

Preface

The present volume contains those audit findings developed by the German SAI only after conclusion of last year's discharge procedure. They supplement the 2018 annual report on federal financial management and thereby update and complement the basis for the pending grant of discharge to the Federal Government for FY 2017 by the two Houses of the German Parliament.

1 The German SAI's annual report – Basis for the annual decision about granting discharge to the Federal Government

The German SAI audits the entire financial management of the Federal Government including federal off-budget funds and industrial or trading funds.¹ We highlight the results of our audit work in the annual report on federal financial management. This report provides an essential basis for the decision which the two Houses of the German Parliament take each year about granting discharge to the Federal Government.

In our annual report, we especially state

- whether the amounts posted in the budget and capital accounts tally with the amounts stated in the underlying accounting records and whether the audited revenues and expenditures are properly backed up by vouchers;
- major cases where the audited entities have not complied with the applicable financial management regulations and principles;
- the key results generated by our audits of the management of federal government shareholdings in enterprises and
- what recommendations for improvement we have developed.

As a result, the annual report deals with the Federal Government's revenues and expenditures, assets and liabilities. Furthermore, the annual report may

¹ More detailed information about the tasks, organisation, status, budget and staff of the German SAI and about the audit procedure can be found on our website (URL: <http://www.bundesrechnungshof.de>).

address all programmes that may have a financial impact on the federal budget even if they have not yet resulted in receipts or issues.

The President of the German SAI communicates the annual report to the two Houses of Parliament and the Federal Government. At the same time, he presents it to the public. After that, the report may also be accessed on our website.²

The Lower House of German Parliament (Bundestag) refers our annual report to its Budget Committee. The Budget Committee communicates the report to its sub-committee, the Public Accounts Committee.

We issue our annual report in two volumes:

- The principal volume covers the findings on the budget and capital accounts, the trends in federal public finance and in cross-departmental and government-wide issues. In addition, it sets out the audit findings on individual budgets.

The German SAI submitted and published the principal volume of the 2018 annual report in December 2018.

- In the present supplementary report we report on additional audit findings of current interest. We use this possibility to report on current audit findings that have become available only after submission of the principal volume as input for the discharge procedure.

2 Audit findings promote compliance and efficiency in government operations

The annual report sets out those of our audit findings and our pertinent recommendations which the executive branch has so far not taken up. They are discussed intensively in the Public Accounts Committee (PAC). The Committee usually invites the responsible policy-makers to attend the deliberations. In the vast majority of all cases (more than 90 per cent) the PAC endorses our findings and recommendations. In these cases, the PAC

² <http://www.bundesrechnungshof.de>

adopts resolutions requesting the Federal Government to implement our recommendations and to ensure that government operations provide good value for money and comply with applicable regulations.

The Budget Committee prepares the annual decision about granting discharge, taking into account the results of the deliberations of the PAC on our annual report. Based on this, the two Houses of Parliament decide on granting discharge to the Federal Government. They call upon the Federal Government to pay due regard to the resolution of the Budget Committee on our audit findings when preparing the budget estimates and implementing the federal departmental budgets.

We monitor the implementation of the Committee resolutions over the course of several years and follow up on whether the Federal Government has duly implemented the recommendations developed. During this period, the respective federal government departments have to answer to the PAC. Furthermore, the results may serve as input for the budget deliberations, thus having a bearing on the appropriation of funds for the following financial year.

In many cases, the audited bodies directly implement our recommendations. If so, our findings and recommendations are usually not relevant for Parliament's granting of discharge to the Federal Government and reporting them to the two Houses of Parliament is not necessary.

3 Quality of audit findings is ensured by a structured procedure and the involvement of audited bodies

We are independent in the choice of our audit matters and the design of our audit exercises. Whenever possible, we accede to audit requests of Parliament and its committees.

In our audit work, we apply the criteria of performance, regularity and compliance as set forth in Art. 114.2 German Constitution. Furthermore, we check whether the audited bodies have used funds in an efficient way and

whether their measures actually accomplished the intended objectives. When auditing regularity and compliance, we check whether the audited bodies adhere to applicable standards and principles.

As a matter of principle, we communicate our audit findings to the auditees and request them to comment on our findings, giving them the chance to explain the circumstances or to justify their actions. On this basis, we decide on the final wording of our audit findings.

By means of an implementation status query and follow-up audits, we keep an eye on any remedial action taken or improvements made by the audited bodies in response to our audit findings. We also verify compliance by the audited bodies with the requirements imposed by Parliament.

Our work is carried out in line with clear principles and free from any bias. We continuously reconsider our methods and adapt them where necessary. We do not evaluate policy decisions. However, we may audit and report on whether the assumptions underlying these decisions are accurate and whether a measure based on them has achieved the intended effect.

4 The German SAI and the Federal Performance Commissioner advise the Federal Government and Parliament

On the basis of audit findings, we may provide advice especially to the two Houses of Parliament, the Federal Government and individual federal government departments. We summarise our audit findings and recommendations pursuant to Art. 88.2 Federal Budget Code. The reports addressed to Parliament are thoroughly deliberated at committee level, especially in the Budget Committee and the Public Accounts Committee, its sub-committee. During these deliberations, decisions are also taken about the way in which our recommendations are to be implemented.

We may at any time report to the two Houses of Parliament and the Federal Government on matters of particular importance (Art. 99 sentence 1 Federal Budget Code). We have to be consulted or notified in many cases such as the promulgation of grant funding guidelines by the federal government departments or changes of federal government shareholdings in companies incorporated under private law.

By tradition, the President of the German SAI holds the ex officio position of Federal Performance Commissioner. One of the Federal Commissioner's principal functions is to provide advice to the Government and Parliament on the impact legal provisions may have on government performance. For this purpose, federal government departments have to involve the Commissioner at an early stage in drafting bills, delegated legislation and administrative regulations. In discharging his functions, the Federal Commissioner mainly relies on the audit findings and lessons learnt of the German SAI.

5 German SAI facilitates and promotes the transparency of government operations by releasing audit results

When we communicate our annual report or special purpose reports (pursuant to Art. 99 Federal Budget Code) to Parliament, we publish them at the same time on the internet. Furthermore, we may, in suitable cases, release or publish our advisory reports (pursuant to Art. 88. para. 2 Federal Budget Code) and our final management letters. We make use of this option where it is compatible with the protection of privacy rights of individuals, the interests of businesses and the public interest. This makes government operations transparent for Parliament, the citizens and the press. The annual reports, other reports and management letters published so far can be accessed on our webpage by clicking on "Publications".³

³ <http://www.bundesrechnungshof.de>

Federal Ministry of Transport and Digital Infrastructure
Departmental budget No. 12

1 Adequately study the impact long vehicles have on road infrastructure

Long combination vehicles may have a length of up to 25.25 m that exceeds standard lorries (maximum 18.75 m), but are subject to the same weight restrictions as these and may weigh up to 44 tonnes under certain conditions. Although they are subject to the same weight restrictions, long vehicles are in fact often much heavier than standard lorries. Both with and without a load, they often carry more weight on the road. There are five major types of long vehicles (see figure below). Type 1 is currently tested until the end of 2023.

The Federal Ministry of Transport discontinued its study of the impact long vehicles have on the road infrastructure without having gained reliable knowledge. Long vehicles may have a length of up to 25.25 m that exceeds the length of standard lorries (maximum 18.75 m), but are subject to the same weight restrictions. The Ministry had temporarily approved the operation of long vehicles in a field test. The Ministry had recorded the number of long vehicles in use and done monitoring research on their operation. From 2017 up until the time of our audit work, the Ministry had granted approval for road operation to four out of five heavy road vehicle types. At the same time, the Ministry had discontinued data collection and the monitoring study on the operation of long vehicles.

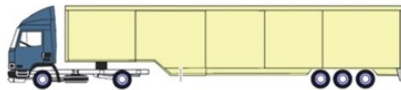
In the field test, potential problems had been highlighted such as parking on rest areas, undersized emergency stop bays and an increased fire load in tunnels, roundabouts, driving on construction sites and overtaking on by-roads. The field test and the research study had not yet provided any reliable results.

In our view, it is crucial for the Ministry to pursue recording the increased operation of long vehicles on roads. If the number rises significantly, the Ministry will have to review the impact on infrastructure and traffic safety.

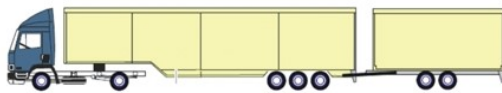
This will help the Ministry identify in a timely manner what steps to take and what expenditure is projected for road infrastructure.

Figure

**Heavy lorries and combination vehicles
(Long vehicles, types Nos. 1 to 5)**



Type 1: Tractor semi-trailer (maximum length of 17.80 m)



Type 2: Articulated vehicle with central axle trailer (maximum length of 25.25 m)



Type 3: Trucks with a lower axle and semi-trailer (maximum length of 25.25 m)



Type 4: Articulated vehicle with a wide semi-trailer (maximum length of 25.25 m)



Type 5: Double truck with one trailer (maximum length of 24 m)

Source: Federal Highway Research Institute

Federal Ministry of Defence

(Departmental budget No. 14)

2 Federal Armed Forces procured frigates without being able to train an adequate number of their crews

The Federal Armed Forces have procured four F 125 frigates for the Navy. For this purpose, the Federal Armed Forces concluded a procurement contract of more than €3.1 billion in 2007. The contract provided for the vessels to be delivered from 2014 to 2017. As a result of time overruns, the Federal Armed Forces expect the Navy to receive the frigates from 2019 to 2020.

The four F 125 frigates are designed to replace the current eight F 122 frigates. The Navy is planning to make more intensive use of the F 125 frigates than before. The frigates are to serve continuously in the area of operation for up to two years instead of nine months as has been the practice so far. For this purpose, additional funds have been made available to equip the F 125 frigates with automated systems needing very little maintenance and repair. Also the Navy is planning to operate the F 125 frigates by relying on a multiple-crew model where eight crews will be operating as a closed team on a rotation principle. This serves to ensure that the vessels can remain in the area of operation for two years. In this way, the duration of each crew's operation can be limited to four months. Thus, the Navy intends to operate two of the four F 125 frigates on a permanent basis. Such is the Federal Armed Forces' national planning which is in line with their pledge to NATO.

The Federal Armed Forces are procuring four new frigates for the Navy at a cost of more than €3 billion, but failed to build up the land-based facilities needed to train the operating crews. As a result, the number of crews to be trained is now lower than needed. The new frigates cannot be deployed as was originally intended.

The Navy had planned to leave the frigates for up to two years in the area of operation. To ensure such an intensive use, the frigates were equipped with automated systems that need very little maintenance and repair. Also, the crews are to rotate every four months to limit the absences from home for the members of the crew. To do so, the Navy needs eight crews for four frigates.

Since the Navy intends to operate two of the four vessels on a permanent basis and one of the vessels is designed to be under repair at the same time, there are not enough vessels in place for training purposes. For this reason, the Navy needs a naval operation training centre. However, the Federal Armed Forces have initiated the project much too late and assigned too little staff to the centre. This means that the centre will be operational about a decade later than intended. This puts at risk the entire planning of the Federal Armed Forces for making intensive use of the new frigates, and the additional expenditure on special equipment would not have been needed.

Federal Ministry of Defence

(Departmental budget No. 14)

3 Federal Armed Forces should stop procuring unnecessary hand-held radio sets

The Armed Forces used the TETRAPOL Bw radio system in missions abroad, pre-deployment training of units and activities in Germany. In December 2018, the Armed Forces had more than 7,882 hand-held radio sets of the type P2G.

In missions abroad, the Armed Forces never used more than 2,500 of these hand-held radio sets at the same time. According to the information we collected, such radio sets were used in activities in Germany only 40 times in 2012. On average, the Armed Forces used 20 hand-held radio sets on these occasions.

In autumn 2017, we found that the IT battalions stored several thousand hand-held radio sets on shelves.

Although the Armed Forces have a sufficient number of hand-held radio sets for their TETRAPOL Bw radio system, they consider procuring another 800 hand-held radio sets in 2019 at a cost of more than €1 million.

In December 2018, the Armed Forces had 7,882 hand-held radio sets for their TETRAPOL Bw radio system. Troops deployed abroad never carried along more than 2,500 of these radio sets at the same time. Since the manufacturer had discontinued the production and maintenance of these radio sets, the Armed Forces purchased 3,200 compatible hand-held radio sets as backup units at a cost of €4.7 million in 2018. We had advised against this procurement, because most of the radio sets were not used.

The Armed Forces intend to implement a successor system for the same purpose in the years from 2020 to 2022 on a step-by-step basis. The hand-held radio sets of the TETRAPOL Bw radio system are not compatible with

the proposed successor system selected. Still, the Armed Forces consider procuring a total of 4,000 backup units to be necessary. The TETRAPOL Bw radio system would have to remain fully serviceable until the implementation of the successor system had been concluded by 2022.

We reiterate that the procurement of the 3,200 backup units was unnecessary because the Armed Forces had sufficient backup units.

Especially in view of the intended replacement by the successor system, we do not perceive a need for procuring another 800 hand-held radio sets. The Armed Forces should decide against procuring them.

Federal Ministry of Defence

(Departmental budget No. 14)

4 Benefit from retrofitting older naval aircraft is at risk

In 2004, the Federal Armed Forces bought eight used aircraft of the type P-3C Orion from the Dutch Navy. The Armed Forces initially intended to use the aircraft for reconnaissance at sea and anti-submarine warfare until 2025. Since the aircraft were already 20 years old at the time of purchase and were in bad condition, the Federal Armed Forces had them repaired at considerable cost. By year-end 2014, the Ministry had spent more than €1 billion on purchase, operation and repair.

In 2015, the Federal Armed Forces decided to have the aircraft fully overhauled and retrofitted for use up to 2035. To do so, the Armed Forces awarded three contracts worth €500 million. Due to damage by corrosion and material fatigue, the Armed Forces commissioned the exchange of the wings and the adjustment of the instrument flying system in line with changed statutory requirements. The contractor was first to test this work on one aircraft (sample installation). After successful flight clearance, the new components were to be installed in the remaining aircraft (serial installation). In the same way, the Federal Armed Forces also intended to renew the computers and software (mission avionics) used to perform maritime missions. All this work was to be completed in 2023 to enable the aircraft to be used for more than another ten years.

After a major overhaul of eight older but not obsolete naval aircraft, the Federal Defence Ministry failed to achieve its goal of putting the aircraft to efficient use. In 2015, the Federal Armed Forces awarded contracts worth €500 million for this overhaul. The Navy intends to use these aircraft for reconnaissance at sea and anti-submarine warfare until their scheduled replacement in 2035. The overhaul work was to be concluded by 2023. If that had been the case, the aircraft could have been used for more than another decade.

The overhaul work has taken much more time and has become much more costly than scheduled. The Federal Armed Forces awarded contracts for additional work which have led to even more time overruns. Overhaul work will need more funds than those budgeted in 2015. By now, the Ministry has estimated additional expenditure needed to total €340 million or more.

The Ministry would be well advised to initiate a reappraisal of the entire project. In view of the proposed replacement, the Ministry should analyse the value of money of any overhaul operations and the number of aircraft affected in the light of the proposed replacement date. The purpose is to avoid that any aircraft overhauled at a high cost will be decommissioned after a few years of service.

Federal Ministry of Health

(Departmental budget No. 15)

5 Health insurers and hospitals have agreed on illicit flat-rate billing worth several million euros to avoid accounting inspections

Where beneficiaries have received in-patient treatment in hospital, statutory health insurers need to reimburse the hospitals for the treatment given. The treatment provided by the hospital must be adequate, expedient and efficient and may not exceed what is the necessary standard (value for money principle). Health insurers are not authorised to pay for treatments that do not comply with these requirements. The fees paid to hospitals for treatment are determined on the basis of diagnosis-related groups (DRG). Under this system, hospital cases are allocated to case groups reflecting the diagnosis, treatment and cost rate. Hospitals receive the case rate stating operations and services for each treatment case. Health insurers have a statutory obligation to obtain an assessment of the Health Insurance Medical Service where doing so is needed in view of the type, severity, duration, frequency or stage of the disease. In order to determine whether a medical assessment is necessary, health insurers review the billing set up by the hospitals. The Health Insurance Medical Service examines the medical services performed and checks any notable features of the billing.

For many years, various statutory health insurers did not comply with their duty to examine hospital billing. For years, they had concluded individual agreements with hospitals about flat-rate billing worth several millions and, in return, had waived the cross-checking of billings. This resulted in waiving the inspections of the Health Insurance Medical Service, a service required by statute. We consider these agreements to be illegal. Such practice enables hospitals to buy their way out of health insurer inspections. There is the risk that hospitals have even taken the potential deductions into account when calculating their fees and have issued excessive billings. If erroneous hospital billings are not corrected, this also impacts on the amount of allocations received from the health fund, since along with other

data, the invoice data serve as a yardstick for determining these allocations. All revenues from health care contributions of the health insurers and the federal grants from tax revenues flow into the health fund.

In May 2017 and 2018, at meetings of the supervisory authorities of the social insurance bodies, the Federal Insurance Office urged to terminate these agreements. Since a resolution proposed to this effect did not reach a majority of the votes, the Federal Insurance Office chose not to take supervisory action. It was only in response to this draft annual report item that the Federal Insurance Office and the supervisory authorities of the federal states acknowledged, in November 2018, that such agreements were illegal and pledged to take disciplinary action as needed.

Given the longstanding practice of concluding such agreements and the heavy resistance to abolishing them, we consider the action taken to be just a first step to address the problem. We recommend that such agreements be prohibited by statutory law. The Federal Ministry of Health should initiate legislation to this effect.

General Fiscal Administration

(Departmental budget No. 60)

6 Need to enhance planning and governance of major federal construction projects

The Institute for Federal Real Estate administers and manages federal property government-wide. Whenever the Institute intends to build, convert or renovate a building, the Institute needs to submit the matter to the Federal Ministry of the Interior, Building and Community in its capacity as supreme federal building authority. In addition, a budget justification needs to be prepared. In this document, the construction project needs to be described in detail. The document also needs to state the costs approved and the budget funds authorised. This document is also the basis for further planning and construction operations.

The respective building management authority in charge implements the building project. For this purpose, the building management authority concludes contracts with architectural and building businesses. During construction works, the building management authority has the duty to continuously monitor costs and ensure that the cost cap is complied with. If there is evidence that this is put at risk, for example as a result of modifications in the draft plans or additional specifications, the building management authority needs to prepare a modified building documentation.

The Institute renovated a building complex for the United Nations located in the city of Bonn. In 2006, the Federal Ministry of Transport, Building and Urban Development set the cost cap at €55 million. The buildings were to be handed over to the user in July 2010 after renovation. Construction work was launched in September 2009.

We found shortcomings in project management of retrofitting the building complex. This was one of the reasons why the relevant building management authority was not able to hand over the buildings to the United Nations until three years later than projected. Initially, construction

costs were projected to total €55 million (cost cap). However, costs rose by almost 70 per cent to reach €92 million while construction was under way. Since the building management authority failed to obtain timely approval to fund increased construction costs, the authority exceeded the cost cap imposed several times, at one instance even by an amount of €10 million. The building management authority has thus seriously violated budgetary regulations.

We consider that the reason for the cost overruns were in particular shortcomings in project planning and project governance. When construction was launched, the status analysis was incomplete, the public approval procedure was not concluded and the future user needs had not been fully defined.

In our view, the reasons put forward by the Federal Ministry of the Interior, Building and Community, such as the complexity of the construction project, staffing shortage and tight schedules do not justify the time and cost overruns. The Ministry needs to take prompt action to enhance planning and governance of major construction projects. In future projects, the Ministry needs to ensure compliance with budgetary regulations.

General Fiscal Administration

(Departmental budget No. 60)

7 Unjustified tax privileges for public TV and radio broadcasters

By virtue of the German Constitution and the provisions of the Broadcasting Agreement concluded by the federal states, public TV and radio broadcasters have the duty to provide basic TV and radio programme services to the general public. To that end, they need to ensure that broadcasts can be nation-wide and that a diverse range of programmes is provided. They largely fund the performance of these public duties from the revenues of compulsory broadcasting licence fees. The annual revenues from these fees total about €7.8 billion. Apart from their functions under public law, the public broadcasters also engage in commercial activities, e.g. by broadcasting advertisements and selling property rights in programmes. They generate revenues of about €570 million from advertising and about €70 million from selling property rights in programmes.

Public broadcasters are not subject to taxation in respect of their general statutory broadcasting activities. Therefore no tax is levied on revenue from broadcasting licence fees. Where public broadcasters engage in commercial activities, they are liable – like other business entities – to pay tax on the revenues generated. The taxes due include corporation tax and trade tax. The profits from commercial activities result in additional income of the broadcasters that is subject to capital yield tax.

Public broadcasters enjoy undue tax privileges with respect to commercial revenue. This resulted in subsidies of approx. €55 million during the last decade. While the broadcasters are not subject to taxation in statutory broadcasting, they are liable to tax on their earnings where they engage in commercial activities e.g. by broadcasting advertisements or commercialising programmes. In this case, they are authorised to largely calculate their tax liability due by using a flat rate. The flat rates have remained unchanged for the past 20 years although modifications would have been needed. There is no statutory basis in place for all the flat rates

used. We repeatedly drew attention to the need for action. However, the Federal Finance Ministry has so far chosen not to take any steps to address the problems we stated. The Ministry should promptly initiate the necessary reform of taxation of public broadcasters.

General Fiscal Administration

(Departmental budget No. 60)

8 Data on tax inspections are misleading

The tax authorities conduct tax inspections to gather information needed for adequate taxation on the spot. The federal states communicate the data collected to the Federal Ministry of Finance. The Ministry relies on such communications to prepare and publish its annual statistics. The statistics provide information on the additional tax yield (tax revenues as a result of inspecting a tax case) and the inspection ratio (rate of businesses inspected against the total number of businesses in place).

The data the Ministry holds on the additional amount of tax received as a result of tax inspections is neither good for tax planning or steering the tax administration nor for providing information to the general public. The data statistics contain erroneous data and other shortcomings that add to providing a distorted picture of tax revenues. Tax inspections serve to gather information needed for adequate taxation on the spot. The federal states communicate the data collected to the Ministry. The Ministry uses the data to compile annual statistics and publishes them. We found that the data recorded in the Ministry's statistics deviated largely from the data on the actual data yield. In the cases we checked, the tax administration had actually collected less than half of the additional amount stated in the data. Also the number of tax inspections recorded exceeded the tax inspections actually conducted by up to a third. On the one hand, the cause for the shortcomings we stated was that the Ministry set inadequate requirements for the annual statistics. On the other hand, tax authorities did not even comply with other clear and applicable requirements. We have demanded that the Ministry fully revise the requirements and the procedures for collecting reliable data on the tax yield.

General Fiscal Administration

(Departmental budget No. 60)

9 Abolish unjustified tax privilege and levy tax on prepaid credit cards in the same way as on cash amounts

Taxable work-related income encompasses all revenues received from employment. As a rule, such income is subject to the applicable graduated tax rate. Wages may be paid in cash or in kind. Recently, the Federal Fiscal Court ruled that a payment made by the employer to the employee is a benefit in kind if the amount received may be used for specific purposes only. The employer may use a 30 per cent flat rate of income tax for benefits in kind up to an annual amount of €10,000 (cf. Art. 37b, Income Tax Act). This means that the employer pays the amount of income tax that normally the employee would be liable to.

We found that instead of special payments (bonuses or gratuities) employers increasingly give prepaid credit cards to their top executive staff. Such gift cards are preloaded with an amount of up to €10,000 each year. The incomes of such managerial staff are regularly subject to the top tax rate. The managers can use these credit cards freely to purchase any goods or services (e.g. a trip). Employers treat the reload as a benefit in kind and pay a 30 per cent income tax flat rate on the amount. In this way, they ensure that the employee receives the benefits gross for net. The tax authorities accept such a tax option if the reload of credit card cannot be converted into cash.

There are no reasonable grounds for tax authorities to give preferential tax treatment to prepaid credit cards vis-à-vis wages received in cash. The incomes of such managerial staff are liable to a graduated tax rate of up to 45 per cent. The employer can shoulder the income tax for wages in kind at a flat rate of 30 per cent and pay this amount to the tax authorities. As a result, the employee is no longer liable to tax on this amount. The tax authorities take a soft line on this flat rate even if the employer gives a prepaid credit card to the employee that the employee can use to freely

purchase goods or services. However, the preloaded amount is no benefit in kind. Seen from a legal perspective, the asset given to the employee is electronic money that the legislator treats like a substitute for cash. We noted with concern the flat rate option for prepaid credit cards. This option results in differing tax treatment of employees receiving payment of wages in cash and those receiving electronic money. This violates the principle of equality before the law that is laid down in the Constitution. In addition, federal revenues are foregone if the graduated tax rate for the individual employee is higher than the tax flat rate due for benefits in kind. We demand that electronic money be subject to the same taxation as cash. The Federal Ministry of Finance should urge for drawing up legislation to tackle the issue.

