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OPEN DATA AND THE FIGHT AGAINST CORRUPTION IN GERMANY

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Authors: Andreas Pawelke and Mara Mendes
Design: Daniela Cristofori

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This research was conducted in cooperation with the World Wide Web Foundation. Established by the inventor of the web, the World Wide Web Foundation works for digital equality for all. For more, please visit webfoundation.org.

The authors would like to thank Transparency International Deutschland, Open Knowledge Foundation Deutschland and Correctiv for providing invaluable comments and input on this study.

ISBN: 978-3-96076-035-1

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EXECUTIVE SUMMARY



Germany has scored consistently highly on rankings that measure the control of corruption. The government has been generally supportive of an anti-corruption environment and has set up a robust regulatory and institutional framework that enables the authorities to be effective in detecting, preventing and tackling corruption in all its manifestations. To close regulatory gaps in Germany's anti-corruption framework, a series of laws have been passed in recent years, including the revision of legal clauses on buying the votes of public officials and new regulations to address bribery in the healthcare sector. At the 2016 Anti-Corruption Summit in London, the German government announced a number of specific commitments, including the creation of a beneficial ownership register.

When it comes to open data, international rankings such as the Open Data Barometer (ODB) show that Germany has not been able to keep pace with open data pioneers such as the United States, France and the United Kingdom. While Germany does have an active open data initiative at the national level, there is no specific open data regulation that requires government agencies to proactively publish data.

Experts have criticised the lack of a comprehensive open data strategy, the generally slow implementation of e-government solutions as a foundation for open data and a culture in public administration that favours secrecy over openness and innovation. Implementation of G8 Open Data Charter commitments has been slow and Germany has not yet adopted the International Open Data Charter. In recent months open data has attracted greater high-level political attention, with the announcement of the government's decision to join the Open Government Partnership (OGP) and the drafting of an open data law, to be enacted before the elections in 2017. Despite the significant potential, however, little work has been done in the country so far to systematically address corruption through open data.

KEY FINDINGS



- 1** There is currently no legal foundation for proactive release of data enshrining an explicit commitment to the 'Open by Default' principle at the national level in Germany. Despite the lack of a legal requirement, however, an increasing number of agencies are providing access to the data they hold.
- 2** Germany makes seven out of the ten datasets assessed in this research available online in some form (see datasets scoring table below). Those datasets that are available online are updated on a regular basis, and five of them contain granular data with little to no aggregation.
- 3** Germany does not publish on a central portal all the data relevant to anti-corruption. Key anti-corruption datasets are hosted on different websites, portals and platforms. The government also does not require companies to release specific data related to anti-corruption and it does not make extensive use of open formats to ensure that it is available to the widest range of users.
- 4** Germany implements open standards for budget data only by making the data available under open formats, such as CSV and XML. The government does not publish consistent metadata for most anti-corruption datasets, and clear accompanying documentation for the published datasets is not usually available.
- 5** The German government promotes the use of digital participation platforms to determine data needs, though such engagement is usually not targeted at anti-corruption specifically.
- 6** Apart from general data publication guidelines, there is no evidence of the German government providing tools, success stories and guidelines for government officials to use open data as a means to prevent corruption.
- 7** There is no indication of the German government encouraging other stakeholders, including civil society organisations and businesses, to open up the data created and collected by them to build a rich open data ecosystem.

PREFACE



In recent years there has been an increase in the availability of open data – data that can be freely used, modified and shared by anyone for any purpose.¹

Open government data is emerging as an important tool in the fight against corruption in that, by enabling increased transparency in terms of government activities, budgets and expenditures, it becomes an important ingredient in various accountability interventions.

There is demand for government to open up more data and processes to improve information disclosure and transparency, to facilitate public scrutiny and to allow for information that is easier to work with and compare, which should reduce the mismanagement and misallocation of resources and help secure a fair deal for governments and citizens.

In 2015 the G20 Anti-Corruption Open Data Principles² (hereafter G20 Principles) were adopted as a first step towards leveraging open data as a crucial tool to enable a culture of transparency and accountability in order to address corruption. It was agreed to follow a set of principles, based on the International Open Data Charter,³ to enhance access to, and the release and use of, government data so as to strengthen the fight against corruption. As is the case with international standards, what is crucial now is to ensure that these G20 Principles do not solely remain lofty words on paper but are translated into national-level policy and practice across the G20 countries.

The purpose of this report is to assess the extent to which Germany is meeting its commitments to fighting corruption by applying and implementing the principles and actions set out in the G20 Principles. This is one of five reports; others have been compiled for Brazil, France, Indonesia and South Africa.

The purpose of the five-country study is to gain a better understanding of how different countries are performing in terms of implementing the G20 Principles, and to highlight how these principles can be implemented so that open data becomes an effective tool in the fight against corruption. It also seeks to present selected examples of good practice in the use of open data to combat corruption.

¹ See <http://opendefinition.org>.

² See www.g20.utoronto.ca/2015/G20-Anti-Corruption-Open-Data-Principles.pdf.

³ See <http://opendatacharter.net/history>.

METHODOLOGY OF THE STUDY⁴



This study establishes a baseline regarding the implementation of the G20 Anti-Corruption Open Data Principles, which were adopted in 2015. The main goals of the analysis are to find answers to the following questions. How much progress have G20 governments made in implementing open data as part of an anti-corruption regime? What are the main national government policies and practices for open data and anti-corruption? And where is there room for improvement in moving towards the Principles?

The G20 Principles commit governments to data that should be as follows:

1. Open by Default
2. Timely and Comprehensive
3. Accessible and Usable
4. Comparable and Interoperable
5. For Improved Governance and Citizen Engagement
6. For Inclusive Development and Innovation

For each principle, the specific global commitments made by the G20 have been turned into questions that can measure anti-corruption policies and practices. There are 35 questions in total, including both general questions and specific questions for ten datasets that have been identified as key to anti-corruption efforts. For the questions directed at anti-corruption datasets, binary responses have been created, enabling us to score performance.

The key anti-corruption datasets are the following:

1. Lobbying Registers
2. Company Registers
3. Beneficial Ownership Registers
4. Directories of Public Officials
5. Government Budget Records
6. Government Spending Records
7. Public Procurement Records
8. Political Financing Records
9. Legislative Voting Records
10. Land Registers

Five countries were selected; each has its own report and there is also a summary report. The five countries represented a variety of G20 economies from around the world but included countries whose international leadership has or will be in the spotlight, via the G20 presidency or the Open Government Partnership chair, for instance. For this reason, it can be expected that they have a keen interest in implementing open data for anti-corruption purposes.

To carry out these studies, consultant researchers with both open data and corruption expertise were hired for each country report. The research consists of both desk research and key informant interviews. The Web Foundation and Transparency International have guided the research process and provided relevant materials to support the process.

⁴ For full methodology, please see <https://www.transparency.org/whatwedo/publication/7666>

ANTI-CORRUPTION DATASETS



For the purpose of this study, the following datasets were used as proxy indicators of whether anti-corruption commitments have been translated into open data practice:

- 1** Lobbying register: Containing a list of registered lobbyists, details of who they are lobbying, and who they are lobbying on behalf of.
- 2** Company register: Containing a list of every company legally registered to operate within a jurisdiction. It should include information on when companies were formed and whether they are still active, as well as including details of company directors.
- 3** Beneficial ownership register: Containing the natural person or persons who are the beneficial owner(s) of an asset, including at a minimum the beneficial ownership of companies or land.
- 4** Directories of public officials: Containing a list of all public officials above a certain level of seniority, along with details of their role.
- 5** Government budget: Including national government budget at a high level (e.g. spending by sector, department, sub-department, etc.).
- 6** Government spending: Records of actual national government spending at a detailed transactional level; at the level of month to month government expenditure on specific items (usually this means individual records of spending amounts under \$1m or even under \$100k).
- 7** Public procurement: Details of the contracts entered into by the national government.
- 8** Political financing: Containing data on the financial contributions received by a politician and/or a political party.
- 9** Voting records: Containing registers on individual votes in Parliament (including session, chamber and law category such as amendment, new bill, nomination, etc.).
- 10** Land register: Including national-level information on land ownership, tenure and location.

The findings for Germany are presented below, and are based on an assessment as outlined in the methodology.¹

INDICATOR	Dataset Online	Timeliness	Granularity	Formats	Openness	Accessibility	Open Standards	Metadata	Documentation	TOTAL DATASET SCORE
Lobbying registers ^{II}	✗	✗	✗	✗	✗	✗	✗	✗	✗	0
Company registers ^{III}	✓	✓	✓	✗	✗	✗	✗	✗	✗	3
Beneficial ownership ^{IV}	✗	✗	✗	✗	✗	✗	✗	✗	✗	0
Public officials ^V	✓	✓	✗	✗	✗	✓	✗	✗	✗	3
Government budget ^{VI}	✓	✓	✓	✓	✓	✓	✓	✓	✗	8
Government spending ^{VII}	✗	✗	✗	✗	✗	✗	✗	✗	✗	0
Public procurement ^{VIII}	✓	✓	✓	✗	✗	✓	✗	✗	✗	4
Political financing ^{IX}	✓	✓	✓	✗	✗	✓	✗	✗	✗	4
Voting records ^X	✓	✓	✓	✗	✗	✓	✗	✗	✓	5
Land registers ^{XI}	✓	✗	✗	✗	✗	✗	✗	✗	✗	1

I See <https://www.transparency.org/whatwedo/publication/7666>

II A mandatory lobbying register does not exist. See for more details: Transparency International e.V. (2014) Lobbying in Germany. http://media.transparency.org/eurobby/2015_LobbyingGermany_EN.pdf

III <https://www.unternehmensregister.de/ureg/>

IV At the time of writing no beneficial ownership data was publicly accessible but media reports say that the German government would create a public register: <http://www.rp-online.de/politik/deutschland/geldwaesche-wolfgang-schaeuble-schafft-2017-nationales-transparenzregister-aid-1.6418466>

V There is no single directory of all public officials above a certain level of seniority but details are listed on the various government websites e.g. <https://www.bundesregierung.de/Content/DE/StatistischeSeiten/Breg/element-die-staatsminister.html>

VI <https://www.govdata.de/web/guest/suchen/-/details/bundeshaushalt-2016b>

VII http://www.bundesfinanzministerium.de/Web/DE/Themen/Oeffentliche_Finzen/Bundeshaushalt/Haushalts_und_Vermögensrechnungen_des_Bundes/haushalts_vermoegensrechnungen_des_bundes.html

VIII <http://www.bund.de/Content/DE/Ausschreibungen/Suche/Formular.html?view=processForm&nn=4642046>

IX <https://www.bundestag.de/parlament/praesidium/parteienfinanzierung/fundstellen50000>

X <https://www.bundestag.de/parlament/plenum/abstimmung/abstimmung>

XI <http://www.grundbuch-portal.de/stufe1-ni.htm>



COUNTRY OVERVIEW

OPEN DATA AND CORRUPTION IN GERMANY



Corruption

Germany performs well across various corruption rankings and indices. The country is ranked tenth on Transparency International's 2015 Corruption Perception Index.⁵ In addition, bribe rates are considerably lower than in most other countries. Only 3 per cent of respondents surveyed in the 2016 Global Corruption Barometer reported having to pay a bribe for a key public service.⁶

The German government has been generally supportive of an anti-corruption environment. A robust regulatory framework is in place that allows authorities to effectively detect, prevent and tackle corruption in all its manifestations. The country's anti-corruption agenda builds on and is informed by international and European Union conventions and policies that have been ratified into German law, such as the United Nations Convention against Corruption (UNCAC), though it was not ratified until 2014, 11 years after Germany had signed the Convention.⁷

The country's institutional anti-corruption framework does not feature a single anti-corruption agency with a broad mandate. Instead, individual German federal states have created specialised prosecution units (Schwerpunktstaatsanwaltschaften) to strengthen prosecution and law enforcement capacities.⁸

⁵ See www.transparency.org/cpi2015#results-table.

⁶ See https://files.transparency.org/content/download/2039/13168/file/2016_GCB_ECA_EN.pdf.

⁷ See www.transparency.org/news/pressrelease/11_years_after_signing_german_parliament_approves_global_corruption_agreement.

⁸ Transparency International Germany, *Nationaler Integritätsbericht Deutschland* (Berlin: Transparency International Germany, 2012), p. 113, [www.transparency.de/fileadmin/pdfs/Wissen/Publikationen/epaper-Nationaler_Integritaetsbe%20\(1\)/page117.html](http://www.transparency.de/fileadmin/pdfs/Wissen/Publikationen/epaper-Nationaler_Integritaetsbe%20(1)/page117.html).

It is common for incoming governments to agree on a set of specific anti-corruption policies and measures as part of their coalition agreements. The current administration, for example, has committed to consider strengthening the protection of whistleblowers in the private sector.⁹

Various government bodies at the national and state levels publish anti-corruption monitoring and assessment reports.¹⁰ For instance, the Ministry of the Interior's annual report on corruption prevention in the public administration¹¹ provides information on government agencies that underwent risk assessments and reports on investigations into corruption cases. The report also looks into the effectiveness of individual anti-corruption measures and assesses the extent to which they have been implemented in different agencies, such as the rotation of staff in positions with a high corruption risk.

The 2004 Guidelines on Prevention of Corruption in the Public Administration¹² provide guidance on such measures to address corruption within the national public administration through corruption risk assessments, anti-corruption training workshops and principles for transparent public procurement.

To close gaps in Germany's regulatory anti-corruption framework, a series of laws have been passed in recent years, including the revision of legal clauses on vote-buying in connection with public officials,¹³ as required by the UNCAC,¹⁴ as well as new regulation to address bribery in the healthcare sector.¹⁵ At the 2016 Anti-Corruption Summit in London, the German government announced a number of specific commitments, including the creation of a beneficial ownership register under the German Money Laundering Act and in line with the 4th EU Anti-Money Laundering Directive.¹⁶

9 Transparency International Germany, 'Halbzeitbilanz der Bundesregierung: Maßnahmen zur Korruptionsbekämpfung nur teilweise umgesetzt', 9 December 2015, www.transparency.de/15-12-09_Halbzeitbilanz-der-Bu.2733.0.html?&contUId=6416.

10 See www.transparency.de/Verwaltung.63.0.html.

11 Federal Ministry of the Interior, *Korruptionsprävention in der Bundesverwaltung: Jahresbericht 2014* (Berlin: Federal Ministry of the Interior, 2015), www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsoring/jahresbericht-2014-korruptionspraevention.pdf.

12 Federal Ministry of the Interior, *Richtlinie der Bundesregierung zur Korruptionsprävention in der Bundesverwaltung* (Berlin: Federal Ministry of the Interior, 2001), www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsoring/Richtlinie_zur_Korruptionspraevention_in_der_Bundesverwaltung.pdf.

13 See www.transparency.de/Bestechung-von-Mandatstraegern.734.0.html.

14 See www.transparency.org/news/pressrelease/11_years_after_signing_german_parliament_approves_global_corruption_agreement.

15 See <http://dipbt.bundestag.de/extrakt/ba/WP18/685/68571.html>.

16 HM Government (UK), 'Germany Country Commitments: Anti-Corruption Summit – London 2016', www.gov.uk/government/uploads/system/uploads/attachment_data/file/522833/Germany.pdf.

Open data

When it comes to open data, international rankings such as the Open Data Barometer (ODB) show that Germany has not been able to keep pace with open data pioneers such as the United States, France and the United Kingdom. Ranked 11th on the 2015 ODB,¹⁷ Germany does have an active open data initiative at the national level, but there is no specific open data regulation that requires government agencies to proactively publish data.

A number of laws, strategies and international commitments have shaped the country's open data agenda. The G8 Open Data Charter,¹⁸ the European Commission's Digital Agenda,¹⁹ the national e-government strategy,²⁰ various government initiatives, such as the Networked and Transparent Administration Initiative,²¹ and Germany's own Digital Agenda²² have guided the government's efforts in connection with open data in recent years.

Thus far, open data has seen limited support from the highest level of government. Experts have criticised the lack of a comprehensive open data strategy, the generally slow implementation of e-government solutions as a foundation for open data and a culture in public administration that favours secrecy over openness and innovation.²³ Implementation of G8 Open Data Charter commitments has been slow,²⁴ and Germany has not yet adopted the International Open Data Charter.²⁵

Open data has attracted greater high-level political attention recently with the announcement of the government's decision to join the OGP²⁶ and the drafting of an open data law to be enacted before the general election that will take place in the autumn of 2017. Resources allocated to advance open data in Germany remain limited, however, with less than two full-time positions dedicated to open data in the Ministry of the Interior²⁷ and a relatively small budget²⁸ allocated to the operations of the national open data portal.

Apart from a few isolated initiatives, little work has been done in Germany to systematically address corruption through open data. There are some key factors at play that could change this, however. Germany has a robust anti-corruption framework and ambitious plans to strengthen the policy foundations for open data.

The country also has a prominent role on the international stage as a new member of the OGP and as G20 chair, providing fertile ground to realise the full impact of open data for the fight against corruption.

17 See http://opendatabarometer.org/data-explorer/?_year=2014&indicator=ODB&open=DEU.

18 See www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex.

19 European Commission, 'The EU Explained: Digital Agenda for Europe' (Brussels: European Commission, 2014), https://europa.eu/european-union/file/1497/download_en?token=KzfSz-CR.

20 See www.bmi.bund.de/EN/Topics/IT-Internet-Policy/E-government/e-government_node.html.

21 See www.verwaltung-innovativ.de.

22 Federal Government, Digital Agenda 2014–2017 (Berlin: Federal Government, 2014), www.digitale-agenda.de/Content/DE/_Anlagen/2014/08/2014-08-20-digitale-agenda-engl.pdf?__blob=publicationFile&v=6.

23 T. Knobloch and J. Manske, Das Datenzeitalter gestalten: Offene Verwaltungsdaten sind der Schlüssel (Berlin: Stiftung Neue Verantwortung), www.stiftung-nv.de/sites/default/files/snv_datenzeitalter-gestalten_7.7.2016.pdf.

24 Stiftung Neue Verantwortung, Impulse: Offene Daten ohne Deutschland: Der G7-Gipfel und der steinige Weg zu mehr Transparenz (Berlin: Stiftung Neue Verantwortung, 2015), www.stiftung-nv.de/sites/default/files/impulse_g8-open_data_charta_1.pdf.

25 See <http://opendatacharter.net>.

26 See www.bundesregierung.de/Content/DE/Pressemitteilungen/BPA/2016/04/2016-04-07-deutsch-franz%C3%B6sischer-ministerrat.html.

27 See <http://dipbt.bundestag.de/dip21/btd/18/074/1807485.pdf>.

28 See <https://fragdenstaat.de/anfrage/kosten-govdata/#nachricht-37253>.



OPEN DATA PRINCIPLES

IMPLEMENTATION OF THE G20 PRINCIPLES



Along with the other G20 countries, in 2015 Germany adopted the G20 Anti-Corruption Open Data Principles, which recognised open data as a crucial tool to enable a culture of transparency, accountability and access to information and to more effectively prevent corruption. The G20 Principles are based on the International Open Data Charter,²⁹ which Germany has not yet adopted.

The following assessment provides an overview of country progress on setting out policies that support the commitments contained within each of the six G20 Principles. A common methodology³⁰ has been used that looks at the different elements contained within each of the principles.

Principle 1: Open Data by Default



The 'open by default' principle commits each G20 government to proactively disclose government data unless certain exceptions apply. The principle goes beyond transparency, as it requires the proactive provision of reusable data from its source in order to increase access in equal terms for everyone while at the same time assuring the necessary protection of personal data in accordance with existing laws and regulations.

²⁹ See <http://opendatacharter.net>.

³⁰ The methodology was developed by the Web Foundation and Transparency International: see <https://www.transparency.org/whatwedo/publication/7666>

³¹ See <https://www.govdata.de>.

Existing open data policies

There is currently no law in place at the national level in Germany that establishes a general right to access and use government data by means of an explicit ‘open by default’ approach.

Germany's Freedom of Information Act (FOIA) gives citizens the right to request government information but it does not go beyond reactive disclosure, nor does it require government agencies to provide documents and data in machine-readable formats.

While the FOIA does not contain a clause on proactive disclosure of data and therefore does not follow a general open by default approach, the government does publish data on a central open data portal. The GovData portal³¹ started its regular operation in 2015 after a two-year trial phase, with a number of national ministries as well as ten federal states³² providing access to a growing number of datasets through a single platform.

As part of the G8 Open Data Charter implementation, Germany committed to publish at least two datasets ‘from each supreme, higher and intermediate federal authority’³³ on GovData.

The government also appointed open data points of contact³⁴ at every department and initiated targeted engagement with users from civil society, business, media and academia. All these measures are monitored and documented by the government on a publicly accessible website.³⁵

In September 2016 the chancellor, Angela Merkel, publicly announced³⁶ that the government would pass a law to provide a strong legal basis for the proactive disclosure of government data. Open data watchdog organisations such as the Open Knowledge Foundation Germany have called for the inclusion of the ‘open by default’ principle and limited exceptions to the principle.³⁷ It remains to be seen how far this new law enshrines the ‘open by default’ principle in government data disclosure regulation and the extent to which it will be implemented in practice.

Exceptions to the ‘open by default’ principle

Germany does not follow the ‘open by default’ principle in its open data policy and practice, and exceptions have therefore not been formulated by the government.

The exemptions included in the German FOIA could serve as a proxy for a possible future ‘open by default’ policy. The FOIA exemptions include internal and external security interests, public safety, third-party confidential information and the protection of personal data and intellectual property rights.³⁸

Open data practice

Despite the lack of a legal requirement for government to proactively disclose data, an increasing number of agencies are providing access to the data they hold.

Although implementation of the G8 Charter has been slow,³⁹ and aiming for at least two datasets per agency as part of the G8 Charter implementation was not particularly ambitious, it seems that the government has managed to translate commitments into practice.⁴⁰ The overall number of around 17,000 datasets⁴¹ published on the open data portal also indicates a certain level of commitment to practice open data publication, though the quantity of the data does not speak to its usefulness and quality.

ICT infrastructure to support the publication of and access to government data

Germany has in place the required information and communication technologies (ICT) infrastructure and systems for effective data management and sharing, though some work is required to make data publication management consistent across the various government agencies at the national level and between agencies from different levels of government.⁴²

32 See <https://www.govdata.de/web/guest/datenbereitsteller>.

33 Federal Ministry of the Interior, *The Federal Government's National Action Plan to Implement the G8 Open Data Charter* (Berlin: Federal Ministry of the Interior, 2014), www.verwaltung-innovativ.de/SharedDocs/Publikationen/Pressemitteilungen/nationaler_aktionsplan_open_data_englisch.pdf?__blob=publicationFile&v=4.

34 See www.verwaltung-innovativ.de/SharedDocs/Publikationen/eGovernment/open_data_ansprechpartner.pdf?__blob=publicationFile&v=7.

35 See www.verwaltung-innovativ.de/DE/E_Government/Open_Government/Monitoring/Monitoring_node.html.

36 See <https://www.bundesregierung.de/Content/DE/Rede/2016/09/2016-09-07-merkel-bundestag.html>.

37 See <https://okfn.de/blog/2016/10/opendata-gesetz>.

38 See <https://www.gesetze-im-internet.de/ifg>.

39 Stiftung Neue Verantwortung (2015).

40 See www.verwaltung-innovativ.de/SharedDocs/Kurzmeldungen/DE/2015/monitoring_uebersicht.html?nn=5849400.

41 See www.govdata.de/web/guest/daten.

42 Open Data Barometer, 3rd edition, qualitative data on Germany, <http://opendatabarometer.org>.

Germany is ranked 15th in the United Nations' E-Government Development Index.⁴³ The basic infrastructure for effective data management and publication exists and the government makes reference to data transparency in its national e-government strategy as an important element in Germany's plans to advance e-government in the country.⁴⁴

Open data for anti-corruption skills at the national level

There is no evidence of programmes, tools and guidelines to build internal capacity, improve data literacy and make government representatives aware of the benefits of open data in general⁴⁵ and the role of open data in the fight against corruption specifically.

Some specialised courses exist for businesses, civil society organisations and journalists, including those offered by Fraunhofer FOKUS,⁴⁶ the Open Data Incubator programme,⁴⁷ Datenschule,⁴⁸ Correlaid⁴⁹ and Data Science for Social Good Berlin.⁵⁰ Beyond data publication guidelines, however, there is no evidence of comprehensive open data trainings for national government officials with a particular focus on the use of open data to counter corruption. At the same time public sector employees do receive regular anti-corruption training and are provided with anti-corruption e-learning tools.⁵¹

Subnational open data awareness programmes

There are no awareness or training programmes promoted by the national government with a specific focus on making subnational governments supportive of the national anti-corruption environment.

In Germany's federal system it is the federal states, in this case through their police forces and the specialised prosecution units, that are responsible for the prosecution and prevention of corruption, and the national government is therefore not involved in

subnational awareness raising and training.⁵²

Data protection laws

Germany has a robust regulatory framework in place for the protection of personal data.

Unlike information access and government transparency more broadly, Germany has a very strong tradition when it comes to data privacy and protection of personal data. The Federal Republic was one of the first countries to introduce a data protection law, in 1977, following the passage of a similar law in the federal state of Hesse, which has been referred to as the world's first data protection law.⁵³

The current legal framework ensures the protection of personal data and personally identifiable information. Researchers have called for adjustments and a revision of the legal regime, however,⁵⁴ given the rapid growth of and changes in the availability and potential uses of new forms of digital data. The German government should assess the extent to which new regulation, as well as technical measures such as aggregation and data anonymisation, is required to allow for the greatest possible transparency through open data while at the same time protecting personal privacy, the experts suggest.

Right to information legislation

A functioning right to information law exists in Germany. Freedom of information experts have voiced concerns over the far-reaching exemptions and the implementation practices of some agencies, however.

The law was enacted in 2005 and regulates access by the general public to information held by the national government. Most requests are considered simple requests for information, which is provided at no or minimal cost. The maximum amount to be charged by government agencies is limited to €500. Individuals making requests can appeal denials through a complaint to the Federal Commissioner for Data

43 See <https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/65-Germany>.

44 Federal Ministry of the Interior, *Open Government Data Deutschland: Eine Studie zu Open Government im Auftrag des Bundesministerium des Innern* (Berlin: Federal Ministry of the Interior, 2012), www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/ModerneVerwaltung/opengovernment.pdf?__blob=publicationFile.

45 Knobloch and Manske (2016).

46 See www.fokus.fraunhofer.de.

47 See <https://opendataincubator.eu>.

48 See <https://datenschule.de>.

49 See <http://correlaid.org>.

50 See <http://dssg-berlin.org>.

51 See http://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_germany.pdf.

52 See www.g20australia.org/sites/default/files/g20_resources/library/foreign_bribery_frameworks_self-assessment_germany.DOCX.

53 See <https://en.wikipedia.org/wiki/Bundesdatenschutzgesetz>.

54 Stiftung Neue Verantwortung, *Offene Daten und der Schutz der Privatsphäre: Anregungen zur systematischen Integration von Datenschutzprinzipien in Open Data* (Berlin: Stiftung Neue Verantwortung, 2016), www.stiftung-nv.de/sites/default/files/impulse_julia_manske_offene_daten_privatsphare.pdf.

Protection and Freedom of Information.⁵⁵ Appeals can also be made to the courts.

Some agencies have been reluctant to provide access to sensitive information. For instance, the Ministry of the Interior required a single request filed by journalists to be split into such a large number of individual requests that the total cost amounted to €15,000.⁵⁶ In another case, large sections of documents released in response to a freedom of information request were blacked out with reference to the exceptions contained in the FOIA regarding privacy and the protection of confidential information.⁵⁷

Legal framework

Apart from those already mentioned, there are several laws that govern the publication and reuse of government data in the country,⁵⁸ including the E-Government Act,⁵⁹ the Copyright Act,⁶⁰ the Act on the Reuse of Public Sector Information⁶¹ and the Environmental Information Act⁶², many of which have been criticized by open data activists as legal barriers to easy access and re-use of government data.⁶³

Principle 2: Timely and Comprehensive Data



Principle 2 of the G20 Principles commits a government to identify and publish key high-quality and open datasets. Publication of the data should be informed by actual demand and identified through ongoing public consultation. The principle also encourages a government to apply a consistent dataset management strategy according to the open data principles. Such data openness, it is suggested, will allow a better understanding of government processes and policy outcomes in as close to real time as possible.

Online availability of key anti-corruption datasets

Germany makes seven out of the ten datasets assessed as part of this research available online in some form, and therefore partially meets the requirement of providing access to key anti-corruption datasets (see dataset scoring table above for details).

While data from company and land registers, as well as budget, spending and public procurement data, along with data on political financing, voting records and public officials, are available online in some form, the same is not the case for data on political lobbying and beneficial ownership.

The creation of a mandatory lobbying register did not receive enough support in a recent vote in the national parliament,⁶⁴ despite repeated calls by civil society organisations such as Transparency International⁶⁵ for the establishment of just such a database for greater transparency in the legislative branch.

55 See www.bfdi.bund.de/DE/INFREIHEIT/INFREIHEIT_node.html?__lang=en.

56 See <https://netzpolitik.org/2016/erfolg-fuer-informationsfreiheit-innenministerium-muss-15-000-euro-an-antragssteller-zurueckgeben>.

57 See <http://blog.fragdenstaat.de/2016/tagderinformationsfreiheit>.

58 See Federal Ministry of the Interior (2012) for a more in-depth analysis of the legal framework.

59 See www.gesetze-im-internet.de/englisch_egovg/englisch_egovg.pdf.

60 See www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.

61 See www.gesetze-im-internet.de/iwg/BJNR291300006.html.

62 See www.gesetze-im-internet.de/bundesrecht/uiig_2005/gesamt.pdf.

63 See <https://okfn.de/blog/2016/10/opendata-gesetz>.

64 See www.bundestag.de/dokumente/textarchiv/2016/kw23-de-lobbyistenregister/426446.

65 Transparency International Germany, *Lobbying in Germany* (Berlin: Transparency International Germany, 2014), http://media.transparency.org/eurlobby/2015_LobbyingGermany_EN.pdf.

Although stronger regulation of political lobbying is unlikely to be passed by the current governing coalition, a public beneficial ownership register to expose and prevent illicit money flows seems to be high on the government's agenda, as recently reported by German media.⁶⁶

Timeliness of available key anti-corruption datasets

Those datasets that are available online in some form are updated on a regular basis, which, depending on the nature of the dataset, can be daily (as is the case with company register data) or yearly (in the case of government budget data), or whenever the situation requires an update.

For instance, data on government officials is updated when a public official is appointed to a new role in government, and the same is true for voting data, which is updated when a new vote is held in parliament. Since land ownership data can be accessed only by people with a 'legitimate interest',⁶⁷ the timeliness of the data cannot be assessed.⁶⁸ For all the other online available datasets, Germany meets the requirement.

Granularity of the data

Out of the seven datasets available online, five contain granular data with little to no aggregation, namely data on companies, budget, public officials, procurement and voting.

The voting records, for instance, are of high granularity, as the data contains individual votes of MPs. In the case of political financing the data is sufficiently granular, as it provides all the necessary information, including the donor, receiver, amount and date of donation. Only donations above €50,000 are made available to the public, however.

Feedback loops

Germany partially meets the requirement of allowing users to provide feedback on the published data, as this is ensured only for data that is available on the central open data portal GovData, where users can create accounts to engage with the data providers.

There is no formal process for user feedback for data published on other websites, though approaching the respective agency's open data focal point person⁶⁹ might be the most promising way of engagement.

Data management

Germany fulfils the requirement of consistent data management practices, though some work is required to improve the consistency of metadata used across government agencies.

With the Datenlizenz Deutschland 2.0⁷⁰ a single open data licence is in place that ensures interoperability between the datasets of different providers. The government also provides a list of software specifications and data formats to be used throughout the federal public administration.⁷¹ A metadata framework for all data published by government as open data is currently being developed.⁷²

66 See www.rp-online.de/politik/deutschland/geldwaesche-wolfgang-schaeuble-schafft-2017-nationales-transparenzregister-aid-1.6418466.

67 See www.grundbuch-portal.de/allg-infos.htm.

68 This finding applies to all the following data scoring criteria given the restricted access.

69 See www.verwaltung-innovativ.de/SharedDocs/Publikationen/eGovernment/open_data_ansprechpartner.pdf?__blob=publicationFile&v=7.

70 See www.govdata.de/lizenzen.

71 See www.cio.bund.de/Web/DE/Architekturen-und-Standards/architekturen_standards_node.html;jsessionid=FC2CD87BF518EC5FE1EC73086B1CD954.2_cid324.

72 See www.govdata.de/web/guest/metadatenschema.

Principle 3: Accessible and Usable Data



Principle 3 seeks to address the challenges that users face in locating, accessing and using data. It commits G20 governments to increase data accessibility and usability by lowering unnecessary entry barriers, and by publishing data on single-window solutions, such as a central open data portal. Principle 3 also requires governments to promote open data initiatives to raise awareness and increase data literacy and capacity-building among potential data users.

Open data catalogue

Germany does not meet the requirement of publishing on a central portal all the data relevant to anti-corruption.

The data assessed as part of this research is hosted on different websites, portals and platforms of different levels of government and across various government agencies. Although a central open data portal exists it does not contain all anti-corruption-related datasets, nor is there a specific database for such data. Likewise, there is no catalogue for the documentation and sharing of corruption cases.

Legal requirements for the publication of anti-corruption data by companies

The German government does not require companies to release specific data related to anti-corruption, apart from what companies publish as part of their Sustainability Reports.⁷³

This might change, however, with new legislation coming into force in 2017 that will require large corporate enterprises, credit institutions and insurance companies to report on anti-corruption efforts in addition to environmental, social and human rights issues.⁷⁴

Moreover, German media recently reported that a law was being drafted by the Ministry of Finance that would establish a beneficial ownership register by the end of 2017⁷⁵ in line with the 4th EU Anti-Money Laundering Directive. While the commitment made at the Anti-Corruption Summit in London states that the register will be accessible only to 'competent authorities, obliged entities when performing customer due diligence measures, and persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences such as corruption, tax crimes and fraud'⁷⁶, the media report says that, in principle, the register should be accessible to the general public.

Machine-readable, open and multiple formats

The German government does not comply with the requirement to release anti-corruption data in open formats to ensure that it is available to the widest range of users.

This research shows that the majority of the data assessed is not available in machine-readable, open and multiple formats. Of the seven datasets available online, only the budget data meets this requirement and can also be downloaded in various formats (Excel, CSV, XML) and processed using non-proprietary software.

Access costs and licensing

The government is also failing to release data free of charge under an open and unrestricted licence.

Only the budget data can be classified as fully open. Key anti-corruption data, including data on public procurement, companies and political financing, are either released only for a fee or lack clear terms stating that anyone has permission to reuse the data without restrictions on the nature of the reuse. Moreover, individual requests for information can also be charged by government agencies, up to €500.

⁷³ See <https://de.wikipedia.org/wiki/Nachhaltigkeitsbericht>.

⁷⁴ More information on the EU directive can be found (in German) at www.deutscher-nachhaltigkeitskodex.de/de/dnk/eu-berichtspflicht.html. Additional information on how companies are doing and are assessed according to those sustainability reports can be found (in German) in Transparency International Germany, *Nachhaltigkeitsberichte Deutscher Grossunternehmen: Untersuchung der Übereinstimmung mit den GRI-Richtlinien im Bereich Antikorruption* (Berlin: Transparency International Germany, 2014), www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/Nachhaltigkeitsberichte_Grossunternehmen_2014.pdf; see also www.transparency.de/12-11-28-GRI-Bericht.2192.0.html.

⁷⁵ See www.rp-online.de/politik/deutschland/geldwaesche-wolfgang-schaeuble-schafft-2017-nationales-transparenzregister-aid-1.6418466.

⁷⁶ 'Germany Country Commitments: Anti-Corruption Summit – London 2016'.

Registration to access data

With regard to the general accessibility of the data, Germany scores highly on the data assessed.

Of the data that is available online in some form, only land and company registers require a mandatory registration, for which users must set up an account and pay access fees.

Open data awareness, data literacy and capacity-building

The German government has done little to raise awareness of open data and to build capacity for the use of data by civil society and the private sector through data literacy programmes.

Most government resources have gone into getting the open data portal up and running and on strengthening coordination between different government agencies on open data publication, both at the national level and between the national government and the federal states.

Major government programmes to support open data reuse have been launched only very recently by the government, in the form of incubation and training programmes: funded by the Ministry for Education and Research, the Prototype Fund⁷⁷ supports data literacy, data security and software infrastructure projects, while mFund,⁷⁸ established by the Ministry of Transport and Digital Infrastructure, helps German businesses use mobility data to develop new data-driven products and services in the transport sector.

Principle 4: Comparable and Interoperable Data



Enabling the comparability of datasets and allowing for the traceability of data from numerous anti-corruption-related sources increases the possibility of detecting patterns, trends or anomalies that could be used to expose or counter corrupt practice.

This principle commits governments to implementing open standards, and ensures that open datasets include consistent core metadata as well as adequate descriptions and documentation. It also specifies that governments will engage and collaborate with existing anti-corruption standards bodies, identify gaps and encourage interoperability.

Open standards

Only for the budget data does Germany implement open standards by making the data available under open formats such as CSV and XML. None of the other datasets apply open standards for the data structure, which can make comparing and tracing data from different sectors more difficult.

Metadata

The German government does not publish consistent metadata for the anti-corruption-related datasets except for budget data, for which basic metadata including descriptive title, data source and publication date exists. None of the other key anti-corruption datasets, such as company register, public procurement or land register data, contain adequate metadata descriptions.

⁷⁷ See <https://prototypefund.de/en/about>.

⁷⁸ See www.bmvi.de/DE/Themen/Digitales/mFund/Foerderung/foerderung.html.

Documentation

Clear accompanying documentation for the published datasets with sufficient information to understand the source and analytical limitations of the data is **not common**, and available only for voting records data from our anti-corruption dataset sample.

Data and transparency standards

Germany is engaging with a number of data and transparency initiatives and has shown increasing commitment in recent years to join and contribute to existing global partnerships and initiatives.

In February 2016 Germany became a member of the Extractives Industries Transparency Initiative (EITI) to strengthen transparency in its natural resource sector.⁷⁹ In December 2016 Germany joined⁸⁰ the Open Government Partnership,⁸¹ a global multi-stakeholder initiative to promote transparency, empower citizens and tackle corruption.

With regard to data standards, adoption and implementation of the technical reporting standard of the International Aid Transparency Initiative (IATI) have been on the government's agenda for the past three years, and German Official Development Assistance data is published on the IATI platform.⁸² Germany has not yet committed to the implementation of the Open Contracting Data Standard,⁸³ though the Federal Ministry for Economic Cooperation and Development is one of the founding members⁸⁴ of the Open Contracting Partnership.⁸⁵ Moreover, Germany has not adopted to date the International Open Data Charter.⁸⁶

Principle 5: Data for Improved Governance and Citizen Engagement



Open data empowers citizens and enables them to hold government institutions to account.

Open data can also help citizens to understand, influence and participate directly in decision-making processes and in the development of public policies in support of public sector integrity. This can be an important process in building trust and strengthening collaboration between government and all sectors of society.

This principle commits governments to promote the use of online collaboration to engage with anti-corruption organisations, and to equip government officials so that they may use open data effectively. It stipulates that governments will improve mechanisms and procedures, and report regularly to the public, in order to strengthen ties between citizens and the public sector.

Data needs

There is evidence to support the view that the German government promotes the use of digital participation platforms to determine data needs, though such engagement is usually not targeted at anti-corruption specifically.

For instance, as part of the development of the national open data portal, in 2013 several consultations, both online and offline, were held to better understand potential user needs.⁸⁷ In 2015, in order to address data needs as part of the G8 Open Data Charter implementation, the government engaged with interested stakeholders in workshops on themes such as energy and climate, transport and mobility, and transparency and participation.⁸⁸

79 See <https://www.d-eiti.de/en>.

80 See www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2016/12/bekanntgabe-der-teilnahme-an-open-government-partnership.html.

81 See www.opengovpartnership.org.

82 See www.bmz.de/en/what_we_do/approaches/transparency-for-greater-effectiveness/publication-in-accordance-with-the-IATI-standard/index.html.

83 See <http://standard.open-contracting.org/latest/en>.

84 See http://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_germany.pdf.

85 See www.open-contracting.org/about.

86 See <http://opendatacharter.net>.

87 See <https://okfn.de/en/blog/2013/10/govdata-in-der-evaluationsphase>.

88 See www.open-data-aktionsplan.de/en/consultation/346?page=1.

Moreover, a regular monthly call has been initiated between government and the wider open data community,⁸⁹ and the open data portal allows users to ask for specific datasets through an online form.⁹⁰

Toolkits

Apart from general data publication guidelines,⁹¹ there is no evidence of the German government providing tools, success stories or other guidelines designed to ensure that government officials are capable of using open data as a means to prevent corruption.

Collections of general open data use cases,⁹² tools⁹³ and guidelines⁹⁴ have been created by non-government actors, but these resources are not specifically related to anti-corruption.

Research

There is no evidence that Germany has invested in research that specifically looks into open data as a tool to prevent corruption, and therefore it does not meet the requirement. Nevertheless, a range of open-data-related reports have been published in recent years,⁹⁵ some of which were government-funded.

Reporting

Apart from a general monitoring of progress of the government's open data initiative,⁹⁶ no publications have been produced or funded by government to regularly report to the public on the progress and impact of open data as anti-corruption instrument. Germany does not meet this requirement.

Interaction

There have been instances of limited one-off engagement, for instance in the form of competitions, such as the Apps for Germany challenge.⁹⁷ Nevertheless, there is no evidence of comprehensive mechanisms and procedures being put in place to encourage the interaction, use and application of open data by citizens and the public sector.

In the past year, however, the German government has endeavoured to strengthen a culture of innovation with open data through dedicated funding for application development programmes, such as the previously mentioned mFund and Prototype Fund initiatives.

Civic engagement with anti-corruption open data

The limited government investment in interaction and use is partly offset by an active German civil society working in the broader governance and open government space.⁹⁸

Initiatives such as Frag den Staat⁹⁹, Abgeordnetenwatch¹⁰⁰ and Transparenzklagen¹⁰¹ support citizens in their engagement with government in accessing and using information, while the Code for Germany network of labs in 25 cities provide a platform for the creation of useful applications¹⁰² for citizens. In addition, organisations such as Transparency International Germany¹⁰³ seek to address corruption across different sectors. Initiatives in which citizens play an active role in strengthening open data use in the fight against corruption are rare, however.

89 See <https://pad.okfn.org/p/public-community-partnership>.

90 See www.govdata.de/Kontakt.

91 See www.govdata.de/web/guest/datenbereinsteller.

92 See, for example, <http://datenwirken.de>.

93 See, for example, <http://codefor.de/en>.

94 See, for example, <https://oparl.org>.

95 Examples include B. Seibel, *Open Data in der Praxis: Bereitsteller und Anwender offener Daten in Berlin* (Berlin: Technologiestiftung Berlin, 2016), www.technologiestiftung-berlin.de/fileadmin/daten/media/publikationen/160128_TSB_OpenDataBerlin.pdf; Federal Ministry of the Interior (2012); and M. M. Dapp, D. Balta, W. Palmeshofer and H. Krcmar, *Open Data: The Benefits: Das volkswirtschaftliche Potential für Deutschland* (Sankt Augustin: Konrad-Adenauer-Stiftung, 2016), www.kas.de/wf/de/33.44906.

96 See www.verwaltung-innovativ.de/DE/E_Government/Open_Government/Monitoring/Monitoring_node.html.

97 See http://kommunalwiki.boell.de/index.php/Apps_f%C3%BCr_Deutschland.

98 See, for example, the civil society organisations forming part of the German OGP Working Group: <https://opengovpartnership.de/arbeitskreis>.

99 See <https://fragdenstaat.de>.

100 See www.abgeordnetenwatch.de.

101 See <https://transparenzklagen.de>.

102 See <http://codefor.de/en/projekte>.

103 See www.transparency.de.

Principle 6: Data for Inclusive Development and Innovation



Principle 6 of the G20 Principles commits governments to support other G20 open data work and encourage civil society, the private sector and multilateral institutions to open up data. It specifies that governments will engage in new partnerships with anti-corruption stakeholders and share technical expertise and experience with other governments and organisations.

Government's anti-corruption agenda

The German government partially meets its obligation to promote the adoption of open data in other principles and activities supported by the G20's Anti-Corruption Working Group.

At the Anti-Corruption Summit in London, the German government announced its support to establish the International Anti-Corruption Coordination Centre in conjunction with other countries.¹⁰⁴ This, along with the planned creation of a beneficial ownership register, could strengthen Germany's role on the international anti-corruption stage.

Moreover, while Germany has been slow in implementing the actions outlined in the G8 Open Data Charter,¹⁰⁵ joining the Open Government Partnership at the OGP summit in December 2016 in Paris could help advance the country's open data agenda and strengthen open data for anti-corruption in the country, as well as in the G20, which Germany will be chairing in 2017.

Anti-corruption data ecosystem

There is no indication of the German government encouraging citizens, civil society, private sector organisations or multilateral institutions to open up the data created and collected by them in order to move towards a richer open data ecosystem, with multiple sources, to strengthen transparency and integrity.

As part of the initiative Transparente Zivilgesellschaft (Transparent Civil Society),¹⁰⁶ launched by Transparency International Germany, many civic organisations publish basic information on their work, including sources of funding and staffing. Media outlets such as Correctiv¹⁰⁷ release the data they collect and use in their reporting as open data (see the case study below for details). There is no evidence of government actively encouraging data sharing, however.

Partnerships

There is some evidence of the German government partnering with relevant stakeholders to support the release and use of open data – though such engagement is not specifically focused on anti-corruption.

For instance, a multi-stakeholder group that includes civil society and private sector representatives was set up to drive the implementation of Germany's EITI commitments.¹⁰⁸ Similarly, as part of the government's implementation of the G8 Open Data Charter, it engaged with interested stakeholders to determine the data needs of potential users.¹⁰⁹

104 'Germany Country Commitments: Anti-Corruption Summit – London 2016'.

105 Stiftung Neue Verantwortung (2015).

106 See www.transparency.de/Zehn-Informationen.1613.0.html.

107 See <https://correctiv.org>.

108 See www.d-eiti.de/en/d-eiti-implementing-the-eiti-standard/multi-stakeholder-group.

109 See www.open-data-aktionsplan.de.

Networks

Germany partially meets the requirement of sharing anti-corruption technical expertise and experience with other governments and international organisations, but it is not clear if this also includes open data as a means to tackle corruption.

Launched in 2013, the Alliance for Integrity¹¹⁰ is a multi-stakeholder initiative that includes international organisations, businesses and civil society groups with the aim of promoting transparency and integrity in the business sector by fostering dialogue between the public and private sectors. The German government is also committed to supporting the establishment of a joint International Anti-Corruption Coordination Centre, together with other countries,¹¹¹ and could support the work of the Open Government Partnership Anti-Corruption Working Group¹¹² as a newly joined member country.

Tools

There is no evidence that government is creating or supporting programmes and initiatives specifically aimed at the development of tools based on open data that could contribute to the fight against corruption.

Although government-funded programmes to support open data reuse and the development of applications exist, such as the mFund¹¹³ and Prototype Fund,¹¹⁴ to date there has been no promotion of government open data initiatives to fight corruption, such as visualisations, applications, application programming interfaces (APIs) and data mashups.

¹¹⁰ See www.allianceforintegrity.org/en.

¹¹¹ 'Germany Country Commitments: Anti-Corruption Summit – London 2016'.

¹¹² See www.opengovpartnership.org/node/9232.

¹¹³ See www.bmvi.de/SharedDocs/EN/PressRelease/2016/112-dobrindt-kicks-off-mfund.html?nn=187654.

¹¹⁴ See <https://prototypefund.de/en/about>.

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CASE STUDY: GERMANY

Shining a light on the German healthcare system

IN APRIL 2016 the national parliament passed legislation to strengthen anti-corruption measures in Germany's healthcare system. The Act on Fighting Corruption in the Healthcare Sector (Gesetz zur Bekämpfung von Korruption im Gesundheitswesen)¹¹⁵ makes both active and passive bribery of healthcare professionals a criminal offence. The new law does not require the disclosure of fees and allowances paid by pharmaceutical companies to medical professionals to conduct or participate in presentations, trainings or studies, however. Unlike in the United States, for example, where the public disclosure of such payments is mandatory by law and access provided to granular data in the form of a publicly accessible database,¹¹⁶ there is no such legal requirement in Germany.

In June 2016, for the first time ever and on a voluntary basis, 54 pharmaceutical companies disclosed payments made to doctors and hospitals in Germany. Of the 71,000 individuals and institutions on the receiving end a third agreed to publicly share details of these payments. Following the release of the data, journalists at two German media outlets, Correctiv¹¹⁷ and Spiegel Online,¹¹⁸ jointly developed a searchable database¹¹⁹ that allows the public to access the data through a single platform and to search for detailed information based on names and addresses.

While the transparency initiative¹²⁰ of major players in the healthcare sector is a step in the right direction, as it sheds light on money flows among pharma companies and doctors, this case clearly shows that data-savvy intermediary organisations from civil society and/or the media are key to effective data reuse. The data released by the companies was not made available in machine-readable formats but only in the form of PDF files, and therefore it was not easily accessible and searchable.¹²¹ Such data publication practices prevent the benefits of open data for anti-corruption from spreading.

When data cannot be processed easily by computers, it makes it difficult for people with limited data search and analysis skills to find, compare and extract the information they are interested in. Moreover, it also makes the entire data-scraping, extraction and conversion process extremely time-consuming and prone to errors. Some of the pharma companies even prohibited the reuse of the data, though this didn't keep Correctiv and Spiegel Online from building the database. Additionally, some of the data was highly aggregated, which makes it challenging to derive meaningful insights from it.

What is more, as part of the sector's transparency initiative, doctors had to consent to having their data published. Such optional disclosure means that those medical professionals supporting transparency through the release of their data are under public scrutiny while those who did not consent are not. Without a mandatory disclosure regime, those doctors who had their data published and thereby contributed to greater transparency might think twice next time they are asked to share data publicly given the attention of the media and public they are now exposed to.

Studies have shown the potentially detrimental effects of opaque payments in the healthcare sector.¹²² Nevertheless, although the disclosure initiative of German pharma companies has revealed that significant payments are made to doctors each year, and despite pioneer countries such as the United States having demonstrated the value of public reporting of such payments, the German government currently does not plan legislation similar to the US Physician Payments Sunshine Act¹²³ to make it mandatory for the healthcare sector to publicly disclose such payments.

115 See <http://dipbt.bundestag.de/extrakt/ba/WP18/685/68571.html>.

116 See <https://openpaymentsdata.cms.gov>.

117 See <https://correctiv.org>.

118 See www.spiegel.de.

119 See <https://correctiv.org/recherchen/euros-fuer-aerzte/datenbank>.

120 See www.pharma-transparenz.de.

121 M. Grill, S. Wehrmeyer and C. Elmer, 'Seid umschlungen, Millionen!', Correctiv, 14 July 2016, <https://correctiv.org/recherchen/euros-fuer-aerzte/artikel/2016/07/14/seid-umschlungen-millionen>.

122 Grill, Wehrmeyer and Elmer (14 July 2016).

123 See www.congress.gov/bill/111th-congress/house-bill/3138.

CONCLUSIONS AND RECOMMENDATIONS



With low levels of corruption and the necessary systems and capacities for mainstreaming open data in place, Germany can build on relatively robust existing regulatory and institutional frameworks to advance the country's agenda for using open data to tackle corruption. The government has shown leadership in strengthening access to data for greater transparency and accountability by launching an open data portal and by announcing important steps to consolidate initial successes through legislation and by joining international initiatives. More needs to be done at the intersection of open data and anti-corruption, however, to better exploit the potential of open data in addressing corruption.

In recent years the open data initiative has seen low levels of support from the highest levels of government, coupled with the lack of a comprehensive open data strategy, few resources to advance the open data agenda and gaps in the regulatory framework, with no law requiring agencies to proactively publish data. Recent announcements and actions taken by the government indicate a greater interest and willingness to promote open data for anti-corruption. Joining initiatives such as the Extractives Industry Transparency Initiative and the Open Government Partnership, and the drafting of legislation on open data, as well as tackling issues around beneficial ownership, are promising signs of much-needed reform.

This research shows that access to and the unrestricted use of key anti-corruption datasets remain a challenge. While the intention to build a central register on true ownership of companies – which will be accessible to the public, if recent media reports are correct – is laudable, the government has not taken action to strengthen transparency around political lobbying by setting up a public lobbying register. And, while a number of datasets are accessible online and contain up-to-date and granular data, the assessment of data formats, licensing, standards, metadata and documentation shows that much work needs to be done to allow for the efficient, easy and legally secure reuse of the data.

KEY RECOMMENDATIONS



The implementation of the following recommendations is crucial in order to strengthen Germany's open data for anti-corruption agenda.

1 Make open the true owners behind companies.

Germany should tackle the secrecy around the true ownership of companies and make detailed beneficial ownership data publicly available. Although, according to the German government, a system on beneficial ownership data is in place, it seems to only cover up-to-date basic information on bank accounts and deposits,¹²⁴ but not details as to company ownership. A fully open register with easily accessible and machine-readable data with no access fees would be a major step forward for Germany. The government should make use of its role as G20 chair and as a new member of the Open Government Partnership to encourage and support other countries in tackling corruption through open beneficial ownership data.

2 Strengthen transparency in public procurement and company registration.

Both these datasets score relatively poorly in the assessments as access to and use of the data is cumbersome, given the issues with formats, licensing and metadata. As one of the founding members¹²⁵ of the Open Contracting Partnership,¹²⁶ Germany should take the necessary steps to implement the Open Contracting Data Standard¹²⁷ in order to promote transparency in public procurement. It should also follow countries such as the United Kingdom in making company register data available as machine-readable data at no cost.

3 Provide publicly accessible lobbying register data.

A central lobbying register is not available to the public, which makes it difficult for citizens and watchdog organisations to establish who is seeking to influence political decision-making. As is the case in the United States and other countries, a central publicly accessible register should be created for all lobbyists.

124 'Germany Country Commitments: Anti-Corruption Summit – London 2016'.

125 See http://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_germany.pdf.

126 See www.open-contracting.org/about.

127 See <http://standard.open-contracting.org/latest/en>.

4 Improve data on the financing of political parties.

Further reform of the regulations that govern the publication of the side income of Members of Parliament, as well as of political party financing, should be on the government's agenda so as to strengthen transparency in the legislative branch. Granular reporting of the side income of Members of Parliament should replace the current system, and data on donations to political parties below €50,000 per donor per year should be made available to the public.

5 Adopt the International Open Data Charter and pass a strong open data law that follows the charter's principles.

The most significant impact on Germany's open data agenda, both more generally and with regard to open data for anti-corruption, could come with the passing of the open data law that is currently being drafted by the government. The law should include a strong 'open by default' principle for all government data, with very limited exceptions.

6 Strengthen the Freedom of Information Act by adding proactive disclosure requirements,

as Hamburg and other federal states have done in the form of transparency laws. The government should also consider including a 'release to one, release to all' clause, as advocated by the Open Knowledge Foundation Germany,¹²⁸ which would require government bodies to make documents released in response to FOIA requests available to the public and not only to the individual filing the request.

Time for implementing these important moves is running out for the German government, with the next general election, due in late 2017, just around the corner. Now is the time for Germany to take a giant leap forward and build a solid foundation for the country to become a pioneer in using open data to tackle corruption in the years to come.

¹²⁸ See <https://okfn.de/blog/2016/10/opendata-gesetz>.

Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200
Fax: +49 30 34 70 39 12

ti@transparency.org
www.transparency.org

blog.transparency.org
facebook.com/transparencyinternational
twitter.com/anticorruption