

Best Practice: Transparency Laws as a Tool in Anti-Corruption

REPORT UPDATED: SEPTEMBER 18, 2012

CITY: HAMBURG

POLICY AREAS: PUBLIC INTEGRITY

BEST PRACTICE

Hamburg's Transparency Law, passed in 2012, makes Hamburg the most progressive German state for openness in public contracts. The law stipulates that all contracts over €100,000, grant awards, reports, public plans, Senate resolutions, spatial data, construction or demolition permits, and key corporate data holdings such as urban fringe benefits and annual remuneration of senior management, must be publically accessible in an online repository by October 2014. The law defines the public as having a legal right of immediate access to such information with certain protections in place for personal data. This law will also aid Hamburg's Department of Internal Investigation (DII) in education and prevention against corruption because public agencies are aware that contracts can be scrutinized by the public. Consequently, disagreements over contacts and irregularities appearing in the media may be avoided.

ISSUE

There have been projects in Hamburg where a public/private contract has proven to be opaque. In 2005, Hamburg became one of 16 German states to pass a Freedom of Information Act (FOIA). This process where citizens can request and pay a fee for public information has been costly, time-consuming, and not always successful.

For example, in 2007, construction began on Hamburg's Elbe Philharmonic Hall, an architecturally progressive concert space located on an unused pier in Hamburg's harbor. The cost of the hall was to be shared between the city and a construction corporation. Of the expected €600 million total cost, the city was prepared to contribute €77 million initially. Due to various cost overruns and missed deadlines, by 2012 the city was expected to pay €323 million for the project. The original completion date was 2010; it is now 2014. In February 2012 the city of Hamburg sued the corporation.



Presentation about Hamburg's Transparency Law

GOALS AND OBJECTIVES

In 2011, several civic groups interested in open data and transparency came together to draft a collaborative and more stringent act that superseded the powers of the German Freedom of Information Act (FOIA). This law would create an information register online that would be free of charge and anonymous to access. The goals of the proposed law included:

- Impede corruption and manipulation of contracts
- Reduce waste of tax money
- Reduce bureaucracy
- Strengthen trust of governmental administrators and general public
- Facilitate participation

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IMPLEMENTATION

In December 2011, activists and concerned civic groups including not-for-profit Transparency International Germany, gathered 15,000 signatures calling for greater transparency in government. While gathering these signatures, the groups used a public online forum, or wiki, to collaborate and draft the law, using expert advice from legal experts to improve content, structure, and wording.

Public support for the change was significant, and in a matter of weeks the Hamburg State Parliament passed the “Hamburg Transparency Law.” In June 2012, this legally obligated the state government to publish all public data in an information register online. The law will be effective October 2012, and all documents under the purview of the law must be available in the online registry by October 2014.

COST

Information about the cost of the online domain that will contain public contracts and data is currently unavailable.

RESULTS AND EVALUATION

The public campaign to enact the Hamburg Transparency Law was extremely successful. Normally to initiate a public referendum to vote on a law, organizers must initially submit 10,000 signatures to the government, and within three weeks petition the city council with a new total of 62,000 signatures. Only after these first two steps have been completed, can a law be placed on the ballot to be voted on during the next elections. In this case, the city council took up the matter after the first step and passed the law before a referendum was even necessary.

An evaluation of the actual online register is currently unavailable because it will not go into effect until October 2012.

TIMELINE

June 2005: Hamburg passes the German Freedom of Information Act (FOIA) granting each person an unconditional right to access official federal information and no legal, commercial, or alternative justification is necessary.

October 2011: Hamburg civic organizations spearheaded an initiative to enact legislative changes and create a public transparency law through the Hamburg referendum process. This “people’s initiative” is the first step in Hamburg’s direct democracy system.

December 2011: On global Anti-Corruption Day (December 9), the Hamburg Parliament received 15,000 signatures fulfilling the first requirement for a public referendum.

June 2012: Before the full referendum process could be completed, the Hamburg Parliament passed the Hamburg Transparency Act.

October 2012: The law will come into force with a deadline for full registry information to be uploaded within two years.

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LEGISLATION

The Hamburg Transparency Law was passed in June 2012 with support from all political parties under the belief that public acts should be based on the principle of openness and that citizens deserve the right for accountability.

The planned register will be a repository for all contracts over €100,000, grant awards, reports, public plans, Senate Resolutions, spatial data, construction or demolition permits, and key corporate data holdings such as urban fringe benefits and annual remuneration of senior management.

LESSONS LEARNED

One concern raised for this law could be its isolating effect on Hamburg. Since other states in Germany do not have such far-reaching transparency laws, there is the potential for companies to take their business to other cities in Germany, or potentially leave the country entirely.

TRANSFERABILITY

The Hamburg Transparency Law is currently one of the most progressive Freedom of Information Acts in Europe. The other German states that also passed such acts in 2005 could be candidates for similar transparency laws.

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