act.

Corruption Directive that the anti-corruption code of conduct also applies to federal ministers and parliamentary state secretaries will be another positive development. Whilst GRECO regrets that the authorities decided that it was not necessary to adopt a separate code of conduct, it nevertheless accepts that the newly adopted guidance manual taken together with the Anti-Corruption Directive and code of conduct meets the objective of the recommendation. GRECO therefore considers that part (i) of the recommendation has been dealt with in a satisfactory manner. It also recalls that such a document should be published, in order to inform the public as to what conduct should be expected from PTEFs.

12. Regarding part (ii) of the recommendation, GRECO notes that the authorities consider the existing legal provisions to be sufficient and indicate that scrutiny of adherence to the above-mentioned provisions is carried out by Parliament. However, GRECO reiterates that it would be beneficial to introduce a mechanism dedicated to monitoring specifically the respect of the integrity standards contained in the guidance manual and the anti-corruption code of conduct. Moreover, as frequently underlined by GRECO, enforcement implies some form of sanction depending on the breach and its severity. GRECO has found that non-criminal enforceability of the code would have obvious merits, providing for additional proportionality to the accountability of ministers who have little or none for official misconduct other than political oversight. Therefore, GRECO considers that this part of the recommendation has not yet been complied with.
13. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii

14. *GRECO recommended 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.*
15. The authorities state that, upon taking up their position, new federal ministers and parliamentary state secretaries are made aware and are comprehensively informed of the guidance manual (see above, recommendation i) and requirements of integrity and avoiding conflicts of interest. For instance, on 8 December 2021, the day the members of the new Federal Government were sworn in, the head of the Directorate-General “Public Service” at the Federal Ministry of the Interior and Community sent a letter to all federal ministers informing them of the most important rights and duties associated with their status, in particular the integrity rules. The guidance manual was attached to that letter, and the offices of the federal ministers were requested to forward it to the offices of the parliamentary state secretaries. In addition, on 15 December 2021, the head of the Federal Chancellery sent a letter to all members of the Federal Government and all parliamentary state secretaries drawing their attention to the applicable integrity standards and highlighting the strict requirements regarding the ban on outside activities and the acceptance of rewards or gifts. The authorities also indicate that such letters will be sent to members of the government at least every four years (the length of a legislative period), providing a form of regular briefing for the continuing members. In the event of a change of office before the end of the electoral term, the guidance manual is also handed over to the new minister or parliamentary state secretary.

16. The German authorities also stress that the Federal Government Directive concerning the Prevention of Corruption requires agencies to appoint a contact person for corruption prevention based on the tasks and size of the agency. His or her duties include advising the agency's executive staff and assisting with training. The contact persons also advised the new executive staff and made the staff members working in their offices aware of integrity rules immediately after the change of government. Furthermore, the authorities indicate that, when revising the Directive, it is envisaged to strengthen anti-corruption training activities and awareness-raising for staff of top executives. This could include regular training or awareness-raising measures for staff working in the offices of federal ministers or parliamentary state secretaries – measures which are already in place in several ministries.
17. GRECO notes that letters on integrity issues have been sent to members of the new Federal government upon taking up their position. While this represents a positive start, GRECO also notes that, for ministers and parliamentary state secretaries, there will only be one letter sent after they take up their post and no other briefing on integrity issues thereafter. This means that the requirement of briefing "at regular intervals" is not fulfilled. Such briefings should take place notwithstanding the fact that the contact persons for corruption prevention may also advise ministers and parliamentary state secretaries, if so requested, as mentioned in paragraph 48 of the Evaluation Report. In this respect, GRECO underlines that it is necessary to regularly raise awareness of the applicable integrity standards not only among the staff working in the offices of federal ministers or parliamentary state secretaries, but also specifically among ministers and parliamentary state secretaries, for instance during a personal discussion with the contact person for corruption prevention. Consequently, further measures on a regular basis are required.
18. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii

19. *GRECO recommended 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.*
20. The authorities report that policymakers are currently considering whether to revise the Freedom of Information Act. During the current legislative period, the Federal Government plans to further develop the Freedom of Information Act into a Federal Transparency Act and introduce a legal right to open data. In this context, preparatory work has started and a key issues paper is expected by the end of 2022.
21. GRECO takes note of this development. In the absence of any further information at this stage, GRECO concludes that recommendation iii has not been implemented.

Recommendation iv

22. *GRECO recommended that substantive external inputs to legislative proposals and their origin, which are received before the formal launching of consultations, be identified, documented and disclosed.*
23. The authorities report that, on 15 November 2018, the Federal Cabinet adopted an agreement to increase the transparency of the legislative process, stipulating that comments made by associations involved in the consultation process under section 47 of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*, GGO) must be published. Such comments are to be published on the website of the lead federal ministry, which is also linked to the homepage of the Federal Government. The federal ministries decide on their own responsibility whether to publish any comments that were submitted without having been requested. The authorities also explain that the Federal Government will look into various ways to adjust the obligations to disclose information during the legislative process.
24. In addition, the authorities indicate that the coalition agreement for the 20th legislative term provides that: “As regards bills drawn up by the Federal Government or the German *Bundestag*, we will provide extensive information about the influence exerted by third parties on the preparation of proposed legislation and bills (“footprint”). This regulation is limited by the right of MPs not to be bound by orders or instructions and to be responsible only to their conscience.”⁵
25. GRECO notes that the authorities had already referred to the Agreement to Increase Transparency of the Legislative Process adopted by the Federal Government on 15 November 2018 during the evaluation visit and that this information was included in the Evaluation Report (paragraph 59). Hence, there seems to have been no further significant developments since then. GRECO notes that the German Government plans to introduce a “legislative footprint” to allow the monitoring and tracing of all third parties who seek to influence and contribute to specific legislative texts. This “footprint” was included in the coalition agreement for the 20th legislative term and is now to be implemented together with other transparency elements. While this would represent a positive step, it is too early for GRECO at this stage to consider this recommendation as even just partly implemented.
26. GRECO therefore concludes that recommendation iv has not been implemented.

Recommendation v

27. *GRECO recommended 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*

⁵ *Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag 2021 – 2025 zwischen der Sozialdemokratischen Partei Deutschlands (SPD), BÜNDNIS 90/DIE GRÜNEN und den Freien Demokraten (FDP)*, p. 10 (Transparency).

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.

28. The authorities of Germany report that the Act Introducing a Lobbying Register for the Representation of Special Interests vis-à-vis the German *Bundestag* and the Federal Government (Lobbying Register Act, *Lobbyregistergesetz*) entered into force on 1 January 2022. Representatives of special interests vis-à-vis the German *Bundestag* and the Federal Government must now register in the Lobbying Register, if they meet the requirements stipulated in the Act. Anyone who engages in lobbying, even only sporadically, is covered by the scope of the Act and has to carry out the representation of special interests within the meaning of this Act on the basis of openness, transparency, honesty and integrity. Exceptions to the obligation to register concern, for example, areas protected under constitutional law (churches, trade unions, petitions) or the protection of minorities in Germany, whose dialogue with political decision makers is expressly encouraged and institutionalised. The German *Bundestag* maintains the Lobbying Register in electronic form.⁶ To achieve transparency, representatives of special interests are required to list numerous items of information about themselves or their organisations. This includes the number of employees and the area of interests and objectives of the representation. Representatives of special interests are encouraged to provide financial details, which may however be withheld. Anyone acting in breach of the registration requirement or of the requirement to update the information registered at regular intervals is liable to a fine of up to 50,000 euros. Failure to provide or update information and violations of the Code of Conduct for representatives of special interests may result in representatives of special interests being denied access to public hearings organised by the German *Bundestag* or being excluded from the consultation of associations under section 47 of the Joint Rules of Procedure of the Federal Ministries.
29. In addition, the authorities indicate that the coalition agreement for the 20th legislative term provides for the following: “We will make the Lobbying Register Act stricter, widen its scope to include contacts to ministries at the level of policy officers, and enlarge the group of representatives of special interests who need to register; in doing so we will interfere as little as possible with fundamental rights and take a differentiated approach.”⁷ The practical implementation of this project is currently in the planning stage.
30. GRECO welcomes the entry into force of the Lobbying Register Act on 1 January 2022 and the creation of a Lobbying register for representatives of special interests. The Act contains clear definitions and rules, which are detailed and illustrated in a Handbook for representatives of special interests. The register is public, accessible online, and a unit within the *Bundestag* Administration has been set up to supervise it. However, there are several exceptions to the obligation to register. Additionally, the obligation to register only covers regular activities of representation of special interests. As a result, a number of representatives of special interests find themselves outside the scope of the Act. In

⁶ <http://www.lobbyregister.bundestag.de>

⁷ [Koalitionsvertrag 2021 – 2025](#), p. 10 (Transparency).

this regard, the plan of the current Federal Government to enlarge the group of representatives of special interests who need to register and to include contacts at level of policy officers is to be welcomed.⁸ In GRECO's view, any regulation of lobbying should explicitly include all third parties seeking to influence government's decision-making.⁹ Above all, GRECO considers that, as mentioned in the recommendation, detailed rules on the way in which persons with top executive functions interact with lobbyists and third parties should clearly be highlighted, such as existing rules on gifts and hospitality, conflicts of interest and confidential information. In the meantime, part (i) of the recommendation is considered partly implemented. GRECO also considers that the authorities should introduce further rules to address part (ii) of the recommendation and disclose sufficient information about the purpose of contacts with lobbyists and other third parties seeking to influence decisions or actions of the government, in order to be in line with the transparency objective of the recommendation.

31. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi

32. *GRECO recommended 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.*
33. The authorities reiterate that the relevant legal provisions, *i.e.* the Act on the Legal Status of Federal Ministers, the Act Governing the Legal Status of Parliamentary State Secretaries and the Act on Federal Civil Servants, contain clear-cut legal provisions and effective enforcement mechanisms on integrity-related matters for persons with top executive functions. The newly drafted guidance manual (see Recommendation i) for federal ministers and parliamentary state secretaries contains a chapter summing up the existing requirements for avoiding conflicts of interest (Chapter 2.4). Under this guidance manual, federal ministers and parliamentary state secretaries are required to obtain prior approval for and declare the acceptance of gifts and outside activities or employment after leaving office. The same applies to the permission to testify. The authorities are thus made aware of any potential conflicts of interest, and are in the position to thoroughly examine the cases in hand and to intervene or even deny permission when necessary.
34. As regards part (ii) of the recommendation, the authorities underline that all above-mentioned legal provisions include either declaration requirements or denials of permission. The duty to obtain prior approval for and declare the acceptance of gifts and outside activities or employment after leaving office translates into a direct declaration

⁸ According to section 1(2) of the Lobbying Register Act, the rules for the Federal Government shall also apply to Parliamentary State Secretaries, State Secretaries, Heads of Directorates General and Heads of Directorates. However, making contact with members of staff of the Federal Ministries below the level of Heads of Directorate is not considered to be representation of special interests.

⁹ See paragraph 63 of the Evaluation Report.

requirement and helps avoiding conflicts of interest. If decision-makers believe that a conflict of interest or even the appearance of such a conflict would occur, they will refuse permission to take up the activity in question or to accept a gift.

35. GRECO takes note of the information provided by the German authorities. While the provisions on acceptance of gifts, outside activities and conflicts of interest contained in the guidance manual represent a positive development, GRECO notes that the guidance manual does not include an unequivocal obligation to disclose various situations of conflicts as they occur (on an *ad hoc* basis), as required by the Evaluation Report (paragraph 72). If a conflict of interest exists or is likely to occur, ministers and parliamentary state secretaries are required to simply align their actions with the integrity requirements. The guidance manual also recommends a regular exchange with the contact person for corruption prevention appointed in each Federal Ministry. In GRECO's view, the guidance manual should be strengthened and the authorities should consider the introduction of practical advice on how to identify and manage situations of conflict of interest as well as of real-life examples of situations that may arise. Therefore, GRECO considers that the recommendation has not yet been fully complied with.
36. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii

37. *GRECO recommended 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.*
38. With regard to part (i) of the recommendation, the German authorities recall that, according to Section 105 of the Act on Federal Civil Servants, civil servants (and therefore also state secretaries and directors general) are obliged to notify their last employer in the civil service of any remunerated or other employment after leaving their office. The authorities stress that this obligation to report employment after leaving office represents a necessary and reasonable balance between enforcing obligations that continue to apply after leaving active public service, in particular the obligation of retired civil servants to maintain confidentiality, and protecting the integrity of the public service, on the one hand, and on the other hand, the right of retired civil servants to freely choose their occupation, according to Article 12(1) of the Basic Law, or the freedom of expression, arts and sciences according to Article 5(3) of the Basic Law. Failure to comply with the obligation to report or with a prohibition on employment after leaving office constitutes a disciplinary offence and results in the opening of disciplinary proceedings against the retired civil servant.¹⁰

¹⁰ Section 77(2) sentence 1 no. 3 of the Act on Federal Civil Servants. The disciplinary measures that can be taken against civil servants who are retired in the case of a violation of the duty to report under Section 105 of the Act on Federal Civil Servants are the reduction and withdrawal of their pension.

39. The authorities refer to numerous rulings by the German administrative courts¹¹ on Section 105 of the Act on Federal Civil Servants and on Section 41 of the Act on the Status of Civil Servants and related standards issued by the federal states, which ensure that the law is applied consistently. The courts have set out, in numerous decisions, the requirements for the obligation to report employment after leaving office and for prohibiting employment after leaving office, in particular for determining when employment interferes with interests of the public service as referred to in Section 105 of the Act on Federal Civil Servants.¹²
40. Lastly, the authorities report that the introduction of the topic of employment after leaving the public service in the circular on the law on secondary employment, which serves as a guide for ministries in applying the law, is being considered. The question as to whether the obligation to report stipulated in Section 105 of the Act on Federal Civil Servants should be expanded to require state secretaries and directors general to report to their former public service employer all their employment after leaving the public service is also being examined.
41. Turning to part (ii) of the recommendation, the authorities take the view that the laws on the employment of federal ministers and parliamentary state secretaries after leaving office¹³ have proved effective to date. They add that the comparison made between the cooling-off provision for these groups of persons pursuant to the Act governing the Legal Status of Members of the Federal Government, on the one hand, and the provisions for civil servants (directors general and state secretaries in particular) on the other is not appropriate, as most directors general and state secretaries end their careers as civil servants with life tenure by retiring. By contrast, high political office in the Federal Government is only held for a limited time, and office-holders must often pursue new careers before they reach retirement age. Unlike civil servants, they are typically unable to retire when they leave office and support themselves with their pension benefits. The law on the length of cooling-off periods thus enables decisions which provide an appropriate balance in each individual case between the public interest and the constitutional right to freely choose one's occupation.
42. In addition, the authorities indicate that the Federal Government disagrees with the criticism in relation to the composition of the advisory body according to section 6b of the Act governing the Legal Status of Members of the Federal Government (advisory body for the cooling-off period). The advisory body is nominated by the Federal President upon proposal of the Federal Government for one legislative term of the German *Bundestag*. The following members of the advisory body were proposed by the Federal Government and appointed by the Federal President at the start of the 20th

¹¹ Federal Administrative Court, 26.06.2014 - 2 C 23.13 (VG Berlin), BVerwGE 150, 153; Higher Administrative Court Koblenz, 06.06.1990 - 2 A 119/89, NJW 1991, [245](#); Higher Administrative Court Münster, 02.03.2016 – 1 B 1375/15, NVwZ 2016, 255 and Federal Administrative Court, 12.12.1996, concerning section 20a Soldiers Act - 2 C 37/95, BVerwGE 102, [326](#).

¹² The prohibition of employment for retired civil servants sets a requirement that there be a concern that service-related interests will be adversely affected by the employment.

¹³ The cooling-off provision in section 6a et seqq. of the Act governing the Legal Status of Members of the Federal Government in conjunction with section 7 of the Act governing the Legal Status of Parliamentary State Secretaries.

legislative period of the German *Bundestag*: Prof. Dr Norbert Lammert, former president of the *Bundestag*; Ms Krista Sager, former member of the government of the city-state of Hamburg; and Prof. Dr Andreas Voßkuhle, former president of the Federal Constitutional Court. The authorities stress that all members have held prominent offices in government institutions and are highly respected, which helps ensuring the objectivity and acceptance of the procedure.

43. Finally, the authorities state that the Federal Government still sees no need for sanctions in the case of possible violations of cooling-off provisions. It assumes that former members of government will continue to obey the law even after leaving office. Furthermore, the occupations of former ministers and parliamentary state secretaries are a relevant issue for the media and the public, as any violations of the cooling-off provisions would become known to the public.
44. GRECO notes, in relation to part (i) of the recommendation, that several rulings by the German administrative courts have provided some guidance on post-employment prohibition and the interpretation of “service-related interests” in this context, although they do not directly deal with the authorisation of new occupations of state secretaries and directors general following their public service. Written guidance in the circular on the law on secondary employment is also envisaged. However, in the Evaluation Report, GRECO found that “it would be useful to take further measures to avoid inconsistencies across different sections of the federal administration” and to ensure transparency (paragraph 91). As this has not been done yet, GRECO can only say that this part of the recommendation has not been implemented.
45. As regards part (ii) of the recommendation, GRECO takes note of the position of the Federal Government finding the length of the cooling-off period for ministers and parliamentary state secretaries adequate. It regrets that the lengthening of this period is dismissed outright, despite other stakeholders calling for a three-year cooling-off period to better prevent and reduce risks of undue influence.¹⁴ GRECO reiterates that there are certainly posts in the private sector which would warrant a longer mandatory cooling-off period than the current 12 to 18 months.¹⁵ It also notes that the authorities have not considered a change in the composition of the advisory body for the cooling-off period and that two of the three members are again former politicians, as was the case at the time of adoption of the Evaluation Report. Similarly, no reflection has taken place regarding the introduction of sanctions in case a decision on a cooling-off period is not respected. GRECO therefore encourages the German authorities to resume the discussion on the issue of the cooling-off period for ministers and parliamentary state secretaries, on the composition of the advisory body as well as on a proper enforcement mechanism of decisions on cooling-off periods. In light of the foregoing, GRECO considers that part (ii) of the recommendation has not been implemented.
46. GRECO concludes that recommendation vii has not been implemented.

¹⁴ See European Commission, [2022 Rule of Law Report](#), Country Chapter on the rule of law situation in Germany, p. 14.

¹⁵ See paragraph 89 of the Evaluation Report.

Recommendation viii

47. *GRECO recommended 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.*
48. The authorities state that the obligations for persons with top executive functions to declare financial interests and mechanisms to review such declarations were once again considered, including the inclusion of financial information on spouses and dependent family members in such declarations. However, the authorities put forward that they constitute an interference with the constitutional rights of those persons obliged to disclose financial information. The authorities underline that, depending on the group of people involved and the specific nature of the obligations, it is necessary to take into account the right to determine the use of one's personal data (Article 2(1) in conjunction with Article 1(1) of the Basic Law) and the right to freely choose one's occupation (Article 12(1) of the Basic Law). If fundamental rights are affected, interference with these rights must serve a legitimate purpose and be suitable for achieving this purpose. Such interference must also be necessary to achieve the desired purpose, and the intended purpose of the interference must be in reasonable proportion to the severity of the interference.
49. The authorities acknowledge that the transparency obligations suggested are intended to serve the important purpose of preventing corruption among persons with top executive functions. However, they stress that there are reservations as to whether obliging the persons in question, much less their spouses and dependent family members, to declare their financial interests is necessary to combat corruption. This is the case only if no other, equally suitable means to combat corruption, which interfere less with fundamental rights, are available. The authorities recall that the German federal administration has instruments such as declaration requirements which are equally efficient while interfering to a much smaller extent with the fundamental rights of the persons concerned.
50. Finally, the authorities explain that members of the *Bundestag*, who are subject to certain declaration requirements, cannot be compared to persons having top executive functions (in particular directors general and state secretaries with civil servant status). In terms of constitutional law, the question is to what extent declaration requirements may prevent MPs – in contrast to persons with top executive functions – from exercising their right not to be bound by orders or instructions and to be responsible only to their conscience (Article 38(1) of the Basic Law). Given the need for a parliament that is effective and able to represent the public, transparency obligations are justified there.¹⁶
51. GRECO takes note of the information provided by the German authorities, which – apart from the justification of the difference of treatment of MPs regarding declaration requirements – describes the information already outlined in the Evaluation Report

¹⁶ Judgment of the Federal Constitutional Court of 4 July 2007 – 2 BvE 1-4/06.

(paragraphs 92-95). This demonstrates that there has been no tangible progress. It is recalled that the Evaluation Report found that the transparency over financial and business interests of federal ministers and parliamentary state secretaries (and state secretaries and directors general, as appropriate) needed to be considerably enhanced, in particular to disclose potential conflicts of interest. It also found, in line with GRECO's practice, that some form of review by the authorities of the information provided in the financial declarations would be necessary. With regard to part (ii) of the recommendation, GRECO recalls its established position that consideration of any matter requires that the reflection process is sufficiently in-depth, involves the pertinent stakeholders and is fully documented. Against this background, GRECO encourages the authorities to pursue their efforts towards the implementation of this recommendation.

52. GRECO concludes that recommendation viii has not been implemented.

Preventing corruption and promoting integrity in law enforcement agencies

Recommendation ix

53. *GRECO recommended (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.*
54. The authorities of Germany indicate that an expanded code of conduct tailored to the specifics of the Federal Criminal Police Office has been drawn up in consultation with the entire staff council of this agency and other staff representatives (values officer and communication officer). The new code of conduct was adopted on 8 March 2022 and made available to staff on 1 April 2022; it is available on the Federal Criminal Police Office's Intranet. The new code of conduct is also to be handed out to all newly hired staff or made available to them in digital form.
55. The authorities also report that the Federal Police has similarly drafted a new code of conduct tailored to the specifics of the agency. The new code of conduct presents the existing, general rules (such as the circular prohibiting the acceptance of gratuities or gifts) in the specific context of the Federal Police. In addition, it is to compile the internal Federal Police orders related to this topic. Examples of what to do in particular situations are contrasted with what to avoid, in order to make the fundamentals of preventing corruption clearer to Federal Police staff. Federal Police divisions (such as those responsible for organisation, basic and advanced training, human resources, etc.) are now providing feedback on the current draft, which is to be published in late 2022. In the process of drafting their codes of conduct, the Federal Police and the Federal Criminal Police Office have coordinated their efforts and shared their experience with each other.
56. GRECO notes with satisfaction that a code of conduct, tailored to the specifics of the Federal Criminal Police Office, was adopted on 8 March 2022 and made available to

staff. It contains six chapters explaining the conduct expected of police officers in relation to corruption prevention. As for the Federal Police, a specific code of conduct is in preparation and is to be published in late 2022. In view of the above, GRECO considers that good progress has been made with respect to this recommendation and invites the authorities to keep GRECO updated on any further developments in addressing the recommendation, in particular regarding oversight and enforcement of these codes. Given that the text of the code of conduct for the Federal Police is not yet available and that the issue of effective oversight and enforcement is pending, GRECO cannot yet consider this recommendation as being fully implemented, but takes note of the encouraging progress made.

57. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x

58. *GRECO recommended 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.*

59. The authorities state that the Federal Police recently produced various training films and provided them, accompanied by detailed notes, to their corruption prevention officers, some 190 persons in total.¹⁷ The authorities emphasise that the films and notes are specifically based on situations taken from the daily routine of Federal Police officers and therefore offer representative examples of corruption threats. In addition, all existing products for advanced training on corruption prevention were compiled in a systematic overview and sorted by course content, duration, target group and course objectives. The authorities state that the overview is a living document which should allow for the ongoing development of advanced training measures in the area of corruption prevention.

60. The authorities also indicate that all Federal Police employees have access to various training events on corruption prevention. Annual corruption-prevention trainings are mandatory for staff holding posts that are classified as especially vulnerable to corruption. For this purpose, relevant staff need to show to their supervisors that they have taken part in appropriate training courses. Supervisors, in turn, are required to check provided verification. In addition, all employees receive instruction on the most important prevention regulations before starting their employment. Depending on their career classification, police officers are also taught in-depth approaches to integrity as part of their police training. Corresponding training figures are reported annually to the Federal Ministry of the Interior and Community (BMI) as part of the “Integrity Report of the Federal Administration.” In 2021, 993 employees from Federal Police Headquarters (including nationwide branch offices) took part in awareness raising, instruction or training measures, of whom 61 employees working in an area classified as especially vulnerable to corruption. The same year, 2756 Federal Police employees (i.e. subordinate federal police authorities) took part in awareness raising, instruction or

¹⁷ As of 14 October 2022, the Federal Police has 55,142 employees, of which 37,493 are law enforcement officers. Each of the currently 123 departments has at least one local contact person for corruption prevention.

training measures, of whom 1746 working in an area classified as especially vulnerable to corruption.

61. GRECO takes note of the steps taken by the German Federal Police towards the rationalisation of existing training products and the production of new ones, based on real-life situations. It welcomes that annual corruption prevention trainings are mandatory for staff holding posts that are classified as especially vulnerable to corruption. GRECO thus accepts that training on integrity for the Federal Police has been better structured and tailored to various categories of staff, as required by the recommendation.
62. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi

63. *GRECO recommended strengthening the screening processes of new recruits in the Federal Police and repeating such screening processes at regular intervals throughout police careers.*
64. The authorities of Germany recall that background screening is conducted at the Federal Police in accordance with the Act on Prerequisites and Procedures for Security Clearance Checks Undertaken by the Federal Government and on the Protection of Classified Information (*Sicherheitsüberprüfungsgesetz, SÜG*). This screening explicitly includes repeated screening that is anchored in that Law. To carry out such screening, every Federal Police office has a separate unit consisting of a security officer and support staff. When conducting screening, the Federal Police relies on the resources and expertise of the Federal Office for the Protection of the Constitution. During the recruitment process, candidates must submit a police certificate of good conduct. A check of the federal intelligence information system NADIS is also carried out. This check is currently carried out on the basis of a voluntary declaration of consent.
65. The authorities indicate that, according to the coalition agreement for the 20th legislative term, the security screening of job candidates, which has proved effective in other areas, is to be expanded, thereby making the security authorities more resilient in the face of influences hostile to democracy.¹⁸ The Act on the Federal Police (*Bundespolizeigesetz, BPolG*) is in the process of being amended, and the amended version is to include a legal basis for conducting a mandatory security check of all future Federal Police staff, including the NADIS query as well as other checks. This affects all career groups (law enforcement officers and administration staff) and is to be repeated regularly for everyone at the intervals prescribed by the law.
66. GRECO takes note of the information provided by the authorities, which partly describes the information already outlined in the Evaluation Report. It notes that discussions are still under way on an amended version of the Federal Police Act, which would include security clearance check for all new recruits to the Federal Police. This would represent a positive development. GRECO therefore considers that developments are underway,

¹⁸ [Koalitionsvertrag 2021 – 2025](#), p. 104 (*Bundespolizeien*).

but for the time being, there is no concrete outcome that addresses this recommendation.

67. GRECO concludes that recommendation xi has not been implemented.

Recommendation xii

68. *GRECO recommended that measures be taken to provide for stricter internal oversight within the Federal Police, using a pro-active approach with comprehensive monitoring capacities.*

69. The authorities underline that, as described in the Evaluation Report, a standard system of oversight, consisting of administrative and operational supervision, specialised supervision by specific organisational units (responsible for occupational health and safety, data protection, etc.) and Internal Audit, is in place in the Federal Police. The authorities indicate that they are opposed to a pro-active monitoring of individual staff members in the absence of reasonable suspicion. Such monitoring does not conform to the classic principles of staff management, according to which staff are managed on the basis of trust and supervision, not distrust and surveillance without reasonable suspicion.

70. GRECO takes note of the position of the authorities, who oppose any pro-active monitoring of the Federal Police staff in the absence of reasonable suspicion. However, GRECO reiterates that a more pro-active approach should be taken in the detection of offences committed by staff of Federal Police, as advocated in the Evaluation Report (paragraph 156). In GRECO's view, this would not go against the principle of reasonable suspicion but would, on the contrary, allow to take into account the highly sensitive nature of these types of investigations and the need to protect information. In this context, GRECO regrets that there is no progress in respect of this recommendation.

71. GRECO concludes that recommendation xii has not been implemented.

Recommendation xiii

72. *GRECO recommended that the protection of whistleblowers in the Federal Criminal Police Office and the Federal Police be strengthened.*

73. The authorities report that the Federal Police already has an effective and recognised whistleblower system in the form of a confidential point of contact (*Vertrauensstelle*), as described in the Evaluation Report (paragraphs 162, 165). They stress that the Federal Government is in the process of adopting legislation to implement the EU Directive 2019/1937 on the protection of persons who report breaches of EU law. A draft bill was adopted by the Federal Government on 27 July 2022, submitted to the Second Chamber (*Bundesrat*) and subsequently introduced in Parliament. The Federal Government adopted its views on the comments by the *Bundesrat* on 28 September 2022. The final deliberation in the *Bundesrat* is to take place in December 2022 and the Act is to enter

into force as soon as possible due to the infringement proceedings initiated against Germany.

74. Furthermore, according to the coalition agreement for the 20th legislative term,¹⁹ an independent point of contact for the Federal Police forces is to be created at the German *Bundestag*, with the right to access files and inspect premises. The coalition agreement also indicates that whistleblowers are to be protected from retaliation when reporting not only breaches of EU law, but also serious violations of regulations or other serious misconduct, when there is a special public interest in the detection of such violations or misconduct.²⁰
75. GRECO takes note of the ongoing initiatives to strengthen the protection of whistleblowers, also beyond the Federal Criminal Police Office and Federal Police, and to extend the legislation to other breaches than violations of EU law, which would be a welcomed development. GRECO is looking forward to receiving more specific information on the adoption of the draft whistleblower protection bill and its implementation in the Federal Criminal Police Office and the Federal Police. At this stage, it is however too early to consider the recommendation as partly implemented.
76. GRECO concludes that recommendation xiii has not been implemented.

Recommendation xiv

77. *GRECO recommended 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.*
78. The authorities take the view that more extensive public disclosure is problematic for reasons of data protection. The particulars of the case will make the persons concerned identifiable within the agency affected and pose a danger. According to the authorities this is the case even if the information on complaints received, action taken and sanctions imposed is published in an anonymous form. There are a number of specialised areas in which only a few staff members are employed, which means that anonymisation could not be fully guaranteed even if personal data are not disclosed. The authorities emphasise that the presumption of innocence applies in every case to the persons concerned. In practice, this means that disciplinary decisions must first become final and binding. Given the possibility of appeal, it may take several years for decisions to become final and binding. In the field of corruption prevention, the decision has been taken to not strictly follow this principle by publishing information already about cases of suspected corruption. This is not without concerns from a legal perspective, because the persons concerned can certainly recognise themselves in the published text, even if their case is presented in anonymous form. They could therefore claim prejudicial treatment and cast doubt on the objectivity of the investigation.

¹⁹ [Koalitionsvertrag 2021 – 2025](#), p. 104 (*Bundespolizeien*).

²⁰ [Koalitionsvertrag 2021 – 2025](#), p. 111 (*Unternehmensrecht*).

Publishing information on other kinds of misconduct (such as alcohol while on duty) is already unthinkable.

79. The authorities further explain that public disclosure, even after a decision has become final and binding, violates the privacy of the persons concerned and would only be possible in the form of statistics. Any description of the case, no matter how anonymously it is worded, could be recognised by the persons concerned or their immediate co-workers and supervisors. As a result, making this information public would circumvent the statute of limitations which specifies that, depending on their severity, disciplinary violations are to be removed from the personnel file. After the specified time, personnel decisions are no longer permitted to take the disciplinary violation into account. According to the authorities, publishing information on disciplinary violations outside of the personnel file would prevent this.
80. GRECO notes that the authorities have not made any progress with a view to publicly disclose information on complaints received by the Federal Criminal Police Office and the Federal Police, since the adoption of the Evaluation Report, notably for reasons reported relating to the presumption of innocence and privacy of the persons concerned. In line with its established position, GRECO considers transparency an essential tool in upholding trust in the police agencies, reassuring the public of the corrective action taken and dispelling possible preconceptions of protecting the agencies' image. In this context, the publication of refined statistics on the number of complaints received by the Federal Criminal Police Office and Federal Police and the follow up given to such complaints, including the sanctions imposed, would meet the requirements of the recommendation. GRECO encourages the authorities to step up their efforts in this regard.
81. GRECO concludes that recommendation xiv has not been implemented.

III. CONCLUSIONS

82. **In the light of the foregoing, GRECO concludes that Germany has implemented satisfactorily one of the fourteen recommendations set out in the Fifth Round Evaluation Report.** Of the outstanding thirteen recommendations, five recommendations have been partly implemented and eight have not been implemented.
83. More specifically, recommendation x has been implemented satisfactorily, recommendations i, ii, v, vi and ix have been partly implemented and recommendations iii, iv, vii, viii and xi-xiv have not been implemented.
84. With regard to top executive functions, although only some recommendations have been partly implemented, several positive developments and changes can be noted. A new specific guidance manual for PTEFs covering conflicts of interest and other integrity matters has been adopted, letters on integrity issues have been sent to members of the new federal government, and the Lobbying Register Act entered into force, establishing a Lobbying Register for Representation of Special Interests. Other developments are

either pending or about to be finalised. The Federal Government is, for instance, planning to introduce a “legislative footprint” to allow the monitoring and tracing of all third parties who seek to influence and contribute to specific legislative texts. Yet, some further measures need to be introduced. The guidance manual should include an unequivocal obligation to disclose various situations of conflicts of interest as they occur. Lengthening the “cooling off” period for ministers and parliamentary secretaries as well as enhancing the transparency concerning financial and business interests of federal ministers and parliamentary state secretaries need to be further considered by the authorities.

85. With regard to the law enforcement agencies, GRECO welcomes the adoption of a code of conduct tailored to the specifics of the Federal Criminal Police Office, explaining the conduct expected of police officers in relation to corruption prevention. GRECO is also satisfied that the training on integrity for the Federal Police has been better structured and tailored to various categories of staff. Discussions are underway regarding the implementation of other recommendations, such as the introduction of security clearance checks for all new recruits to the Federal Police and the initiative to strengthen the protection of whistleblowers beyond the Federal Criminal Police Office and the Federal Police. The implementation of these measures would be a step in the right direction. At the same time, GRECO regrets that the German authorities have not enhanced the monitoring capacities within the Federal Police. It encourages the publication of refined statistics on the number of complaints received by the Federal Criminal Police Office and the Federal Police and that there be a follow up given to such complaints as well as sanctions imposed.
86. In the light of the foregoing, GRECO notes that further progress will need to be made within the next 18 months to achieve an adequate level of compliance with the recommendations. In accordance with Rule 31 revised bis, paragraph 8.2, of its Rules of Procedure, GRECO calls on the head of the delegation of Germany to submit additional information with regard to the implementation of outstanding recommendations, namely recommendations i-ix and xi-xiv, by 30 June 2024.
87. 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.