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## **COMBATING CORRUPTION IN GERMANY**

Corruption is not a significant obstacle for businesses in Germany, and companies are unlikely to encounter bribery or other corrupt practices. Fraud and corruption risks are most prevalent in the construction and public procurement sectors. Germany has strong institutional and legal anti-corruption frameworks. The German Criminal Code applies to individuals – not companies – and makes it illegal to offer, pay or accept a bribe. Companies can be held civilly liable for corruption offenses committed by their representatives under the Act on Regulatory Offenses, with fines up to EUR 10 million and confiscation of all economic advantages obtained through bribery. Facilitation payments are prohibited, and small-value gifts and hospitality may be considered illegal depending on the intent, benefit, and value. Enforcement of foreign bribery has increased significantly in recent years, and a large number of prominent German companies and individuals from businesses have been successfully prosecuted [1].

There is a low risk of corruption when dealing with Germany's judiciary. The judiciary is characterized by a high degree of professionalism and independence from political interference. Over two-thirds of companies judge the independence of the judiciary to be fairly good or very good. Companies indicate that bribes and irregular payments in return for favorable judgments are rare. Few citizens consider bribery and abuse of power to be widespread in the German courts. Companies report sufficient trust in the efficiency of the legal framework to settle disputes and challenge regulations. Only a fraction of judges indicate having faced inappropriate pressure to decide a case. Nearly half of judges believe some judges in Germany are promoted on basis other than merit and experience [1].

There is a low risk of corruption when dealing with Germany's police. German police services reliably protect companies from crime, and the necessary mechanisms to investigate and punish abuse and corruption in the police and security forces are in place. Only about one in eight Germans perceive corruption, bribery and abuse of power within the police as a problem [1].

The major provisions on combating bribery and corruption are laid down in Germany's Criminal Code (Strafgesetzbuch - StGB). This notwithstanding, provisions prohibiting illegitimate contributions in specific business relations are also scattered throughout other laws. Anti-bribery rules under German law are addressed to different functions of the recipient, public officials, employees or agents of private business, healthcare

professionals, members of legislative assemblies or members of workers' councils. In general, German law applies also to foreign bribery. Although in the following we will describe bribery offenses with respect to the giving party, there is a mirror-like criminal liability of the receiving party as well. Bribery-related conduct can also be prosecuted for other offenses. The creation of slush funds and payments of bribes can also be prosecuted for embezzlement. The deduction of bribes and expenses related thereto for tax purposes constitutes tax fraud pursuant to Sec. 370 Fiscal Code Abgabenordnung). Fraud (Betrug) and money laundering are often associated crimes. Unlike other countries, Germany does not have a centralized anti-corruption agency. Investigations are conducted by regular state prosecutors and police forces, with respect to tax fraud by the tax investigation service. However, state prosecutors and police have created specialized units or centralized investigations. State prosecutors and tax investigators are obliged to share information on suspicion of bribery. State prosecutors are obliged to ex officio investigate suspicion of bribery, although they have certain discretion to discontinue investigations for minor guilt. Confiscation of profits, and corporate fines, are usual consequences of corruption in business [2].

Germany is a federal state. However, the Criminal Code and the Code of Criminal Procedure (Strafprozessordnung, StPO) apply at both federal and state level. In general, police and prosecution of the respective state (Land) investigate the crimes committed there. As a general principle, all crimes, including business crimes, are prosecuted by the public prosecutor's office and the competent police, who are supervised by the prosecutor, but, who in practice, effectively lead the investigations. Some prosecution offices and police departments have specialized units with a focus on white collar crime. Each federal state has its own judicial circuit with its own public prosecutor office.

Very little protection is offered in Germany for whistle-blowers. There are only a few criminal law obligations that deal with whistle-blowing, for example:

- section 138 of the Criminal Code, which criminalizes the failure to bring the planning of serious offenses to the attention of the authorities. This obligation applies to everybody.

- section 11 of the Money Laundering Act [GwG], the reporting duty for suspicious transactions. This obligation applies to financial institutions, insurance companies, as well as to certain practitioners such as tax advisors, auditors, attorneys and notaries (for details, cf. s. 2 of the German Money Laundering Act [GwG]).

Under German labor law, employees have a duty to inform their superior (only) of any imminent risk for security or health. As a

consequence, the employee should not face any disadvantages if his or her superior initially disregards his or her complaint and he or she decides to subsequently inform the competent authority (section 16(1) and 17(2), Labour Protection Act). Even the decision of the European Court of Human Rights of 21 July 2011 provides only little protection. In this case, the court's basic ruling was that employees should normally first inform their superiors or other authorized persons of possible deplorable conditions or activities at work before informing the authorities or the general public (sections 16(1) and 17(2), Labour Protection Law). The option of informing the general public could only be justified in the event that first informing the "authorized persons" proved evidently impractical. Therefore, in whistle-blowing cases the relevant question is whether the employee has some other effective option to put an end to the unlawful situation [2].

Anti-Corruption compliance and investigations keep playing a prominent role both in the public debate and on the corporate agenda. After the revision of criminal bribery provisions came into force last November 2015, the German Parliament will have to decide on a new draft legislation specifically aimed to combat corruption in the healthcare sector. The draft provides a newly defined criminal offense aiming to sanction active and passive bribery of a wide range of healthcare professionals. Moreover, the Government is currently preparing another draft bill on forfeiture and confiscation aiming to make it easier for authorities to confiscate and recover the profits from illegal behavior.

Summarizing, we note that the general features of the fight against corruption and the methods of eliminating this disgraceful fact in Germany include: the control of state officials, public institutions and parliament; openness and transparency of decision-making at all levels of state power and local self-government; freedom of speech, freedom of the media and their real independence; the possibility of public control over the adoption of the most important economic and political decisions; independence of the judiciary. The main components of the formation and implementation of an effective anti-corruption system in Germany is the clear interaction, first of all law enforcement agencies, at the regional and international levels, and participation in measures to combat this negative fact.

#### *Список використаних джерел*

1. Business anti-corruption portal. 2023 January. URL: [www.business-anti-corruption.com/country-profiles/germany/](http://www.business-anti-corruption.com/country-profiles/germany/)
2. Global legal Insight. 2018. - URL: <https://www.globallegalinsights.com/practiceareas/bribery-and-corruption-laws-and-regulations/germany>.