



## TI Report Card 2004 on Enforcement of OECD Convention

### Questionnaire for TI National Chapters in OECD Signatory States

Questionnaire for: *TI Germany*

Date: 2.2.05

#### I. Current Status of Enforcement

##### A. Prosecutions brought

Please list all cases involving allegations of bribery of foreign public officials brought by prosecutors in your country since the OECD Convention became effective in your country. The list should cover as far as possible all cases relating to bribery of foreign public officials, whether brought under laws dealing with corruption, or under other laws, such as laws dealing with fraud, money laundering, and tax evasion or accounting violations.

**Total number of cases: 1**

**For each case** please list if possible the following:

- (1) Name of case, including principal parties: **No information available**
- (2) Date and court where filed: **No information available**
- (3) Summary of principal charges, including name of the country whose officials were allegedly bribed: **An employee of a medium-sized company from Hamburg was charged to have bribed a public official in Lithuania.**
- (4) Penalties or other sanctions sought
- (5) If case concluded, please indicate disposition: conviction, settlement, dismissal or other disposition. If case pending, please indicate current status, including trial or appeal dates if known.  
**The defendant was charged to pay a criminal fine.**

Comments and sources, if possible:

**Four other cases were not prosecuted, because the alleged criminal conduct occurred before the IntBestG (German law flowing from the OECD Convention) came into force.**

## B. Investigations under way

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in your country.

If information unavailable, please indicate: \_\_\_\_\_

**Total number of known investigations:** 12

**For each investigation**, where possible, please list the following: No information available

- (1) Names of parties
- (2) Date when investigation started
- (3) Name of country whose officials were allegedly bribed
- (4) Current status, including likelihood case will be brought

Comments and sources, if possible: We have no specific information about the investigations under way. To our knowledge, most of the investigations are about allegations of bribery of foreign public officials and some are about allegations of illicit trade and smuggling.

One new investigation (senior employees of a major power manufacturer allegedly bribing officials of another European country's state power corporation) was opened in 2004; current status unknown

The statistics reflect the situation in late July 2004., except for the "new investigation" reported just above.

## C. Serious allegations

Please provide information about serious allegations of foreign bribery by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

**Total number of serious allegations:**

**For each matter**, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication:
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed

Comments and sources, if possible: We have information about serious allegations of foreign bribery by companies or individuals based in Germany. We do not have specific information about the 12 investigations under way, though. Therefore, any judgement on whether the serious allegations we know about from the press are among those being currently investigated or not would be based on speculation.

## II. Actions to Promote Enforcement

### A. Government Commitment to Enforcement

How would you assess your government's commitment to enforcing foreign bribery laws?

*Please choose one of the following:*

1 *Very Weak*

2 *Weak*

3 *Moderate*

4 *Strong*

Comments and sources, if possible: A central office to investigate and/or prosecute foreign bribery has not yet been established. To our knowledge there have been no public statements by government leaders or senior law enforcement officials addressed to business groups, bar associations and similar groups concerning the need to enforce foreign bribery laws. Considering the federal structure of the German state, and the resultant division of responsibilities, it is difficult to choose one rank.

## B. Organization of Enforcement

1. Does the government have a centralized national office for foreign bribery enforcement?

Yes\_\_\_ No\_\_\_\_

2. If enforcement is not centralized, what level of coordination and supervision does the government provide for foreign bribery enforcement?

*Please choose one of the following:*

**1** *Very Weak*

**2** *Weak*

**3** *Moderate*

**4** *Strong*

Comments and sources, if possible: The Federal Bureau of Criminal Investigation observes the foreign bribery cases in the federal states and publishes the number of cases in a yearly official report about the crime rate in Germany. The report contains no specific information about the cases, though. Other than that, to our knowledge there exists no centralized coordination or supervision. The federal states are responsible for the prosecution; several of them have established specialized corruption prosecution offices at State, regional or municipal level. In general, there is a reluctance to start investigations concerning foreign bribery allegations due to limited staff resources, a backlog of domestic cases, anticipated problems with international legal assistance, and inexperience concerning the specific problems of investigations in cross-border foreign bribery cases.

This judgment is based on discussions with numerous prosecutors (at all levels), judges, investigatory authorities and other officials.

## C. Available Resources

How would you assess your government's provision of staffing and resources for foreign bribery enforcement?

*Please choose one of the following:*

**1** *Very Weak*

**2** *Weak*

**3** *Moderate*

**4** *Strong*

Comments and sources, if possible: At federal level, the resources dedicated to corruption fighting are very limited, both in the Government and in the Bundeskriminalamt (BKA). Where specialized prosecution offices have been established at State level or below, these offices have broader responsibilities and thus the resources available for foreign bribery enforcement are not quantifiable. However, several of these special offices set up more recently have been assigned additional prosecutors and investigating staff.

## D. Complaint Procedure

How would you assess your government's efforts to provide and publicize procedures for reporting foreign bribery complaints, such as hotlines and websites?

*Please choose one of the following:*

1 *Very Weak*

2 *Weak*

3 *Moderate*

4 *Strong*

Comments and sources, if possible: Reflecting the federal structure, the German government has not addressed the issue of reporting violations of the German law flowing from the OECD Convention (the IntBestG - International Bribery Law). The government expects reports/accusations against violators under the IntBestG to be lodged with the appropriate Länder prosecution offices (and those offices sometimes are difficult to identify) or the police, just like any other criminal violations. To our knowledge the German embassies or other state representations in other countries have not been instructed to report back reports in the local media concerning alleged bribery by German companies, the German prosecutors' offices (structured at the State and sub-State levels) do not generally scan the international media. At State level there is one initiative worth mentioning: In the State of Lower Saxony, a website has been established which allows whistleblowers to provide information about criminal conduct anonymously, and allows the authorities to follow up and question the whistleblower without breaking the anonymity barrier. Information gained there is being forwarded to other federal states where appropriate.

## E. Whistleblower Protection

How would you assess the level of whistleblower protection for foreign bribery complaints?

*Please choose one of the following:*

1 *Very Weak*

2 *Weak*

3 *Moderate*

4 *Strong*

Comments and sources, if possible: There is no specific whistleblower protection for foreign bribery complaints. In general, whistleblower protection in Germany is weak. As mentioned above, in the State of Lower Saxony, a website has been established which allows whistleblowers to provide information about criminal conduct anonymously, though. The fairly high frequency of bribery reports submitted to this platform (and to the Deutsche Bahn's two external independent ombudsmen) suggests that whistleblowers are afraid to make their reports in the open, underlining the need for effective whistleblower protection.

## F. Public Awareness

How would you assess your government's efforts to create public awareness that foreign bribery has become a crime?

*Please choose one of the following:*

- 1 *Very Weak*
- 2 *Weak*
- 3 *Moderate*
- 4 *Strong*

Comments and sources, if possible: **To our knowledge, there are hardly any government efforts in that respect.**

## G. Accounting and Auditing Requirements

How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books account or the use of other practices for hiding foreign bribery)?

*Please choose one of the following:*

- 1 *Very Weak*
- 2 *Weak*
- 3 *Moderate*
- 4 *Strong*

Comments and sources, if possible: **Since 1998, the effectiveness of the company's internal controls have to be evaluated as part of the statutory audit. Also, the auditor takes samples to check the accounts for criminal conduct. If any irregularities or violations of statutory provisions or facts that constitute violations of the law are being detected, the auditor is obligated to report to the legal representative of the company. Nevertheless, there are no specific legal requirements intended to prevent practices for hiding foreign bribery.**

## H. Private Sector Efforts

How would you assess the use of corporate anti-bribery compliance programmes in your country?

Please choose one of the following:

1 Very Weak

2 Weak

3 Moderate

4 Strong

Comments and sources, if possible: A good number of prominent (especially export-oriented) companies have introduced codes of conduct and anti-bribery compliance programmes, following also the recommendations of the premier industry association BDI. . Among the small and medium size enterprises, the ratio of companies with codes of conduct and compliance programmes is much smaller.

## I. Statutory and Other Legal Obstacles

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

Yes  No

2. If so, please indicate if these include:

- Short statutes of limitation: Yes  No
- Jurisdictional limitations: Yes  No
- Restrictive dual criminality requirements: Yes  No
- Lack of criminal liability for corporations: Yes  No
- Other, please indicate:  decentralized prosecution responsibility

Comments and sources, if possible:

## J. Actions Needed in Your Country

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other actions.

1. Establish a centralized national office with sufficient resources for foreign bribery enforcement (or at least for collecting relevant information and preliminary investigation, before passing the case to the appropriate State authorities) ;
2. Establish a website at federal level that allows whistleblowers to provide information about foreign bribery cases even anonymously;
3. Create better public awareness of the fact that foreign bribery is a crime;
4. Introduce effective criminal liability for corporations.

## III. Current and Anticipated Level of Enforcement

1. How would you assess the current level of foreign bribery enforcement in your country?

*Please choose one of the following:*

1 *Very Weak*

2 *Weak*

3 *Moderate*

4 *Strong*

2. How do you expect your government's enforcement of foreign bribery to change in the coming three years?

*Please choose one of the following:*

1 *Decreasing Enforcement*

2 *No Change*

3 *Increasing Enforcement*

Comments and sources, if possible:

Report prepared by :



(signature)

Name of respondents: **Dr. Michael H. Wiehen, Jan Richter**

Affiliation:

Professional experience:

**Dr. Michael H. Wiehen:**, long-time executive of the World Bank, Attorney 1996-2003

**Jan Richter:** PhD student in law.

### **Appendix**

#### **List of persons consulted (with affiliation), if possible:**

Numerous prosecutors at all levels and in many states, judges, police officials (in the BKA Federal Criminal Office, several LKAs State Criminal Offices and municipal police departments), officials of the federal and several state governments, business representatives (individual enterprises, industry associations and chambers of commerce and industry), attorneys, auditors, and journalists.

#### **List of references and sources** used in responding to this questionnaire

Inclusion of this information is not required, but would be extremely beneficial in helping us to build a database that could be of use to TI-S and other National Chapters.