



Federal Ministry
of the Interior



Rules on Integrity



Foreword

Dear staff members

Corruption damages citizens' trust in the government's independence, integrity and ability to take action. Often corruption is marked by a gradual process.

For this reason the prevention of corruption is indispensable and deserves our attention. We must all be vigilant. The following rules on integrity will help you. Only if you know and observe them, will we be able to prevent corruption effectively. For this reason I kindly ask you to familiarize yourself with these rules, to act accordingly and be a model for others.

Do not give corruption a chance!



A handwritten signature in black ink, appearing to read 'Thomas de Maizière', written in a cursive style.

Dr Thomas de Maizière, MP
Federal Minister of the Interior

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1

Introduction

In a state governed by the rule of law, two steps must be taken to create and maintain public trust in the integrity of public administration: Firstly, the administration must define rules for how it will carry out its tasks; and secondly, the administration must ensure compliance with these rules.

The Federal Government first published its Directive concerning the Prevention of Corruption in the Federal Administration in 1998; the current version is dated 30 June 2004. The Directive covers the major aspects of a preventive strategy, such as identifying areas of administrative activity especially vulnerable to corruption, designating a contact person, raising awareness among employees and creating principles for awarding contracts.

The Directive also contains a code of conduct for federal employees and guidelines for supervisors and executives. The code of conduct is targeted at employees and explains the principles of transparent and honest conduct. The guidelines show supervisors and executives what action they must take to minimize the risk of corruption in their area of influence.

When the Directive went into practice, it raised a number of specific questions. As a result, it proved helpful to make the answers available to all employees in the form of recommendations, circulars or administration regulations.

These include the Recommendations on Preventing Corruption in the Federal Administration, the Circular on the Ban on Accepting Rewards or Gifts in the Federal Administration and the General Administrative Regulation to Promote

Activities by the Federal Government through Contributions from the Private Sector. It also proved useful to compile these documents, together with provisions of criminal law and useful Internet links, into a single brochure available within and beyond the federal administration. The Federal Ministry of the Interior published such a brochure until January 2010.

This brochure was much in demand for its clear and concise presentation of the most important rules for preventing and fighting corruption. However, it was in need of revision, because there are many new and amended rules in the area of corruption prevention in particular. For this reason, we decided to revise the brochure and expand its focus.

We believe that it makes sense for this new brochure, “Rules on Integrity”, to address additional issues closely related to preventing and fighting corruption. These issues are also embedded in a system of values which ensures the transparency and integrity of public administration. This new brochure therefore also contains federal rules on internal audits, the General Administrative Regulation on the Use of Persons Not Employed in the Public Service (External Persons) in the Federal Administration (July 2008) and the Freedom of Information Act.

2 Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration

Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration of 30 July 2004

The following Directive is enacted pursuant to Article 86, first sentence, of the Basic Law:

1 Scope

- 1.1 The Directive applies to the measures taken by all federal agencies for the prevention of corruption; the supreme federal authorities, the authorities of the direct and indirect federal administration, the federal courts and federal special funds are all considered to be federal agencies. The Directive also applies to the armed forces; the Federal Ministry of Defence is responsible for settling the details.
- 1.2 This Directive also applies correspondingly to legal entities under public or civil law which are wholly owned by the Federal Republic of Germany.
- 1.3 Any special features related to the organization or tasks of individual agencies shall be taken into account.

2 Identifying and analysing areas of activity especially vulnerable to corruption

In all federal agencies, measures to identify areas of activity which are especially vulnerable to corruption shall be carried out at regular intervals and as warranted by circumstances. The use of risk analyses shall be considered for this purpose. The results of the risk analysis shall be used to determine any changes in organization, procedures or personnel assignments.

3 Transparency and the principle of greater scrutiny

- 3.1** The principle of greater scrutiny (ensuring that a number of staff members or organizational units take part in or are responsible for checking operations) shall be observed particularly in areas of activity which are especially vulnerable to corruption. If this is not possible due to legal provisions or insurmountable practical difficulties, then random checks or other measures for preventing corruption (e.g. more intensive administrative and task-related supervision) may be used instead.
- 3.2** Transparency of decisions and the decision-making process shall be guaranteed (e.g. via the clear delegation of responsibility, mechanisms for reporting, IT-supported oversight of operations, precise and complete documentation of proceedings).

4 Staff

- 4.1** Staff members for areas of activity especially vulnerable to corruption shall be selected with particular care.
- 4.2** The length of staff assignments in areas especially vulnerable to corruption shall in principle be limited; as a rule, it should not exceed a period of five years. If an assignment must be extended beyond this period, the reasons shall be recorded for the file.

5 Contact person for corruption prevention

5.1 A contact person for corruption prevention shall be appointed based on the tasks and size of the agency. One contact person may be responsible for more than one agency.

Contact persons may be charged with the following tasks:

- a) serving as a contact person for agency staff and management, if necessary without having to go through official channels, along with private persons;
- b) advising agency management;
- c) keeping staff members informed (e.g. by means of regularly scheduled seminars and presentations);
- d) assisting with training;
- e) monitoring and assessing any indications of corruption;
- f) helping keep the public informed about penalties under public service law and criminal law (preventive effect) while respecting the privacy rights of those concerned.

5.2 If the contact person becomes aware of facts leading to reasonable suspicion that a corruption offence has been committed, he or she shall inform the agency management and make recommendations on conducting an internal investigation, on taking measures to prevent concealment and on informing the law enforcement authorities. The agency management shall take the necessary steps to deal with the matter.

5.3 Contact persons shall not be delegated any authority to carry out disciplinary measures; they shall not lead investigations in disciplinary proceedings for corruption cases.

- 5.4 Agencies shall provide contact persons promptly and comprehensively with the information needed to perform their duties, particularly with regard to incidents of suspected corruption.
- 5.5 In carrying out their duties of corruption prevention, contact persons shall be independent of instructions. They shall have the right to report directly to the head of the agency and may not be subject to discrimination as a result of performing their duties.
- 5.6 Even after completing their term of office, contact persons shall not disclose any information they have gained about staff members' personal circumstances; they may however provide such information to agency management or personnel management if they have a reasonable suspicion that a corruption offence has been committed. Personal data shall be treated in accordance with the principles of personnel records management.

6 Organizational unit for corruption prevention

If the results of risk analyses or special circumstances require, a special temporary or permanent organizational unit shall be set up to oversee all corruption prevention measures taken in a particular agency; such units shall be independent of instructions and have the right to report directly to the head of the agency. This task may also be performed by the internal auditing department. This organizational unit shall directly inform the head of the agency and the contact person for corruption prevention in case of shortcomings in corruption prevention and shall recommend appropriate changes.

7 Staff awareness and education

- 7.1 When taking the oath of office or agreeing to abide by the requirements of their position, staff members shall be informed of the risk of corruption and the consequences of corrupt behaviour. When a staff member has been informed, a record shall be kept of this fact. In view of the risk of corruption, staff attention shall continue to be directed to this issue. In addition, all staff members should be given an anti-corruption code of conduct (see Annex 1), informing them of what to watch out for in situations or areas of activity which are especially vulnerable to corruption.

- 7.2 Staff members working in or transferred to areas especially vulnerable to corruption should be given additional, job-specific instruction at regular intervals

8 Basic and advanced training

Facilities providing basic and advanced training shall include corruption prevention in their programmes. In doing so, they shall take into account above all the training needs of supervisory staff, contact persons for corruption prevention, staff in areas especially vulnerable to corruption, and staff in the organizational units referred to in No. 6.

9 Conscientious administrative and task-related supervision

- 9.1 Supervisors shall perform their duties of administrative and task-related supervision in a conscientious manner (“Guidelines for supervisors and heads of public authorities/agencies”, Annex 2). This includes taking anticipatory measures for personnel management and evaluation.
- 9.2 Supervisors shall pay attention to any signs of corruption. They shall alert their staff to the risk of corruption regularly and as circumstances require.

10 Notification and action in case of suspected corruption

- 10.1 Where there is reasonable suspicion that a corruption offence has been committed, the head of the agency shall inform the public prosecutor’s office and the highest service authority without delay; furthermore, an internal investigation and measures to prevent concealment shall be initiated.
- 10.2 The supreme federal authorities shall report annually to the Federal Ministry of the Interior – also on behalf of their subordinate agencies – on the cases of suspected corruption in which proceedings were initiated and the results of proceedings concluded during the reported year; this information is to be submitted in the required anonymous form, organized according to area, circumstances of the case, and measures taken.

11 Guidelines for awarding contracts

11.1 Competition

The principle of public invitation to tender and of open procedures is especially important for preventing corruption.

The awarding of public contracts shall be regularly monitored as part of administrative and task-related supervision to identify any prohibited influencing factors.

11.2 Separation of planning, award and settlement of accounts as a basic principle

According to budget and contract award regulations, when public contracts are awarded, the planning and description of requirements shall in principle be kept separate in organizational terms from both the implementation of the award process and, as far as possible, from the subsequent settlement of accounts.

11.3 Exclusion from competition

The agencies shall determine whether bidders or applicants have engaged in serious misconduct which may compromise their reliability and result in their being ineligible to compete. In particular, bidders or applicants are considered to have engaged in serious misconduct when they offer, promise or provide an advantage to a staff member involved in preparing or carrying out an award process, or to a third party.

12 Anti-corruption clause, obligation of contractors under the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants

12.1 When public contracts are awarded, anti-corruption clauses shall be included as appropriate.

12.2 If private businesses are involved in carrying out publicly funded projects, the individual employees of these businesses shall – as needed – agree in accordance with the Obligations Act to fulfil their obligations arising from the contract. A notice to this effect shall be included in the relevant calls for

tender (including the requirement for a statement of willingness). The affected persons shall be given a copy of the Anti-Corruption Code of Conduct (see Annex 1) and a copy of the applicable regulations on accepting rewards and gifts.

13 Donations to public activities and facilities; sponsoring

Private contributions of money, material items or services made to one or more federal agencies are regulated by the general administrative regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts) of 7 July 2003 (Federal Gazette p. 14906).

14 Recipients of contributions

- 14.1** Recipients of federal contributions in the context of institutional support shall agree, by means of special stipulations in the award notification, to apply this Directive correspondingly if the recipient is obligated by budgetary law to adhere to public procurement legislation (if the award or total amount (in case of financing from multiple sources) exceeds €100,000). An agreement to apply the Directive correspondingly shall be included in contribution contracts.
- 14.2** Principles on the prevention of corruption shall be contractually agreed on with foreign institutional recipients of contributions.

15 Special measures

Agencies may take additional measures as necessary.

16 Entry into force

This Directive shall enter into force on the day after its publication in the Federal Gazette, and the Directive of 17 June 1998 (Federal Gazette No. 127, p. 9665) shall cease to be in force at the same time.¹

Berlin, 30 July 2004
O 4 – 634 140-15/1
The Federal Minister of the Interior
Schily

¹ The Directive was promulgated in the Federal Gazette on 10 August 2004.

Anti-Corruption Code of Conduct (Annex 1)

This Anti-Corruption Code of Conduct is intended to inform staff of situations in which they might inadvertently become involved in corruption. It is also aimed at urging staff to fulfil their duties properly and lawfully and at alerting them to the consequences of corrupt behaviour:



For this reason:

- 1. Set an example: Show, through your behaviour, that you neither tolerate nor support corruption.**
- 2. Immediately refuse any attempt to involve you in corrupt activities and inform the contact person for the prevention of corruption and your supervisor without delay.**
- 3. If you suspect that somebody wishes to ask you for preferential treatment contrary to your duty, consult a colleague as a witness.**
- 4. Do your work in such a manner that it can pass review at any time.**

5. **Separate your job strictly from your private life. Check to see whether your private interests might conflict with your work duties.**
6. **Help your workplace in detecting and clearing up corruption. Inform your supervisor and the contact person for corruption prevention in case of specific indications of corrupt behaviour.**
7. **Support your workplace in detecting defective organizational structures that favour corruption.**
8. **Take part in basic and advanced training on preventing corruption.**
9. **And what should you do if you have already been caught up in corruption? Free yourself from the constant fear of being found out! Get it off your chest!
If you confess on your own initiative, and your information helps clear up the facts, it may reduce the severity of punishment and consequences under public service law.**

Ad 1:

Corruption in the federal administration can be prevented better if everyone makes it his or her goal to fight corruption. This is also in line with the duties which every staff member accepts at the time of hiring.

Upon hiring, each employee agrees to abide by the Constitution of the Federal Republic of Germany and its laws and to fulfil his or her tasks conscientiously. Employees must conduct themselves as befits a public employee and must act in a way that demonstrates their support for the free and democratic fundamental order within the meaning of the Basic Law. Therefore, all employees are to perform their functions in an impartial and fair manner.

Corrupt behaviour conflicts with such duties and harms the reputation of the public service. It destroys trust in the impartiality and objectivity of the public administration and hence the basis for living together as a community.

For this reason, every employee has the task of acting in a way that sets an example for co-workers, supervisors and the public.

Ad 2:

In dealing with persons outside your agency, e.g. with bidders, contractors or in the course of regulatory activities, you must put things on the right footing from the outset and immediately avert any attempt at corruption. You must never give the impression that you would be receptive to 'small gifts'. Do not be afraid to reject or return a gift, asking the giver to understand that rules prevent you from accepting.

If you work in an administrative area involved in awarding public contracts, you have to be particularly sensitive to attempts of third parties to influence your decisions. This area is where most corrupt activities take place.

For this reason, strictly abide by the law and regulations and follow the Directives prohibiting acceptance of rewards or gifts.

If a third party asks you for a questionable favour, immediately inform your supervisor and the contact person for corruption prevention. First, this helps to avoid any suspicion of being corrupt; second, it may, under certain circumstances, also help to take legal action against the third party. If you reject such attempts but do not tell your supervisor or the contact person for corruption prevention, the same party will go to one of your co-workers and try to corrupt him or her. For this reason, also protect your co-workers by conscientiously disclosing third parties' attempts at corruption.

All staff members (supervisors and staff) have to work together so as to present a united and credible front.

Ad 3:

Sometimes you may have to meet with persons you think may try to involve you in a questionable activity which will not be easy for you to turn down. In these cases, it is often not enough to distance yourself clearly from such attempts. You should not try to deal with the situation on your own but ask a co-worker to join you. Talk over the situation ahead of time and ask your co-worker to act in such a way as to avert any attempt at corruption.

Ad 4:

Your working methods should be transparent and comprehensible to all.

As you are likely to leave your position at some point (promotion, transfer) or to be away for short periods (illness, holidays), your working methods should be transparent enough to enable a successor or substitute to familiarize him- or herself with your duties at any time. Transparency in your record-keeping also helps you protect yourself, in the course of reviews or inspections, against implicit or explicit accusations of dishonesty. You should never keep 'secondary files' so as to avoid even the slightest appearance of dishonesty. Hand files should be kept only if this is absolutely necessary for your work.

Ad 5:

Corruption attempts often start when a third party goes beyond official contacts to private ones. As you know, it is particularly difficult to deny granting a 'favour' when you are on excellent private terms with somebody and when you or your family receive advantages and benefits (concert tickets, discounts on holidays, invitations to expensive meals which you cannot reciprocate). You should make clear to your private contacts from the outset that you are obliged to keep your job strictly separate from your private life so as not to be suspected of accepting advantages.

You must observe such strict separation between your private interests and your official duties in any case – irrespective of any risk of corruption – in all your official activities. Your agency and every citizen are entitled to your fair, appropriate, impartial behaviour. For this reason, check every procedure for which you are also responsible to see whether your private interests or those of your relatives or of organizations to which you feel obliged could lead to a conflict with your professional obligations. Avoid any appearance of possible partiality. Make sure you do not give any appearance of being biased, not even through a general climate of influence exerted by an interested party.

If you recognize, given a specific official task, that your obligations and your private interests or the interests of third parties to whom you feel obliged might come into conflict, inform your supervisor so that he or she may respond appropriately (e.g. by releasing you from activities in a specific instance).

You must also clearly separate secondary activities you pursue or intend to pursue from your proper work. Personal relations arising from secondary activities must not influence your main professional activities. If in doubt, give up the secondary activity.

Also bear in mind that you might face sanctions under public service law or labour law if you pursue a secondary activity that is subject to authorization but has not been authorized; the same applies to failures to give notice of a secondary activity.

Irrespective of this, sooner or later your reputation – and hence the reputation of the entire public service – will be damaged if you have given priority to your private interests in case of conflict. This applies all the more if you hold a position of influence. In this case, take special care that you claim only those conditions that are laid down in abstract terms for similar circumstances.

Ad 6:

Corruption can be prevented and combated only if everyone takes responsibility and all pursue the aim of a corruption-free workplace. This means that everyone must seek to ensure that third parties have no possibility of dishonestly influencing the decision-making process.

It also means that one should not cover for corrupt co-workers out of a mistaken sense of solidarity or loyalty. Everyone is obliged to assist with the investigation of criminal activities and to prevent his or her workplace from damage. One 'black sheep' hurts the entire flock. For this reason, do not participate in attempted cover-ups.

Every workplace has a contact person for the prevention of corruption. You should not be afraid of talking to this person if co-workers' behaviour gives specific and reasonable indications that they might accept bribes. The contact person will respect your desire for confidentiality and then decide if and what measures should be taken. It is however absolutely essential that you express a suspicion only if you have reasonable grounds. Co-workers' names may not be blackened without specific evidence.

Ad 7:

Often, procedures that have been followed for a long time result in ‘islands’ which are especially conducive to corruption. These can be procedures in which one staff member is solely responsible for granting privileges. Or they might be vague work processes which hinder or even prevent review.

In most cases, changing organizational structures can remedy the situation. That is why all staff members should provide those responsible for organization with relevant information in order to contribute to clear and transparent work processes.

Within operational units, too, work processes must be transparent enough to stop corruption before it starts.

Another effective means to deal with the danger of corruption is staff rotation. This personnel management tool should be extensively used in areas especially vulnerable to corruption. Doing so requires that staff are willing to take on different functions at regular intervals – as a rule, the period of assignment should not exceed five years - even if this usually results in more work (time needed to familiarize oneself with new tasks).

Ad 8:

If you work in an area especially vulnerable to corruption, take advantage of basic and advanced training offered by your workplace on forms of corruption, risk situations, preventive measures, and consequences of corruption under criminal, public service and labour law. You will then learn how to prevent corruption yourself and how to respond to attempts to corrupt you or when you discover corruption in your work environment. With such training, you can be sure you will be able to deal with corruption in the correct and lawful manner.

Guidelines for supervisors and heads of public authorities/agencies (Annex 2)

I.

As supervisors and heads of public authorities or agencies, you are both responsible for and serve as an example to those working under your supervision.

Your conduct and attentiveness are extremely important in preventing corruption.

For this reason, you should be pro-active in your personnel management and evaluation. In particular, you should ensure that responsibilities are clearly designated, that job descriptions are transparent, and that staff performance is assessed with appropriate frequency.

Examples of weaknesses that may lead to corruption include:

1. inadequate administrative and task-related supervision;
2. blind trust in senior staff or those with specialized functions;
3. character weaknesses of staff in sensitive areas;
4. negative example set by supervisors who accept gifts;
5. lack of consequences after manipulation has been revealed, therefore no deterrent effect.

You can counteract such weaknesses with the following measures:

1. Staff awareness and education

Referring to the Anti-Corruption Code of Conduct, talk to your staff regularly about their obligations arising from the ban on accepting rewards and gifts and from regulations aimed at avoiding conflicts of interest.

2. Organizational measures (depending on your authority)

Make sure that any room for discretion in decision-making is clearly defined and limited as appropriate.

Discuss with your staff the structures for delegating authority, the limits of discretionary powers and the need for co-signatures.

In areas of activity that are especially vulnerable to corruption, make sure that operations are processed flexibly under numeric or alphabetical systems by

- a) critically reviewing the processing carried out according to these systems,
- b) assigning tasks randomly, or by
- c) repeatedly changing the numeric or alphabetic ranges for which individual staff members are responsible.

If possible, implement the principle of greater scrutiny in your sphere of responsibility as well. It might be advisable to set up working teams or groups. Check whether staff members need to be accompanied by a second staff member to local appointments; whether on-site checks, etc. are advisable; and whether a 'transparent' office should be set up for visitors so that outside contacts always take place under the principle of greater scrutiny. If this is not feasible owing to actual circumstances, organize controls at frequent intervals.

Make consistent use of staff management tools, in particular for activities involving technical knowledge that can be obtained quickly:

1. rotation, as a rule after a period of five years in areas especially vulnerable to corruption;
2. If in exceptional cases staff are not subject to rotation, e.g. those in positions requiring knowledge acquired over many years, the reasons for the exception must be stated in writing and supervisory staff should thoroughly review the area of activity.

If it is not unusual in your workplace for two staff members to share an office, take advantage of this practice to prevent corruption in high-risk areas e.g. by occasionally changing office assignments (even without changing staff members' assigned tasks).

3. Responsibility for others

In areas of activity which are especially vulnerable to corruption, prevention also requires extra effort in looking after your staff.

- a) Always be aware of the increased risk to individuals.
- b) Keeping communication lines open is also a way of looking after staff.
- c) Be aware of any work-related and/or private problems staff members may be facing.
- d) If you become aware that a staff member faces conflicts of interest due to his or her secondary activities or activities of a family member, provide a remedy, e.g. by releasing the staff member from certain tasks.
- e) Special vigilance is required if demands on an individual are obviously too high or too low.
- f) You must also pay special attention if you become aware of staff members' personal weaknesses (e.g. problems with addiction, an inclination to expensive hobbies which are hard to pay for) or excessive debt; staff whose personal finances are in disorder should not be in positions where they are responsible for procurement activities or where they are particularly vulnerable to dishonest influence by third parties.
- g) Finally, if any staff member is openly dissatisfied with his or her employer, you must be particularly vigilant and take steps to deal with such dissatisfaction.

4. Supervision and leadership style

You should be aware that in case of corruption, there is no victim in the usual sense to make a complaint; therefore, preventing corruption essentially depends on your own awareness and that of your staff. It also requires your administrative and task-related supervision – your core duty as supervisor in any case. A mistaken notion of a co-operative management style or a 'laissez-faire attitude' can be disastrous in especially vulnerable areas. For this reason, you should try to

- a) optimize the monitoring of transactions and operations by incorporating control mechanisms (re-submission of files and records, etc.) in management procedures;
- b) prevent individual staff members from isolating themselves from co-workers and becoming too independent;
- c) keep a sharp lookout for signs of corruption;

- d) make random checks to see whether discretionary powers have been used according to the rules;
- e) assess the acceptance of administrative activities by discussions with your 'clients'.

Take advantage of advanced training offered on preventing corruption.

II.

1. Signs of corruption, warning signals

Nevertheless, corruption cannot be ruled out.

According to a survey of experts conducted by the Federal Criminal Police Office,¹ corrupt activity is often associated with certain typical behaviours. However, these indicators are not 100% reliable, because some may be regarded as neutral or even positive although, in hindsight, they have turned out to be right.

None of these indicators is 'proof' of corruption. If however, due to comments or observations, a behaviour seems conspicuous, you should check to see whether this indicator, together with the surrounding circumstances, points to a danger of corruption.

1.1 Neutral signs

- a) Conspicuous and unexplainably high standard of living; lavish lifestyle, display of status symbols;
- b) Conspicuous private contacts between the employee and third parties (e.g. invitations, secondary activities, consulting contracts; capital investments);
- c) Unexplainable resistance to a change of tasks or transfer, especially if connected with an actual or prospective promotion or salary increase;
- d) Secondary activities without the necessary authorization or notice;
- e) Unusual, unexplainable behaviour (e.g. due to blackmail or a bad conscience); increasing reticence; sudden changes in behaviour towards co-workers and supervisors;
- f) Decreasing identification with the workplace or tasks;

¹ Federal Criminal Police Office (BKA), *Korruption – hinnehmen oder handeln?* (Corruption: Tolerate it or take action?), Wiesbaden 1995, pp. 151-160.

- g) Social problems (alcohol or drug addiction or compulsive gambling, etc.);
- h) Craving for recognition, boasting about private or work-related contacts;
- i) Acceptance of advantages from third parties (special conditions for purchases, free restaurant meals, invitations to private or business events of 'clients');
- j) Great generosity on the part of businesses (e.g. sponsoring).

1.2 Warning signs

Apart from these rather neutral indicators, there are – according to the Federal Criminal Police Office – others which are characteristic of administrative corruption and must therefore be regarded as 'warning signs'.

Indicators in the workplace:

- a) Circumventing or 'overlooking' regulations; a growing number of 'minor irregularities'; discrepancies between actual transactions and operations and their subsequent documentation;
- b) Lack of identification with the workplace or tasks;
- c) Unusual decisions without a comprehensible rationale;
- d) Different assessments and decisions on transactions and operations with similar content but different applicants; abuse of discretionary powers;
- e) Granting of authorizations (e.g. with exemption from stipulations) while circumventing other responsible agencies;
- f) Intentionally circumventing controls; isolating areas responsible for certain tasks;
- g) Carrying out operations in secret;
- h) Conspicuously brief processing times for certain approvals;
- i) Preference for certain applicants or bidders;
- j) Trivializing the principle of thrift;
- k) Attempts to influence decisions in areas beyond one's own responsibility and for which the interests of third parties are important;
- l) Tacit acceptance of misconduct, in particular unlawful behaviour;
- m) Inadequate or nonexistent control of operations where particularly needed; weak administrative and task-related supervision;
- n) Lack of response to suspicious circumstances or events;
- o) Too many tasks concentrated on one person.

Indicators related to outside contacts:

- a) Conspicuously deferential treatment of applicants or bidders;
- b) Preference for limited tender procedures or invitations for tenders with discretionary award of contract; also splitting contracts so as to enable discretionary awards of contract; avoiding asking for additional bids for purposes of comparison;
- c) Substantial or repeated exceeding of contract amounts;
- d) Procurement not at usual market prices; unreasonable acquisitions; conclusion of long-term contracts without transparent competition on conditions unfavourable for the agency;
- e) Conspicuously frequent 'miscalculations'; subsequent corrections to specifications of goods or services;
- f) Incoming mail in award matters without official entry stamp (received via 'personal channels');
- g) Costly additional work;
- h) Secondary activities of employees or activities of their family members for companies which are also contractors or applicants of the public administration;
- i) Overly familiar manner or conspicuous deference when negotiating with companies;
- j) Companies exploiting (supposed) positions of power;
- k) Frequent 'business trips' to certain firms (particularly conspicuous if involving unnecessary overnight stays);
- l) Companies establishing a 'permanent presence' in the workplace (with specific decision-makers or desk officers); certain company representatives visiting only when 'their' staff members are present;
- m) Absence of the usual conflicts with companies and applicants.

According to research by the Federal Criminal Police Office (BKA), the items on this list may be of particular interest if occurring outside the norm ("unexplainable", "not comprehensible", "suddenly changing" "conspicuous"). The BKA highlights as a frequent and obvious warning signal a lavish or unusually high standard of living by employees with 'outside income', including the display of relevant status symbols. According to the BKA, understatement is less characteristic of these groups of persons.

Experts consulted by the Federal Criminal Police Office say that additional warning signs are allusions by co-workers, rumours from outside and anonymous tips (e.g. by disadvantaged companies that hence find themselves in

financial difficulties). According to these experts, these signals become even clearer when they occur in large numbers and in connection with certain persons or fields of activity, although it is absolutely necessary to weigh and analyse information coming from the ‘rumour mill’ carefully in order to rule out abuse. On the other hand, anonymous indications have often led to investigations which ultimately revealed cases of corruption.

2. Suspicion

In case of specific and well-founded suspicion of corruption, you should immediately inform the contact person for corruption prevention and the personnel department and agency management. Depending on the circumstances, you might also have to take rapid and appropriate measures to prevent a cover-up, such as

- a) withdrawing certain ongoing or completed operations from particular staff members,
- b) prohibiting access to records,
- c) securing the office, work-related files or relevant equipment (e.g. computers and floppy disks).

The extent of measures required can only be based on the circumstances of the individual case.

Remember that corruption is not a ‘trivial offence’ and that concealment can also harm your reputation.

If you break the rules, you may be guilty of a disciplinary and criminal offence.

3 Recommendations on Preventing Corruption in the Federal Administration

The following recommendations are intended as a non-binding aid in implementing the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration (Directive). Last update: 9 February 2012

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Recommendation on No. 11 of the Directive:	Guidelines for awarding contracts

Recommendation on No. 12 of the Directive: Anti-corruption clause, obligation of contractors under the Obligations Act

Recommendation on No. 14 of the Directive: Grant recipients

Recommendation on No. 15 of the Directive: Special measures

Annexes

1. Procurement records (Sample for No. 11 of the Directive)
2. Record of formal commitment (Sample for No. 12.2 of the Directive)
3. Applying the Directive accordingly (sample clause)
4. Standards of conduct for preventing corruption (standard clause and annex)

Recommendation on No. 1 of the Directive Scope

In 1.2, “accordingly” means that the Directive is to be applied by the legal entities under public or private law referred to there unless this conflicts with the divergent legal form.

Recommendation on No. 2 of the Directive Identifying and analysing areas of activity especially vulnerable to corruption

1. Procedure for identifying areas of activity especially vulnerable to corruption
 - 1.1 To identify areas of activity especially vulnerable to corruption within an agency, all areas of activity will be examined for their vulnerability to corruption. Before the process of identification begins, all available information about the various positions and activities (e.g. organizational charts, task assignment charts) should be analysed in order to have as complete an overview as possible of the area to be investigated. A questionnaire may be used to collect additional information needed. Questions about the characteristics listed below (see No. 2 below) may focus on positions or tasks in order to identify areas of activity especially vulnerable to corruption. After compiling all available data, the investigating organizational unit will make a final

determination as to special vulnerability to corruption. The results should be compiled and documented for the entire agency (for example in a risk atlas).

The handbook of 4 January 2012 on identifying areas of activity especially vulnerable to corruption offers extensive assistance with conducting this procedure.

- 1.2 The identification process can be divided into two steps: The first step involves identifying the areas of activity in which staff influence on decision-making leads to advantages of significant value to others (areas of activity vulnerable to corruption). Based on these results, areas of activity especially vulnerable to corruption can be identified in a second step.

2. Areas of activity especially vulnerable to corruption

- 2.1 The following areas of activity are usually especially vulnerable to corruption:
 - a. areas in which staff influence on decision-making may lead to advantages of significant value to others, and
 - b. activities involving at least one of the following:
 - frequent outside contacts, especially monitoring and supervisory activities,
 - management of large budgets, award of public contracts, subsidies, grants or other funds,
 - imposing of conditions, granting of concessions, approvals, permits and the like, setting and levying of fees,
 - processing of transactions and operations using internal information not intended for third parties.

This list is not exhaustive. In certain cases, activities may be especially vulnerable to corruption even in the absence of these characteristics.

- 2.2 The criteria listed above are explained in the handbook on identifying areas of activity especially vulnerable to corruption.

3. Risk analysis

3.1 In areas of activity especially vulnerable to corruption,

- after identifying special vulnerability to corruption for the first time,
- after organizational or procedural changes,
- after changes to assigned tasks, or
- after no more than five years,

the need for conducting a risk analysis should be examined. To do so, the existing safeguards for each area of activity especially vulnerable to corruption and the effectiveness of these safeguards should be briefly examined.

- 3.2 If the brief examination points to a need for action, a risk analysis is to be conducted. For this purpose, the individual operations and processes and existing safeguards against corruption will be examined for each area of activity. This will be followed by an evaluation as to whether the existing safeguards are sufficiently effective to counter the risks. If action is needed, then the organization and processes and/or personnel assignments are to be examined to see how they can be changed. In this case, the risk analysis will include recommendations and/or order additional measures.

The key aspects of a risk analysis are described in Annex 5 of the handbook on identifying areas of activity especially vulnerable to corruption.

Recommendation on No. 3 of the Directive Principle of greater scrutiny and transparency

1. The principle of greater scrutiny as a measure of corruption prevention is fulfilled by having additional staff check and monitor work results.
2. The principle of greater scrutiny is ensured in particular by rules on co-signature requiring a second staff member to check work results. In suitable areas, IT-based workflows incorporating a division of tasks may be used for this purpose. Co-signature under other specialized aspects or partial aspects does not satisfy the requirements of the principle of greater scrutiny. The

documents on which decisions are to be based must be understandable and sufficient for co-signing staff to conduct appropriate checks.

3. If in exceptional cases it is impossible to fulfil the principle of greater scrutiny, appropriate and effective compensatory measures to prevent corruption should be taken (e.g. shifting responsibilities, especially intensive expert and administrative supervision).

Recommendation on No. 4 of the Directive Staff

1. Staff selection

When staff are hired for positions especially vulnerable to corruption, the organizational unit responsible for personnel matters and supervisors involved in personnel decisions determine the level of risk associated with persons considered for the position. Their assessment will typically be limited to evaluation of any noticeable problems, e.g.

- investigations of criminal or disciplinary offences,
- in-house investigations of suspected corruption,
- excessive debt, disorderly financial situation,
- social problems (alcohol or drug addiction, compulsive gambling),
- conspicuous behaviour leading to doubts about the person's reliability.

Any persons to whom any of the above apply may not be considered for a position in an area especially vulnerable to corruption while the relevant investigation is under way or until any suspicion has been found to be groundless.

2. Limits on length of assignment

Rotation requires keeping track of the length of time staff are assigned to work in areas especially vulnerable to corruption. The length of assignment is counted from the actual start of the activity especially vulnerable to corruption.

3. Rotation

- 3.1 Rotation may be implemented both by moving the staff concerned (personnel rotation) and by changing the tasks especially vulnerable to corruption (task rotation) to a different position. The new tasks assigned to staff may also be especially vulnerable to corruption for other reasons.
 - 3.2 If in exceptional cases rotation is not possible due to the nature of operations or to (personnel) management considerations (e.g. lack of expert staff), then other appropriate and effective measures to prevent corruption should be used instead (e.g. extending the application of the principle of greater scrutiny, working in teams and exchanging tasks within organizational units, transferring responsibilities, intensifying administrative and task-related supervision).
4. The contact person for corruption prevention is to be kept constantly involved.

Recommendation on No. 5 of the Directive **Contact person for corruption prevention**

1. The contact person for corruption prevention is to be formally appointed. This appointment is to be announced in the person's area of responsibility. A deputy contact person should be appointed in the same way.
2. As a rule, the contact person will not undertake own investigations in cases of suspected corruption.
3. Staff members with disbursement authority may also serve as contact persons.
4. Persons responsible for background security checks under the Security Clearance Check Act (SÜG) may not be appointed as contact persons.
5. While continuing to perform his or her own duties, the contact person should work with staff in the internal audit unit and with those responsible for implementing the Directive.
6. The agency will support the contact person in carrying out his or her duties (e.g. by setting up special e-mail addresses or providing appropriate office space).

7. If heads of subordinate agencies are suspected of corruption, the contact person contacted will inform the contact person for the supreme federal authority. The same may occur in other appropriate cases.

Recommendation on No. 6 of the Directive Organizational unit for preventing corruption

Following each assessment of an organizational unit, the assessment results should be discussed in a meeting with the assessed unit.

Recommendation on No. 7 of the Directive Increasing staff awareness

1. Pro-active personnel management and monitoring may also serve to increase staff awareness.
2. Particularly in areas of activity especially vulnerable to corruption, regular reminders to staff may also be part of the dialogue between staff and their supervisors.

Recommendation on No. 8 of the Directive Basic and advanced training

Basic and advanced training on corruption prevention should aim in particular at teaching the target group

- how to perform the tasks under Nos. 2, 3, 5 through 7 and 9 of the Directive, and
- how to apply the training to their daily work routine.

Training for supervisors should enable them to do justice to their function as role models and monitors. Staff in areas of activity especially vulnerable to corruption and their supervisors should also be made aware of the specific risks of corruption in a way appropriate to their ranks.

To this end, the responsible bodies in the ministries will draw up scheduling, organizational and content requirements for systematic and rank-appropriate

training at the basic and advanced training facilities. In doing so, the responsibilities of participating agencies should be clearly defined and delimited.

Recommendation on No. 9 of the Directive **Rigorous administrative and expert supervision**

1. If by way of exception a staff member is assigned to an area of activity especially vulnerable to corruption for more than five years (see Recommendation on No. 4), administrative and expert supervision should be particularly intensive. This includes regular discussion between supervisor and staff member of aspects related to corruption which are relevant for the position, and increased random checks of operations with an eye to corruption prevention. With regard to subordinate agencies, an on-site check should also be carried out. Additional compensatory measures should be discussed and implemented with the contact person for corruption prevention.
2. Legal persons under public and private law to whom the Directive applies accordingly should be included in the sharing of information between the ministries and their subordinate agencies in a suitable way and to an appropriate extent.
3. If a task is delegated to a subordinate agency, administrative and expert supervision by the superior authority will also include rigorous corruption prevention measures. In doing so, the federal ministries are to follow the principles of expert supervision for the agencies in their remit.

Recommendation on No. 10 of the Directive **Notification and measures in case of suspected corruption**

In case of plausible indications or evidence of criminal activity, the public prosecutor's office should be contacted at an early stage in order to determine whether there is sufficient evidence of a crime. Further internal investigations may be carried out in consultation with the public prosecutor's office as needed. The number of persons involved in such investigations should be kept as small as possible.

Recommendation on No. 11 of the Directive Guidelines for awarding contracts

1. Instead of having to check the complete award files, keeping standardized logs of the key elements in the award processing, also indicating when they took place, makes it much easier to check for improper influence during the award process. For this reason, agencies should keep such logs, whether or not they are required under procurement law (see Annex 1 for a sample). Logs may also be generated electronically. The agency sets the minimum value of contract for which such logs will be kept.
2. The agency will ensure that the reasons justifying any deviation from the priority of a public invitation to tender or the public tender process are recorded for the file in each individual case.

Recommendation on No. 12 of the Directive Anti-corruption clause, obligation of contractors under the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants (Obligations Act)

1. If an anti-corruption clause is used, invitations to tender should clearly inform potential bidders that the contract will contain such a clause.
2. Only those persons who are not public officials as defined in Section 11 (1) no. 2 of the Criminal Code must agree to conscientiously fulfil their obligations. Employees of enterprises organized under private law subject to government management when performing administrative tasks to the extent that they may be considered part of the “long arm” of the state when assessing their overall characteristics are public officials as defined in Section 11 (1) no. 2 (c) of the Criminal Code.
3. In all other cases, the participation of private enterprises in carrying out public tasks is defined in Section 1 (1) nos. 1 and 2 of the Obligations Act. If it is unclear whether persons are public officials or not, they should agree to fulfil their obligations (just in case).
4. External persons who work for the agency on a contract basis and are hired for certain tasks, such as producing expert reports or serving on an advisory body, should also formally agree (see Annex 2). Employees of external firms

performing manual labour for the agency or delivering goods to the agency do not need to formally agree.

5. Section 1 (4) of the Obligations Act determines which agency is responsible for administering pledges: The agency for which the work is being performed is the responsible authority under Section 1 (4) no. 1 of the Obligations Act. Pledges should be administered by the organizational unit which hired the external persons.

Recommendation on No. 14 of the Directive

Grant recipients

1. Where No. 14.1 of the Directive provides for applying the Directive accordingly within the framework of institutional funding, i.e. when budgetary law provides for the application of procurement law, then the standard clause (Annex 3) should be used.
2. If budgetary law does not require the application of procurement law in the framework of institutional funding, special subsidiary provisions in the grant award notice or an agreement in the award contract should require the grant recipient to agree to uphold the standards of conduct (Annex 4).
3. As part of the award relationship, the party providing the funds should check and ensure that these requirements are actually carried out. The grant recipient should describe the concrete implementation in a report.

Recommendation on No. 15 of the Directive

Special measures

In the case of legal persons under private law in which the Federation directly holds a majority share, the federal agencies supervising the share should apply the influence in accordance with their share and with the legal form to apply the Directive Concerning the Prevention of Corruption accordingly or, if this is not possible, seek other suitable measures for preventing corruption.

4 Circular on the ban on accepting rewards or gifts

Circular on the ban on accepting rewards or gifts in the federal administration of 8 November 2004 (in acc. with Section 70 of the Act on Federal Civil Servants (BBG); Section 10 of the Collective Agreement for Salary Earners in the Public Service and the Collective Agreement for Salary Earners in the Public Service in the new Länder (BAT/BAT-O); Section 12 of the Framework Collective Agreement for Wage Earners in the Public Service and the Framework Collective Agreement for Wage Earners in the Public Service in the new Länder (MTArb/MTArb-O); Section 19 of the Soldiers' Act (SG))

I. General principles

Public service staff (a broad-ranging term which also includes soldiers, retired professional soldiers and retired civil servants) must avoid any impression that they might be susceptible to offers of gaining personal advantages in discharging their duties. Consequently, no rewards or gifts are to be accepted in connection with public service staff's offices or official activities (BBG, Section 70; BAT/BAT-O, Section 10; MTArb/MTArb-O, Section 12; Soldiers' Act, Section 19).

Exceptions are possible only in cases in which there is no risk of the staff concerned being influenced. Exceptions also require prior approval from the employer pursuant to point III. The acceptance of cash – to whatever amount – is not approvable under any circumstances and is thus not to take place.

Public service staff are to notify their employer forthwith and of their own accord, if they are offered rewards or gifts in connection with their official activities.

II. Rewards or gifts

Rewards and gifts are all benefits to which the staff have no legal entitlement and which are objectively to their advantage in either a material or non-material form. These also include benefits granted to third parties (in particular dependents, acquaintances, the public service employee's own sports club, etc.), where such benefits lead to savings for the staff or where they are actually to employees' advantage in any manner or form.

In addition to cash payments and material assets, all other types of benefits also come into consideration in this context. These include, for example:

- the possibility of using or consuming items (motor vehicles, building machinery, petrol or similar);
- vouchers, complimentary or admission tickets, bus, rail or plane tickets;
- preferential treatment relating to private transactions, such as interest-free or low-interest loans, provision of special-price purchasing arrangements, participation in deliveries for an authority, etc.;
- arrangement and/or provision of outside activities or a position after leaving the public service (cf. BBG, Sections 64 to 66 and Soldiers' Act, Section 20; BBG, Section 69a and Soldiers' Act, Section 20a);
- invitations involving hospitality;
- provision of accommodation free of charge or on favourable terms;
- invitation or accompanying to informational, representative or holiday trips or financing of the same;
- privileges relating to heritable interests (testamentary gifts or appointment of heirs);
- awarding of prizes, etc., other than by the employer.

With regard to the office, a benefit is deemed to be granted when, according to the circumstances of the case concerned, the party granting the benefit is guided by the fact that the staff hold or have held a certain office. Consequent-

ly, no approval is required for the acceptance of gifts of a customary nature from among the staff (on the occasion of a birthday, anniversary, etc.).

Any private or official use or exploitation of a gift or reward constitutes acceptance of the same. This also applies where the benefit is passed on directly to third parties or donated to a charitable institution.

Acceptance must not be expressly declared. Behaviour implying acceptance is sufficient.

III. Express approval of exemption from the ban on the acceptance of rewards and gifts

In order to avoid any impression that they may be susceptible to offers of personal gain, prior to accepting gifts or rewards staff are to file an official application for approval with the competent body forthwith, through the official channels. Where this is not possible for material reasons, approval is to be applied for after acceptance. This applies above all when it has not been possible to obtain the approval in good time, particularly when granting of the benefit was not foreseeable.

Application for approval of the acceptance is to be submitted in written or electronic form. Information furnished in accordance with regulations on travel costs, i.e. in an application for an official trip or an application for the reimbursement of costs relating to an official trip, is no substitute for an application for approval of the acceptance of gifts or rewards.

Approval pursuant to BBG, Section 70/Section 19 of the Soldiers' Act does not release the applicant from the obligation to provide the information required under the regulations on travel costs (e.g. on free catering).

An express and separate decision on the granting of approval is to be reached in each individual case. The decision is contingent on the specific given circumstances and is to be communicated in writing or by electronic means. In this context, approval of acceptance cannot be justified by reference solely to the fact that it is customary to accept certain benefits outside of the public administration, in particular in trade and industry.

Approval shall be refused in particular where there is a risk that acceptance may compromise the staff's ability to discharge their duties in an impartial manner or may induce an impression in third parties of partiality or corruptibility.

It is at the discretion of the competent service authority to grant approval subject to conditions. Where a granted benefit can be used in an official capacity, approval should be granted subject to the condition that it be used solely for official purposes. In the case of distinctions, awards, etc. which are accompanied by payments, approval should be granted subject to the condition that the cash benefit be assigned in part or in its entirety to the Federal Cash Office or to charitable causes outside of the administration.

Where applications for approval submitted after accepting benefits are rejected, the benefits concerned are generally to be returned. Where it is not possible to return the benefit, the rejection of the application should entail a requirement for the customary price of the benefit concerned, as assessed by the competent body with due regard to the circumstances of the individual case concerned, to be paid to the party granting the benefit or for the amount to be donated to social institutions.

By way of exception, rejection of the application for approval or subsequent approval is to be accompanied by a requirement for the benefit or the equivalent financial value to be surrendered forthwith to the employer, where

- the benefit has evidently been granted to the employee as a representative of the employer or
- the required return to the party granting the benefit fails to come about solely because
 - returning the benefit would be interpreted as a breach of the general rules of social etiquette or courtesy or
 - the party granting the benefit has refused to take back the benefit or will in all probability refuse to do so or
 - returning the benefit would involve a disproportionate level of expenditure and/or scope of work in relation to the objective value of the benefit concerned

It is recommended to notify the party granting the benefit of surrender of the benefit to the employer.

IV. Tacit approval of exemptions from the ban on the acceptance of rewards and gifts

By way of exception, tacit approval may be assumed in the following special cases:

- The acceptance of minor gifts up to a value of 25 euros (e.g. simple promotion articles such as ballpoint pens, notepads, calendars). The market value in the Federal Republic of Germany is the decisive criterion. In this case, the recipient is obliged to notify the employer, however. The object concerned is to be specified, together with its estimated value, the grounds for granting the object and the person granting the object.
- Hospitality provided by public institutions or grant recipients who are predominantly financed by the public sector.
- Participation in hospitality measures by private parties on the occasion of or in connection with official activities, meetings, inspections or similar, where such measures are customary and appropriate or where they are based on the rules of social intercourse and courtesy which members of the public service cannot evade – with due regard to their special obligation to discharge their duties in an impartial manner – without breaching social etiquette. This shall also apply where the nature and scope of the hospitality represents a substantial value, whereby the official function of the employee concerned shall also be considered in determining the extent to which the hospitality is commensurate in the individual case concerned.
- Hospitality in the context of general events in which employees participate on official duty or with due regard to the social obligations pertaining to the discharge of their duties (e.g. introduction and/or discharge of official staff, official receptions), provided that such hospitality remains commensurate and within the customary bounds.
- Minor services which facilitate or expedite official business (e.g. collection by car from a railway station).

Tacit approval may be revoked by the competent body in individual cases where accepting such benefits might create an impression of preferential treatment for individuals or corruptibility.

V. Legal consequences in case of contravention

Contravention of the ban on accepting rewards or gifts constitutes a disciplinary offence and/or a breach of duties arising from the contract of employment, such that

- civil servants face disciplinary measures up to dismissal from service,
- retired civil servants face disciplinary measures up to the deprivation of pension entitlements,
- professional soldiers and fixed-term volunteers face disciplinary measures up to dismissal from service,
- retired professional soldiers and former soldiers who qualify as retired soldiers face disciplinary measures up to the deprivation of pension entitlements and
- employees and trainees face sanctions under labour law up to exceptional dismissal.

Where the employer incurs an economic disadvantage in connection with a contravention of the regulations pertaining to the ban on accepting rewards or gifts, the employees concerned shall be obliged to pay compensation for damages (cf. BBG, Section 78; BAT-BAT-O, Section 14; MTArb/MTArb-O, Section 11a; Soldiers' Act, Section 24). Notwithstanding any claims for damages, the employer may be entitled to require surrender of the benefits.

Employees may furthermore be sentenced as follows under criminal law for contraventions of the ban on accepting rewards or gifts:

- To up to three years' imprisonment or a fine for accepting advantages, if they demand, solicit or accept an advantage for themselves or a third party in return for discharging their duties (cf. Section 331 (1) of the German Criminal Code (StGB)),
- to up to five years' imprisonment or a fine for accepting bribes, if they demand, solicit or accept an advantage for themselves or a third party in return for having performed an official act or for performing an official act in the future, thereby committing a neglect of duty (cf. Section 332 (1) of the German Criminal Code),

- to up to ten years' imprisonment in particularly serious cases of accepting bribes (cf. Section 335 (1), no. 1 of the German Criminal Code).

VI. Supplementary orders

The highest service authorities may issue supplementary or additional orders, in particular in order to cover special circumstances in their areas or individual branches of administration.

VII. Final provisions

The circulars from the Federal Ministry of the Interior – II A 1 – 21 263 – 352/61 – of 25 January 1962 (Interdepartmental Circular 1962, p. 120 ff.), D I 1 – 210 170/1 of 10 March 1977 and – D I 1 – 210 170/1 of 24 November 1981 shall no longer apply.

5 General Administrative Regulation on Sponsoring

General administrative regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts) of 7 July 2003

The following general administrative regulation is enacted pursuant to Article 86, sentence 1 of the Basic Law:

1 Scope, definitions

This administrative regulation applies to the donation of cash and non-cash contributions and services by parties from the private sector (sponsors) to one or more bodies of the federal government (beneficiaries), via which the sponsor promotes an activity pursued by the federal government with the aim of attaining an advantage in the form of a promotional or publicity-enhancing effect (sponsoring). Activities for the purposes of this administrative regulation are such which the government body concerned performs in discharging its public duties and in presenting itself to the outside world. Bodies of the federal government are the highest federal authorities, the authorities of the direct and indirect federal administration and the courts of the federal government. This regulation also applies to the armed forces.

Consequently, if the party from the private sector and the government body agree on appropriate cost sharing in pursuit of similar objectives, this shall not constitute sponsoring.

The following provisions shall apply correspondingly to gifts by parties from the private sector (in particular donations and other contributions) to the federal administration.

2 Purpose of the administrative regulation

In suitable instances, sponsoring helps to achieve administrative objectives. It is nevertheless incumbent upon the public administration to avoid any appearance of external influence coming to bear, in order to uphold the integrity and neutrality of the state. Consequently, the public administration may only open itself up to sponsoring in accordance with the following circumscribing provisions.

3 Basic principles

The following basic principles are to be observed in reaching decisions on the use of sponsoring:

3.1 As a general principle, public duties are to be financed via budgetary funds. Sponsoring is thus only possible as a supplementary measure subject to the conditions stated in points 3.2 to 3.4.

3.2 As a general principle, decisions on the solicitation and acceptance of sponsoring are to be taken according to a restrictive approach.

3.2.1 Sponsoring is strictly prohibited in the area of interventional administration (e.g. in the form of direct or indirect support in the area of the sovereign duties performed by the federal government's police, financial authorities and customs, by way of non-cash contributions, for example). Outside of the area of interventional administration (e.g. the financing of public relations measures by the police, provided that this does not result in any influence being exerted in the area of interventional administration), sponsoring may be approved by way of exception.

3.2.2 Outside of the area of interventional administration sponsoring is permissible, e.g. in the areas of culture, sport, health, environmental protection, education and science, the promotion of foreign trade, political public relations in Germany and abroad and at representative events staged by the federal government, provided that there is no possibility of influence being brought to bear on the administration in discharging its duties and that no impression of any such influence arises.

3.3 The acceptance of offered or solicited sponsoring shall require the written consent of the highest administrative authority. The latter may delegate its powers in this respect. Should the government body to which the power of consent is delegated be the intended beneficiary of the sponsoring, the consent of the next-highest government body must be obtained beforehand, if the benefiting body is not authorised to make the final decision. A post responsible for sponsorship issues (sponsorship officer) is to be established within each of the highest federal authorities; this post is to be involved in matters relating to sponsorship and is to cooperate closely with the contact for the prevention of corruption. When it is planned to solicit sponsoring, the decision of the head of the government body concerned is to be obtained prior to approaching potential sponsors. The head of the body concerned involves the sponsorship officer in cases to be decided by the highest federal authority. The head may delegate the decision-making authority within the highest federal authorities pursuant to sentence 5.

3.4 Insofar as sponsoring is permissible in isolated instances in these areas, approval shall be dependent on the following criteria:

a) Sponsoring is to be disclosed to the public. The scope and form of sponsoring and the sponsors are to be made transparent for every sponsoring measure, in order to avoid any impression of partiality on the part of the public administration. Measures to ensure transparency include

- booking the cash payments from sponsoring under the appropriate revenue items for ex-post control purposes,
- disclosure of the cash and non-cash contributions and services received from sponsoring in a bi-annual report from the Federal Ministry of the Interior. Individual sponsoring payments up to the

equivalent of € 5000 may be summarised as collective items in this report.

- b) Each individual case is to be decided on the basis of verifiable criteria. Equality of competition and opportunity must be ensured among potential sponsors. The decision in favour of a sponsor must be objective and unbiased and must be based on pertinent and comprehensible considerations. The sponsors' individual reliability, financial capacity, business practices and principles and customer and media profiles represent possible criteria for the decision.
- c) All sponsorship agreements are to be placed on record. It is to be specified in writing what activity is sponsored, what specific contributions the sponsor makes and what obligations the government body assumes.

The sole obligation which is permissible on the part of the government body is an undertaking to present the sponsor, in particular to specify the sponsor's name, company and brand and to present the sponsor's logo and other signs in connection with the event concerned. Agreements establishing direct links between sponsorship contributions and services to be rendered in return for such contributions are not permissible.

- d) When offers of sponsorship are accepted, the contents of the appurtenant agreements must not establish any further obligations or arouse any further expectations.
- e) The government body must not publicly extol the sponsor and the sponsor's products beyond the obligation specified in letter c). Activities relating to the promotion of foreign trade are exempted from this restriction.
- f) When contractors to the government body are considered as sponsors, it is to be ensured that competitors are included in the process with equal opportunities in accordance with letter b). The acceptance of a sponsorship contribution must not give rise to any ties which might restrict or preclude public competition.
- g) Prior to accepting sponsoring, it is to be ensured that budgetary funds for ensuing subsequent expenditure (e.g. vehicle maintenance costs, tel-

evision charges, operating costs or similar) are available for the intended purpose.

- h) Examples of activities eligible for sponsorship are stated in the annex to this administrative regulation.

4 Final provisions

The highest federal authorities may draw up supplementary provisions, in particular further restrictions relating to sponsoring. Existing restrictions shall remain unaffected.

5 Effective date

This general administrative regulation comes into force on the date of its publication in the federal gazette. It supplements item 18 of the federal government directive to prevent corruption in the federal administration of 17 June 1998 (Federal Gazette p. 9665).

Berlin, 7 July 2003

O 4 - 634 140-1/7

The Federal Chancellor Gerhard Schröder
The Federal Minister of the Interior Otto Schily

Annex

Examples of activities eligible for sponsorship

- Public relations events
- Public relations abroad at events which are also organised by the diplomatic missions abroad
- Events and fairs to promote Germany's export sector and individual industries in Germany and abroad

- Events to publicise and promote Germany as a business location in Germany and abroad
- Events in connection with sports, cultural and educational policy in Germany and abroad
- Events and measures to promote general environmental awareness
- The promotion of health and the prevention of illness
- Other representative events
- Representative events to present the Federal Republic of Germany to other countries
- Press relations at key events in Germany and abroad
- Press relations and looking after delegations in connection with major events in Germany and abroad
- Supporting representation of the federal German armed forces in Germany and abroad
- Donations to libraries and media libraries in supplementation of the official resources
- Assumption of all or a portion of the production costs for demonstration materials and specialised information in the form of various media (e.g. printing of conference proceedings and information brochures, production of CDs, etc.)
- Complete or partial financing of an item of equipment by a support group

6

General administrative regulation on the use of persons not employed in the public service

General administrative regulation on the use of persons not employed in the public service (external persons) in the federal administration of 17 July 2008

The following general administrative regulation is enacted pursuant to Article 86 first sentence of the Basic Law:

1 Scope and definitions

- 1.1 The use of external persons facilitates staff exchange and knowledge transfer between the administration and the private sector as well as research, cultural and civil society institutions. Such use in all federal agencies is subject to this administrative regulation.
- 1.2 An external person is a person employed outside the public service who temporarily works for the federal administration while maintaining his other employment. As referred to in this regulation, the public service refers to working in the service of federal, state or local government or other corporations, institutions or foundations under public law or their associations, except for religious societies under public law and their associations. The following is equivalent to working for the public service:
 - working in the service of legal persons, societies or other associations which are entirely government-owned; and

- working for intergovernmental or supranational institutions in which the federal government or a federal state or other public-law corporation, institution or foundation on federal territory or their associations are involved by paying contributions or subsidies or by other means.

1.3 The following are not covered by this regulation:

- paid contracts for the provision of advisory or other services,
- temporary work contracts, and
- employees of other countries.

2 Permissibility and oversight of the use of external persons

2.1 The use of external persons is permitted

- within the framework of a transparent staff exchange between the federal administration and the private sector as well as research, cultural and civil society institutions;
- if the administration does not possess the expert knowledge needed to carry out specific tasks (before it is decided whether to use external persons, it is necessary to define the need for external expert knowledge in detail and document that this need cannot be met by contracting advisory or other services); or
- if the budget explicitly provides funding for this purpose.

2.2 Outside of staff exchanges, external persons are to be selected through neutral competition. To this end, the need for external expert knowledge should be publicized appropriately. The suitability of external persons must be determined before their assignment.

2.3 The length of assignment of external persons must be set on a case-by-case basis and as a rule should not exceed six months. Longer assignments may be allowed where justified. External persons are not to be used to meet long-term needs for expert knowledge.

2.4 The use of external persons from companies and institutions with which the federal administration has had business relations in the previous two years is not permitted except in the framework of staff exchanges.

2.5 The use of external persons in the following functions is never permitted:

- drafting bills or other legislation,
- supervisory functions,
- functions at the executive level or in other key areas of control,
- functions with final decision-making powers,
- functions directly affecting the concrete business interests of the person's permanent employer; this is especially the case if the federal administration unit in which the external person is to work supervises the permanent employer; this applies also to positions outside the public service to be taken up by external persons soon after the end of their assignment in the federal administration,
- functions involving the awarding of public contracts.

This does not apply where other legislation provides for use in these functions.

2.6 The use of external persons is not permitted solely to remedy staff shortages.

The person's external status should be made clear in all work-related contacts within and outside the administration.

3 Risk assessment, supervision

3.1 A risk assessment is to be used to determine whether external persons can be used in view of possible conflicts of interest or creation of competitive advantages. The contact person for corruption prevention according to No. 5 of the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 30 July 2004 (Federal Gazette p. 17745) or the units responsible for (human resources) sponsoring are to be involved

in the risk assessment process. The risk assessment is to be documented in writing and included in the personnel file.

- 3.2 Supervisors of external persons should always be capable of managing, monitoring and evaluating the work of these persons.

4 Compensation

Where not in conflict with other provisions and the aims of staff exchange or knowledge transfer have priority, the salary of external persons can be paid by the permanent employer for up to six months or, in the case of staff exchanges, for the duration of the exchange. Otherwise the permanent employer is to be reimbursed for the salary.

5 Transparency

The Federal Ministry of the Interior reports to the Budget Committee and the Committee on Internal Affairs by 30 September and if desired also by 31 March each year on the use of external persons in the federal administration (number of external persons, permanent employer, length of assignment, form of compensation, human resources budget if applicable, area of assignment and position in the federal administration, position with permanent employer).

6 Instruction; code of conduct; security of confidential information

- 6.1 For the secondment and work of external persons, agreements are to be made concerning labour law, the right to issue instructions and to ensure the confidentiality of data, telecommunications and trade secrets as well as codes of conduct for external persons. External persons must sign the current versions of the code of conduct printed in the annex, of the Anti-Corruption Code of Conduct (Annex 1 of the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 30 July 2004, Federal Gazette p. 17745) and of the Circular on the Ban on Accepting Rewards or Gifts in the Federal Administration of 8 November 2004 (file ref.: D I 3 – 210 170/1, Joint Ministerial Gazette 2004, p. 1074). They are

to be included as annexes to the contract between the external person, the permanent employer and the host agency.

- 6.2 Before external persons start working in the federal administration, as a rule a check of police records is to be conducted in accordance with Section 30 (5) of the Federal Central Criminal Register Act and a background check carried out as needed.
- 6.3 By the time their assignment begins, external persons are to be informed of the special conditions associated with their status and must agree to fulfil the obligations arising from their contract conscientiously in accordance with the Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants.

7 Final provisions

The supreme federal authorities may provide further restrictions on the use of external persons within their remit. Existing restrictions remain unaffected.

8 Entry into force

This general administrative regulation will enter into force on the day after its promulgation.

Berlin, 17 July 2008

Federal Chancellor Dr Angela Merkel
Federal Minister of the Interior Dr Schäuble

Annex

....., on 200....

Code of Conduct for external persons working in the federal administration

1. I have been released from my employer (name, address) to work at the federal ministry / federal office / federal agency / institute (in the following: federal ministry / federal office / federal agency / institute) from (date) to (date). During this time, I agree to put my labour exclusively at the disposal of the federal ministry / federal office / federal agency / institute and pursue its interests alone.
2. During my assignment to the federal ministry / federal office / federal agency / institute, I will take instructions for my work only from the staff of the federal ministry / federal office / federal agency / institute authorized to give me instructions. I will not follow any instructions or recommendations from my permanent employer with reference to this work. Should I receive such instructions or recommendations, I will immediately inform my supervisors at the federal ministry / federal office / federal agency / institute
3. I will be assigned to the following area at the federal ministry / federal office / federal agency / institute : During this assignment, I will place my knowledge, expertise and professional experience at the disposal of the federal ministry / federal office / federal agency / institute In this context I will act only in an advisory and expert capacity. I will not make any decisions, in particular regarding the substance of draft legislation.
4. I will not pass on any information I receive as the result of my assignment at the federal ministry / federal office / federal agency / institute to my permanent employer or any other persons or bodies unless this information is intended for my employer or other persons or bodies. I will contact my permanent employer regarding any decisions taken in the federal

ministry / federal office / federal agency / institute only after prior approval by my supervisors at the federal ministry / federal office / federal agency / institute

5. I am aware that I may not disclose any information to third parties concerning matters of which I become aware during my assignment at the federal ministry / federal office / federal agency / institute unless such matters are public or are not significant enough to require confidentiality. I have been informed that I may not take note of any work-related texts, drawings, formulas, images or other records without permission of the federal ministry / federal office / federal agency / institute and that I may not acquire any copies for myself or others, and that at the request of the federal ministry / federal office / federal agency / institute I must relinquish any work-related texts, drawings, etc. as well as records concerning matters of the federal ministry / federal office / federal agency / institute
6. I am aware of the content of the Circular on the Ban on Accepting Rewards or Gifts in the Federal Administration of 8 November 2004 (file ref.: D I 3 – 210 170/1, Joint Ministerial Gazette 2004, p. 1074) and of the fact that the provisions of the Circular are to be applied to my work at the federal ministry / federal office / federal agency / institute
7. I am aware that the obligations of this code of conduct continue to apply after my work in the federal ministry / federal office / federal agency / institute has ended. This applies in particular to the obligation to maintain the confidentiality of matters subject to the principle of confidentiality.
8. I am aware that I must inform the federal ministry / federal office / federal agency / institute when engaging in secondary employment or a second occupation.
9. I agree that my permanent employer may be given a copy of this statement.

.....

Signature of the external person

7 Recommendations for internal audit units in the federal administration

21 December 2007

The Federal Ministry of the Interior releases the following recommendations with consent of the federal ministries:

Recommendations for internal audit units in the federal administration

Internal audit units are intended to help agency executives meet their overall responsibilities. The following recommendations are based on the latest standards for internal audit units. The individual ministries are responsible for deciding whether and to what extent internal audit units are necessary and how these recommendations are to be implemented, in particular which modifications are needed to accommodate the special characteristics of individual ministries. These recommendations are intended as guidelines for internal audit units.

1. General information

- (1) Internal audit units are intended to reduce risks by providing inspections and advising. The executive level is responsible for ensuring the appropriateness and effectiveness of the internal monitoring systems and issues the specific audit request. The internal audit unit assists the agency executive. It examines administrative operations and delivers information, analyses, evaluations, recommendations and advising. It provides the perspective of

an operational unit which is not involved in the process being examined. It also has a preventive function and helps permanently improve the culture, quality, effectiveness and efficiency of administrative operations. The internal audit unit does not address policy decisions.

- (2) Internal audit units provide information and recommendations for administrative and technical supervision but is not a substitute for it. Staff should regard the internal audit unit as helping them carry out their duties.

2. Objectives

Internal audit units perform an independent inspection and review function requested by the agency executive. Internal audit units create transparency concerning administrative operations in the agency. They help agency executives

- carry out their tasks of monitoring and supervision,
- ensure the quality, innovation, efficiency and effectiveness of administrative operations, and
- comply with rules and regulations.

3. Tasks

The tasks of the internal audit unit cover the entire range of administrative operations. Above all, it has the following tasks:

- (1) Checking that administrative operations are lawful, proper, functional, efficacious and cost-effective; in particular whether
 - operations comply with applicable legislative and administrative provisions (including internal regulations);
 - the defined objectives of the agency executive are being implemented effectively and properly;
 - the principles of efficient operations are being followed;

- assets are adequately safeguarded;
- in-house rules are effective;
- internal monitoring systems and information and business processes are effectively organized and function reliably;
- supervisors perform their duties properly, including administrative and technical supervision;
- the internal risk management system is functional and effective.

(2) Supporting the agency's executive level

- by creating full transparency and a decision-based overview of risks related to assets, environment, business processes and management information;
- in defining and revising in-house rules.

(3) Informing and advising supervisors and staff.

(4) In-house tasks of corruption prevention and/or administrative investigations in case of suspected wrongdoing can be delegated to internal audit units.

4. Organization

- (1) Internal audit units may be structured either centrally (at the level of the supreme federal authority) or decentrally (in the federal ministries and their executive agencies). The ministry executive decides on the structure, taking into account the potential risk and performance.
- (2) The internal audit unit should report directly to the head or deputy head of the agency.
- (3) With the approval of the supreme federal authority, internal audit tasks may be delegated to other agencies, for example if an agency does not have

enough staff or the potential risk is not enough to justify having its own internal audit unit. The responsibility of the executive of the delegating agency remains unaffected.

- (4) The human and material resources of the internal audit unit must be appropriately oriented on agency-specific criteria such as potential risk, size, structure and complexity.
- (5) Internal audit units have no right to issue instructions for any areas, including the area being audited.

5. Rights of the internal audit unit

- (1) All staff and supervisors must support and encourage the internal audit unit, providing the necessary information and documents.
- (2) To perform its duties, the internal audit unit has the right to access, collect and review information from all organizational units. It has the right to report directly to the agency executive orally and in writing.
- (3) To perform its duties, the internal audit unit has the right to inspect all records, including related electronic files such as
 - lists of all contracts for work and services,
 - lists of all purchases,
 - central accounting systems (budget, accounting, cost and activity accounting),
 - documentation of processes,
 - inventories.

As part of their audits, they may request database analyses.

- (4) They may be refused access only to classified materials. The provisions of the Federal Data Protection Act remain unaffected.
- (5) External experts may be engaged in line with existing regulations.

6. Duties of the internal audit unit

- (1) Staff of internal audit units must perform their tasks objectively, conscientiously and neutrally with regard to the subject audited. In particular, they must demonstrate
 - Integrity
The integrity of internal auditors is the basis for a relationship of trust and thus for the reliability of their evaluations.
 - Objectivity
Internal auditors apply the highest level of professionalism and objectivity when collecting, assessing and forwarding information concerning the activities or processes they are examining. They assess all relevant circumstances in a balanced way and do not let their judgement be guided by their own interests or influenced by third parties.
 - Discretion
Internal auditors are bound to secrecy. They respect the value of and the rights to the information available to them and do not disclose any information unless so obligated by law or duty.
- (2) The director of the internal audit unit is responsible for the basic and advanced training of the staff.

7. Requirements for internal audit units

- (1) The work of internal audit units is fundamentally irreconcilable with work in specific subject areas.
- (2) Internal audit staff should have sufficient professional experience. They are required to engage in ongoing professional training and keep up with the latest developments in their field.

8. Types of audits, planning and process

- (1) Based on the threat or risk assessment of the agency to be audited and the effort required relative to the potential benefit, the internal audit unit produces a catalogue of audit topics which it uses to plan the audit process. The audit plan must be presented to the agency executive for approval. The audit plan covers the material, personnel and scheduling aspects of the audit. A longer-term audit plan is to be produced at regular intervals.
- (2) Audits may take the form of
 - regularly scheduled audits,
 - baseline audits,
 - system audits,
 - audits for specific reasons,
 - follow-up audits (to check on the implementation of earlier recommendations and information).
- (3) Depending on the priorities set, audits are conducted according to the following criteria in particular:
 - lawfulness,
 - orderliness,
 - security,
 - cost-effectiveness,
 - preparation for the future,
 - efficacy/effectiveness,
 - outcome orientation.

- (4) As a rule, the internal audit unit informs the organizational units in advance that it will be conducting an audit.
- (5) During the audit, it collects and evaluates the facts and documents the audit operations, findings and evaluations. Already at this stage, insights gained and the resulting recommendations should be discussed with the organizational units audited.
- (6) Audits should always be conducted as a team effort.
- (7) To conclude the audit, the internal audit unit immediately sends the audited unit a draft audit report including its findings and evaluations as well as suggestions for improvement or for remedying problems, if necessary.
- (8) The audited unit has an opportunity to discuss and comment on the report in a final meeting. Comments may also be submitted in writing. The results of the final meeting are recorded in the meeting minutes.
- (9) After the audit is completed, the final audit report is presented to the agency executive without delay. The audited unit usually receives a copy.
- (10) Details of the audit plan and process are governed by audit rules published within the agency.

9. Implementation of audit recommendations

The agency executive decides on the implementation of the internal audit unit's recommendations. The audited unit is responsible for implementation. The responsibilities of other units remain unaffected.

10. Annual report

The internal audit unit should present the agency executive with an annual report of its activities.

11. Quality assurance

- (1) The internal audit unit takes appropriate measures to ensure the quality of its work. These measures may include
 - task-specific basic and advanced training,
 - transparent audit processes,
 - standardized audit procedures,
 - uniform report format,
 - experience-sharing,
 - informational visits to other internal audit units.
- (2) It is crucial for internal audit units to share experience with each other on a regular basis and to take part in relevant basic and advanced training. The ministries ensure that experience is shared internally, while the Federal Ministry of the Interior organizes interministerial experience-sharing.

12. Acceptance of the internal audit unit

- (1) The success of the internal audit unit largely depends on its acceptance by staff.
- (2) All staff are informed of the names of all internal audit staff, the recommendations for internal audits in the federal administration and the specific audit rules of each agency.
- (3) Staff may contact the internal audit unit directly.

13. Supervision

- (1) In the case of a decentral structure, the supreme federal authority is responsible for supervising the internal audit units of its executive agencies. Such supervision covers above all

- setting up the internal audit unit,
- equipping the internal audit unit, and
- annual reports,

in order to preserve the independence, integrity and objectivity of the internal audit unit.

- (2) Executive agencies forward their audit plans to their supreme federal authorities for their information.

8

Additional provisions to prevent corruption

8.1 Ban on accepting rewards or gifts

8.1.1 Act on Federal Civil Servants

Section 71

Prohibition of rewards, gifts and other advantages

- (1) Even after their civil service employment ends, civil servants may not demand or accept any rewards, gifts or other advantages or the promise of such for themselves or third persons in connection with their position. Exceptions shall require the approval of the highest service authority or the last highest service authority. The authority to provide approval may be delegated to other agencies.
- (2) Anyone who violates subsection 1 shall surrender to his or her employer whatever was received in violation of duty, unless its forfeiture was ordered in criminal proceedings or it was otherwise surrendered to the state. The amount to be surrendered shall be governed by the provisions of the Civil Code on surrendering undue enrichment. The duty to surrender under the first sentence also includes the duty to inform the employer of the type, extent and location of whatever was received.

8.1.2 Collective bargaining agreement for the public service (TVöD)

Section 3

General terms of employment

- (1) [...]
- (2) The employees must not accept rewards, gifts, commission or any other benefits from third parties in connection with their work. Exceptions shall be possible with the consent of the employer only. The employees are to notify the employer forthwith, should they be offered any such benefits.
- (3) to (7) not reproduced here

8.1.3 Act on the Legal Status of Military Personnel

Section 19

Ban on accepting rewards or gifts, obligation to report and return

- (1) Even after leaving military service, military personnel may not demand or accept any rewards, gifts or other advantages or the promise of such for themselves or third persons in connection with their official activities. Exceptions shall require the approval of the highest service authority or the last highest service authority. The authority to provide approval may be delegated to other agencies.
- (2) [...]

8.2 Law on secondary employment

8.2.1 Act on Federal Civil Servants

Section 97

Definitions

- (1) Secondary employment shall mean holding a secondary position or pursuing a secondary occupation.
- (2) Secondary position shall mean a set of tasks not belonging to the primary position and carried out on the basis of employment in a service or official capacity under public law.
- (3) Secondary occupation shall be any employment within or outside the public service not belonging to the primary position.
- (4) Public honorary posts and unpaid guardianship, custody and curatorship shall not be considered secondary employment.

Section 98

Secondary employment within the public service

At the request of their service authority, civil servants shall be obligated to secondary employment within the public service where their schooling or occupational training qualifies them for such employment and the employment does not place excessive demands on them.

Section 99

Secondary employment requiring approval

- (1) For all paid secondary employment except that listed in Section 100 (1), civil servants shall require prior permission unless such employment is required of them under Section 98. The same shall apply to the following unpaid secondary employment:
 1. holding a secondary position,
 2. commercial or freelance activities or assistance with one of these activities, and
 3. admission to the body of a company other than a cooperative.
- (2) Permission shall be refused if there is a concern that the secondary employment might interfere with service-related interests. Such reason for refusal shall exist in particular when the secondary employment
 1. by its nature and extent places such demands on the civil servant that it may hinder the orderly performance of service-related duties,
 2. it may put the civil servant in conflict with service-related duties,
 3. is carried out in a matter where the agency to which the civil servant belongs is or may be involved,
 4. may influence the civil servant's neutrality or impartiality,
 5. may lead to serious restrictions on the future service-related deployment of the civil servant, or
 6. may harm the image of the public administration.

As a rule, such reason for refusal shall also exist if the secondary employment constitutes a second occupation due to commercial service or work or otherwise by its nature, extent, duration or frequency.

- (3) The conditions of subsection 2 second sentence no. 1 shall as a rule be considered met if the time spent in secondary employment is more than one-fifth of the regular weekly working hours. In the case of limited capacity to work, this shall be based on one-fifth of the reduced working hours under Section

45 (2) first sentence. A reason for refusal shall exist if the total compensation paid by secondary employment exceeds 40% of the civil servant's annual final basic salary for the primary position. The service authority may make exceptions if the civil servant provides specific evidence that the time spent in secondary employment does not exceed one-fifth of regular weekly working hours or that refusal would not be appropriate given the individual circumstances. In applying sentences one through four, secondary employment requiring approval and reporting shall be considered together.

- (4) Approval shall be issued for a maximum of five years. It may be given subject to conditions or obligations. Approval shall be revoked if secondary employment is found to interfere with service-related interests after approval has been given.
- (5) Approval shall be issued by the highest service authority. The highest service authority may delegate this responsibility to subordinate agencies. Requests for approval and decisions concerning these requests shall be made in writing. The civil servant shall furnish the necessary proof for a decision, in particular the type and extent of secondary employment and the resulting compensation and payments in kind. Every change shall be reported in writing without delay.

Section 100

Secondary employment not requiring approval

- (1) The following shall not require approval:
 1. the management of own assets or those of which the civil servant is the usufructuary,
 2. literary, research, artistic or lecturing activities,
 3. activity as an independent expert related to teaching or research carried out by teaching staff at public and Bundeswehr institutions of higher education and by civil servants at research institutes, and
 4. activities to uphold occupational interests in labour unions or professional associations or in self-help institutions of civil servants.
- (2) Before taking up activities under subsection 1 nos. 2 and 3 and activity in self-help institutions under subsection 1 no. 4, civil servants shall report this in writing to the service authority if they will receive compensation or payment in kind for these activities. In particular, civil servants shall indicate the type and extent of the activity and the probable amount of compensation and payment in kind. Every change shall be reported in writing without delay.
- (3) With good reason, the service authority may require civil servants to report in writing on their secondary employment not requiring approval, in particular on the type and extent of activity.

- (4) Secondary employment not requiring approval shall be prohibited fully or partially if the civil servant violates service-related duties in carrying out the secondary employment.

Section 101

Performing secondary employment

- (1) Secondary employment activities may be carried out only while off duty unless the superior authority so requests or there is a service-related interest in carrying out the activity. A record shall be kept of the service-related interest. Exceptions may be made only in specially justified cases, in particular in the public interest, upon written request, if service-related reasons are not opposed and the missing working hours are made up.
- (2) Employers' facilities, staff or material may be used in carrying out secondary employment activities only if there is a public or scientific interest, with the employer's approval and upon payment of appropriate compensation. Compensation shall be calculated on the basis of costs incurred by the employer and shall take into account the special advantage that the use of such resources provides the civil servant.

8.2.2 Collective bargaining agreement for the public service (TVöD)

Section 3

General terms of employment

(1) to (2) not reproduced here

- (3) Employees shall provide their employer with advance written notification in good time of any secondary employment. The employer may prohibit or impose conditions on such secondary employment, if it is capable of compromising fulfilment of the employee's duties under the contract of employment or the employer's legitimate interests. In the case of secondary employment for the same employer or elsewhere in the public service (Section 34 (3) third and fourth sentences), the employer may impose an obligation to surrender earnings; provisions for federal civil servants shall provide the standard for federal employees.

(4) to (7) not reproduced here

8.2.3 Act on the Legal Status of Military Personnel

Section 20

Secondary employment

- (1) For all paid secondary employment except that listed in Section 6, career military personnel and temporary-career volunteers shall require prior permission unless such employment is required of them under Section 7 corresponding to Section 98 of the Act on Federal Civil Servants. The same shall apply to the following unpaid secondary employment:
 1. commercial or freelance activities or assistance with one of these activities, and
 2. admission to the body of a company other than a cooperative.Public honorary posts shall not be considered secondary employment; military personnel shall inform their superior officer in writing before taking up such a post.
- (2) Permission shall be refused if there is a concern that the secondary employment might interfere with service-related interests. Such reason for refusal shall exist in particular when the secondary employment
 1. by its nature and extent places such demands on the soldier that it may hinder the orderly performance of service-related duties,
 2. it may put the soldier in conflict with service-related duties, may harm the image of the Bundeswehr or is carried out in a matter where the agency or unit to which the soldier belongs is or may be involved,
 3. may influence the soldier's neutrality or impartiality,
 4. may lead to serious restrictions on the future service-related deployment of the soldier.

As a rule, such reason for refusal shall also exist if the secondary employment constitutes a second occupation due to commercial service or work or otherwise by its nature, extent, duration or frequency. The conditions of the second sentence no. 1 shall as a rule be considered met if the time spent in secondary employment is more than eight hours per week. A reason for refusal shall exist if the total compensation paid by secondary employment exceeds 40% of the annual final basic pay for the soldier's rank. The superior officer may make exceptions if the soldier provides specific evidence that the time spent in secondary employment does not exceed eight hours per week, or that refusal would not be appropriate given the individual circumstances, or that service-related interests would justify approval of secondary employment. In applying sentences four through six, secondary employment requiring approval and reporting shall be considered together. Approval shall be given for no more than five years and may be given subject to conditions

or obligations. Approval shall be revoked if secondary employment is found to interfere with service-related interests after approval has been given.

- (3) Secondary employment activities may be carried out only while off duty unless the superior officer so requests or there is a service-related interest in carrying out the activity. A record shall be kept of the service-related interest. Exceptions may be made only in specially justified cases, in particular in the public interest, upon written request, if service-related reasons are not opposed and the missing working hours are made up.
- (4) Soldiers may use employers' facilities, staff or material in carrying out secondary employment activities only if there is a public or scientific interest, with the employer's approval and upon payment of appropriate compensation. Compensation shall be calculated on the basis of costs incurred by the employer and shall take into account the special advantage that the use of such resources provides the soldier.
- (5) Approval shall be issued by the Federal Ministry of Defence, which may delegate this authority to other agencies. Requests for approval and decisions concerning these requests shall be made in writing. The soldier shall furnish the necessary proof for a decision, in particular the type and extent of secondary employment and the resulting compensation and payments in kind; every change shall be reported in writing without delay.
- (6) The following shall not require approval:
 1. the management of own assets or those of which the soldier is the usufructuary,
 2. literary, research, artistic or lecturing activities,
 3. activity as an independent expert related to teaching or research carried out by soldiers as instructors at public and Bundeswehr institutions of higher education and by soldiers at research institutes, and
 4. activities to uphold occupational interests in labour unions or professional associations or in self-help institutions of military personnel.

Before taking up activities under the first sentence, nos. 2 and 3 or activity in self-help institutions under the first sentence, no. 4, soldiers shall report this in writing to the service authority if they will receive compensation or payment in kind for these activities. In particular, soldiers shall indicate the type and extent of the activity and the probable amount of compensation and payment in kind. Soldiers shall report every change in writing without delay. With good reason, the superior officer may require soldiers to report in writing on their secondary employment not requiring approval, in particular on the type and extent of activity. Secondary employment not requiring approval shall be prohibited fully or partially if the soldier violates service-related duties in carrying out the secondary employment.

- (7) Section 97 (1) to (3), Sections 98 and 102 to 104 of the Act on Federal Civil Servants shall apply mutatis mutandis.
- (8) Soldiers in military service under the Compulsory Military Service Act may not be prohibited from engaging in secondary employment unless such employment endangers their capacity to work or runs counter to service requirements. The same shall apply to soldiers enlisted to provide a service under Chapter Four.

Section 20a

Employment after leaving military service

- (1) Before taking up such activity, retired career soldiers and former soldiers entitled to military service benefits shall report in writing any paid or other employment outside the public service which is related to their military service employment during the five years previous to leaving the service and could interfere with service-related interests. This reporting obligation shall end five years after leaving military service.
- (2) Paid or other employment shall be prohibited where there are concerns that such activity may interfere with service-related interests. Such activity shall be prohibited until the obligation to report ends, unless the reasons for prohibiting the activity apply for a shorter period of time.
- (3) The report pursuant to subsection 1 shall be made to the Federal Ministry of Defence, which is also responsible for issuing prohibitions pursuant to subsection 2. It may delegate this authority to other agencies.

8.3 Whistleblower provisions

8.3.1 Act on Federal Civil Servants

Section 67

Duty to maintain confidentiality

- (1) Civil servants shall maintain confidentiality concerning official matters of which they become aware in the course of their official activity. This shall also apply beyond the remit of an employer and following termination of civil service employment.
- (2) Subsection 1 shall not apply
 1. where official communications are required,
 2. to shared information which is common knowledge or which by its nature does not require confidentiality, or

3. to reasonable suspicion of corruption under Sections 331 through 337 of the Criminal Code reported to the responsible highest service authority, a law enforcement agency or other agency or non-service body designated by the highest service authority.

The legal obligation to report planned crimes and to uphold the free and democratic basic order shall remain unaffected by subsection 1.

- (3) Civil servants may not testify in or outside court or make statements concerning matters referred to in subsection 1 without permission. Permission shall be issued by the superior authority or, if civil service employment has been terminated, by the last superior authority. If the matter constituting the subject of expression took place under a previous employer, permission may be given only with the consent of that employer.
- (4) Even after civil service employment has ended, civil servants shall surrender official written documents, drawings, images and notes of all kinds concerning official matters, including recordings, at the request of their superior authority or last superior authority. The same shall apply to their survivors and heirs.

8.3.2 Act on the Legal Status of Military Personnel

Section 14

Confidentiality

- (1) Soldiers shall maintain confidentiality concerning official matters of which they become aware in the course of their official duties, even after leaving military service. This shall not apply
 1. where official communications are required,
 2. to shared information which is common knowledge or which by its nature does not require confidentiality, or
 3. to reasonable suspicion of corruption under Sections 331 through 337 of the Criminal Code reported to the responsible highest service authority, a law enforcement agency or other agency or non-service body designated by the highest service authority.

The legal obligation to report planned crimes and to uphold the free and democratic basic order shall remain unaffected by the first sentence.

- (2) Soldiers may not testify in or outside court or make statements concerning such matters without permission. The soldier's current superior officer shall be responsible for issuing such permission; for those who have left military

service, the last superior officer shall be responsible. Sections 68 and 69 of the Act on Federal Civil Servants shall apply mutatis mutandis.

- (3) Even after leaving military service, soldiers shall surrender official written documents, drawings, images and, if necessary in the individual case for reasons of confidentiality, notes of all kinds concerning official matters, including recordings, at the request of their superior officer or last superior officer. The same shall apply to their survivors and heirs.
- (4) (repealed)

8.4 Provisions related to tax law

Income Tax Act

Section 4

General definition of profit

[...]

- (5) The following operating costs may not be used to reduce profit:

[...]

10. The donation of advantages and related compensation, if the donation of advantages constitutes an unlawful act subject to criminal law or other law under which it may be punishable by a fine. Courts, public prosecutors and administrative agencies shall report facts of which they become aware in the course of their official duties and which give reason to suspect an act as referred to in the first sentence to the tax authority for the purposes of taxation and prosecution of tax crimes and administrative offences. The tax authority shall report facts which give reason to suspect a crime or administrative offence as referred to in the first sentence to the public prosecutor's office or the administrative agency. These shall inform the tax authority of the results of the procedure and the underlying facts;

[...]

8.5 Act on the Formal Assignment of Responsibilities to Persons Other than Civil Servants

Section 1

- (1) The following persons shall be obligated to perform their duties conscientiously without being public officials (Section 11 (1) no. 2 of the Criminal Code): anyone who
 1. is employed by or works for a public agency or other office which performs public administration tasks;
 2. is employed by or works for an association or the like, or for a business or enterprise which performs public administration tasks for a public agency or other office; or
 3. is publicly appointed as an expert.
- (2) The obligation shall be made verbally. The person shall be informed of the legal consequences of failing to fulfil this obligation.
- (3) A written record shall be made of the obligation and shall be signed by the person undertaking the obligation. He shall receive a copy of the record; this may be dispensed with in the interest of the internal or external security of the Federal Republic of Germany.
- (4) The office responsible for the obligation shall be determined
 1. in the cases of subsection 1 nos. 1 and 2 in public agencies or other offices, the highest supervisory authority for administrative matters, or in the absence of administrative supervision, the highest supervisory authority for technical matters responsible under federal law;
 2. in all other cases, the authority determined by the state government by statutory instrument.

Section 2

- (1) Anyone who, without being a public official, is formally obligated on the basis of Section 1 of the ordinance against bribery and betrayal of secrets by persons who are not civil servants in the version promulgated on 22 May 1943 (Reich Law Gazette I, p. 351), shall be the equivalent of a person obligated pursuant to Section 1.
- (2) Anyone who, without being a public official, is obligated to perform his duties conscientiously
 1. as an employee of the public service under collective bargaining law or
 2. based on a law or other legal grounds shall be the equivalent of a person obligated pursuant to Section 1 if the conditions of Section 1 (2) are met.

8.6 Excerpts from the German Criminal Code

Offences committed in public office

Section 11

Definitions

- (1) For the purposes of this law
 - 1 [...]
 2. 'public official' means any of the following if under German law
 - (a) they are civil servants or judges;
 - (b) otherwise carry out public official functions; or
 - (c) have otherwise been appointed to serve with a public authority or other agency or have been commissioned to perform public administrative services regardless of the organisational form chosen to fulfil such duties;
 3. 'judge' means any person who under German law is either a professional or a lay judge;
 4. 'persons entrusted with special public service functions' means any person who, without being a public official, is employed by, or is acting for
 - (a) a public authority or other agency, which performs public administrative services; or
 - (b) an association or other union, business or enterprise, which carries out public administrative services for a public authority or other agency, and who is formally required by law to fulfil their duties with due diligence;
 5. [...]
 6. [...]
 7. [...]
 8. [...]
 9. [...]
- (2) [...]
- (3) [...]

Section 15

Intent and negligence

Unless the law expressly provides for criminal liability based on negligence, only intentional conduct shall attract criminal liability.

Section 46b

Contributing to the discovery or prevention of serious offences

- (1) If the perpetrator of an offence punishable by an increased minimum sentence of imprisonment or a sentence of life imprisonment,
 1. has contributed to the discovery of an offence under section 100a(2) of the Code of Criminal Procedure by voluntarily disclosing his knowledge, or
 2. voluntarily discloses his knowledge to an official authority in time for the completion of an offence under section 100a(2) of the Code of Criminal Procedure, the planning of which he is aware of, to be averted, the court may mitigate the sentence under section 49(1); a sentence of life imprisonment shall be replaced with a term of imprisonment over ten years. In order to determine whether an offence is punishable by an increased minimum sentence of imprisonment, only aggravations for especially serious cases but no mitigations shall be taken into account. If the offender participated in the offence, his contribution to its discovery must exceed his own contribution. Instead of a reduction in sentence the court may order a discharge if the offence is punishable by a fixed-term sentence of imprisonment only and the offender would not be sentenced to a term of more than three years.
- (2) In arriving at its decision under subsection (1) above the court shall have particular regard to:
 1. the nature and scope of the disclosed facts and their relevance to the discovery or prevention of the offence, the time of disclosure, the degree of support given to the prosecuting authorities by the offender and the gravity of the offence to which his disclosure relates, as well as
 2. the relationship of the circumstances mentioned in No. 1 above to the gravity of the offence committed by and the degree of guilt of the offender.
- (3) A mitigation of sentence or a discharge under subsection (1) above shall be excluded if the offender discloses his knowledge only after the indictment against him has been admitted by the trial court (section 207 of the Code of Criminal Procedure).

Section 331

Taking bribes

- (1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

- (2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.
- (3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

Section 332

Taking bribes meant as an incentive to violating one's official duties

- (1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.
- (2) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment for six months to five years.
- (3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to
 1. violate his duties by the act; or
 2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 333

Giving bribes

- (1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.
- (2) Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or

will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.

- (3) The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.

Section 334

Giving bribes as an incentive to the recipient's violating his official duties

- (1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.
- (2) Whosoever offers, promises or grants a benefit to a judge or an arbitrator for that person or a third person, in return for the fact that he
 1. performed a judicial act and thereby violated his judicial duties; or
 2. will in the future perform a judicial act and will thereby violate his judicial duties,shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.
- (3) If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to
 1. violate his duties by the act; or
 2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 335

Aggravated cases

- (1) In especially serious cases
 1. of an offence under
 - (a) Section 332(1) 1st sentence, also in conjunction with (3); and
 - (b) Section 334(1) 1st sentence and (2), each also in conjunction with (3), the penalty shall be imprisonment from one to ten years and
 2. of an offence under section 332(2), also in conjunction with (3), the penalty shall be imprisonment of not less than two years.

- (2) An especially serious case within the meaning of subsection (1) above typically occurs when
 1. the offence relates to a major benefit;
 2. the offender continuously accepts benefits demanded in return for the fact that he will perform an official act in the future; or
 3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

Section 336

Omission of an official act

The omission to act shall be equivalent to the performance of an official act or a judicial act within the meaning of sections 331 to 335.

Section 338

Confiscatory expropriation order and extended confiscation

- (1) In cases under section 332, also in conjunction with section 336 and section 337, section 73d shall apply if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.
- (2) In cases under section 334, also in conjunction with section 336 and section 337, section 43a and section 73d shall apply if the offender acts as a member of a gang whose purpose is the continued commission of such offences. Section 73d shall also apply if the offender acts on a commercial basis.

Section 357

Incitement of a subordinate to the commission of offences

- (1) A superior who incites or undertakes to incite a subordinate to commit an unlawful act in public office or allows such an unlawful act of his subordinate to occur shall incur the penalty provided for this unlawful act.
- (2) The same rule shall be applied to a public official to whom supervision or control over the official business of another public official has been transferred to the extent that the unlawful act committed by the supervised public official concerns the business subject to the supervision or control.

8.7 Act to Combat International Bribery

of 17 December 1997 on combating bribery of foreign officials in international business transactions (Act to Combat International Bribery, IntBestG)

Full citation:

“Act to Combat International Bribery of 10 September 1998 (Federal Law Gazette 1998 II, p. 2327)”

Article 1 – Consent to the Convention

The Federal Republic of Germany consents to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions signed in Paris on 17 December 1997. The Convention is published below in an official German translation.

Article 2 – Implementation

Section 1

Equal status of foreign and domestic public officials with regard to acts of bribery

For the application of Section 334 of the Criminal Code, also in conjunction with its sections 335, 336, 338 (2) to bribery in connection with a future judicial or official act to be committed in order to gain or secure a contract or an unfair advantage for himself or third persons in an international business transaction, the following shall have equivalent status:

1. a judge:
 - a) a judge of a foreign country,
 - b) a judge of an international court;
2. any other public official:
 - a) a public official of a foreign country,
 - b) a person assigned at or for a public agency of a foreign country to perform public tasks for a public enterprise having headquarters abroad or other public tasks for a foreign country,
 - c) a public official and other employee of an international organization and a person assigned to perform its tasks;
3. a member of the Bundeswehr:
 - a) a member of the military of a foreign country,
 - b) a member of the military assigned to perform tasks of an international organization.

Section 2

Bribery of foreign members of parliament in connection with international business transactions

- (1) Anyone who, in order to gain or secure a contract or an unfair advantage for himself or third persons in an international business transaction, offers, promises or grants an advantage to a member of a legislative body of a foreign country or member of a parliamentary assembly of an international organization for this member or for a third party in return for future action or omission in connection with his seat or tasks, shall be liable to imprisonment not exceeding five years or a fine.
- (2) The attempt shall be punishable.

Section 3

Offences committed abroad

German criminal law shall apply to the following offences committed by Germans abroad, regardless of the applicable law where the offence was committed:

1. Bribery of foreign public officials in connection with international business transactions (Sections 334 to 336 of the Criminal Code in conjunction with Section 1);
2. Bribery of foreign members of parliament in connection with international business transactions (Section 2).

Section 4

Application of Section 261 of the Criminal Code

In the cases of Section 261 (1) second sentence no. 2 (a) of the Criminal Code, Section 334 of the Criminal Code shall apply also in conjunction with Section 1.

Article 3 – Entry into force

- (1) Article 2 of this Act shall enter into force on the same day the Convention enters into force for the Federal Republic of Germany. Otherwise this Act shall enter into force on the day after its promulgation.
- (2) The day on which the Convention enters into force for the Federal Republic of Germany pursuant to its Article 15 shall be announced in the Federal Law Gazette.

8.8 EU Bribery Act

of 27 September 1996 on the Convention on the Protection of the European Communities' Financial Interests (EUBestG)

Full citation:

“EU Bribery Act of 10 September 1998 (Federal Law Gazette 1998, II, p. 2340), amended by Article 6 (1) of the Act of 21 July 2004 (Federal Law Gazette I, p. 1763)”

Status: Last amended by Art. 6 (1), Act of 21 July 2004, I 1763

Article 1 – Consent to the Convention

The Federal Republic of Germany consents to the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the Protection of the European Communities' Financial Interests signed by the Federal Republic of Germany at Brussels on 27 September 1996. The Protocol shall be published below.

Article 2 – Implementation

Section 1

Equal status of foreign and domestic public officials with regard to acts of bribery

- (1) For the application of Sections 332, 334 to 336 and 338 of the Criminal Code to an act of bribery for a future judicial or official act, the following shall have equivalent status:
 1. a judge:
 - a) a judge of another European Union Member State;
 - b) a member of a court of the European Communities;
 2. any other public official:
 - a) a public official of another European Union Member State if his position is equivalent to a public official as referred to in Section 11 (1) no. 2 of the Criminal Code;
 - b) a Community official as defined in Article 1 of the Protocol of 27 September 1996 to the Convention on the protection of the European Communities' financial interests;
 - c) a member of the Commission and the Court of Auditors of the European Communities.
- (2) For the application of
 1. Section 263 (3) second sentence no. 4 and Section 264 (2) second sentence nos. 2 and 3 of the Criminal Code and

2. Section 370 (3) second sentence nos. 2 and 3 of the Fiscal Code, also in conjunction with Section 12 (1) first sentence of the Act to Implement the Common Market Organization and Direct Payments, a public official shall be the equivalent of a Community official as referred to in subsection 1 no. 2 (b) and a member of the European Commission.

Section 2

Offences committed abroad

Sections 332, 334 to 336 of the Criminal Code, also in conjunction with Section 1 (1) shall apply to the following offences committed abroad, regardless of the applicable law where the offence was committed if

1. the perpetrator
 - a) at the time the offence was committed was a German or
 - b) a foreigner who
 - aa) as a public official as referred to in Section 11 (1) no. 2 of the Criminal Code or
 - bb) as a Community official as defined in Section 1 (1) no. 2 (b) belonging to an institution located in Germany and created in accordance with the treaties establishing the European Communities, committed the crime, or
2. if the offence is committed against a judge, any other public official or a person of equivalent status under Section 1 (1) who is German.

Article 3 – Application of Section 261 of the Criminal Code

Section 261 (1) second sentence nos. 1 and 2 (a) of the Criminal Code shall apply also in conjunction with Article 2 Section 1 (1).

Article 4 – Entry into force

- (1) This Act shall enter into force on the day after its promulgation.
- (2) The day on which the Protocol enters into force for the Federal Republic of Germany pursuant to its Article 9 (3) shall be announced in the Federal Law Gazette.

9

Freedom of Information Act

Federal Act

Governing Access to Information held by the Federal Government (Freedom of Information Act)

5 September 2005

(Federal Law Gazette I, p. 2722)

Section 1

Underlying principles

- (1) Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law. For the purposes of these provisions, a natural or legal person shall be treated as equivalent to an authority where an authority avails itself of such a person in discharging its duties under public law.
- (2) The authority may furnish information, grant access to files or provide information in any other manner. Where an applicant requests a certain form of access to information, the information may only be provided by other means for good cause. In particular, substantially higher administrative expenditure shall constitute good cause.
- (3) Provisions in other legislation on access to official information shall take precedence, with the exception of Section 29 of the Administrative Procedure Act (VwVfG) and Section 25 of Book Ten of the Social Code.

Section 2

Definitions

For the purposes of this Act,

1. official information shall be defined as every record serving official purposes, irrespective of the mode of storage. This shall not include drafts and notes which are not intended to form part of a file;
2. a third person shall be defined as anyone on whom personal data or other information are held.

Section 3

Protection of special public interests

The entitlement to access to information shall not apply

1. where disclosure of the information may have detrimental effects on
 - a) international relations,
 - b) military and other security-critical interests of the Federal Armed Forces,
 - c) internal or external security interests,
 - d) monitoring or supervisory tasks of the financial, competition and regulatory authorities,
 - e) matters of external financial control,
 - f) measures to prevent illicit foreign trade,
 - g) the course of current judicial proceedings, a person's entitlement to a fair trial or the pursuit of investigations into criminal, administrative or disciplinary offences,
2. where disclosure of the information may endanger public safety,
3. where and for as long as
 - a) the necessary confidentiality of international negotiations or
 - b) consultations between authorities are compromised,
4. where the information is subject to an obligation to observe secrecy or confidentiality by virtue of a statutory regulation or the general administrative regulation on the material and organisational protection of classified information, or where the information is subject to professional or special official secrecy,
5. with regard to information obtained on a temporary basis from another public body which is not intended to form part of the authority's own files,
6. where disclosure of the information would be capable of compromising fiscal interests of the Federal Government in trade and commerce or economic interests of the social insurance institutions,

7. in the case of information obtained or transferred in confidence, where the third party's interest in confidential treatment still applies at the time of the application for access to the information,
8. with regard to the intelligence services and the authorities and other public bodies of the Federal Government, where these perform duties pursuant to Section 10, no. 3 of the Security Clearance Check Act (SÜG).

Section 4

Protection of the official decision making process

- (1) Applications for access to information should be rejected for drafts relating to rulings and studies and decisions relating directly to the preparation of rulings, insofar as and for as long as premature disclosure of the information would obstruct the success of the ruling or impending official measures. Routine results of the taking and hearing of evidence and expert opinions or statements from third parties shall not be deemed to relate directly to the preparation of rulings pursuant to sentence 1.
- (2) The applicant should be notified of the conclusion of the proceedings concerned.

Section 5

Protection of personal data

- (1) Access to personal data may only be granted where the applicant's interest in obtaining the information outweighs the third party's interests warranting exclusion of access to the information or where the third party has provided his or her consent. Special types of personal data within the meaning of Section 3 (9) of the Federal Data Protection Act (BDSG) may only be transferred subject to the express consent of the third party concerned.
- (2) The applicant's interest in accessing information shall not predominate in the case of information from records relating to the third party's service or official capacity or a mandate held by the third party or in the case of information which is subject to professional or official secrecy.
- (3) The applicant's interest in accessing information shall generally outweigh the third party's interests warranting exclusion of access to the information where the information is limited to the third party's name, title, university degree, designation of profession and function, official address and official telecommunications number and the third party has submitted a statement in proceedings in the capacity of a consultant or expert or in a comparable capacity.

- (4) Names, titles, university degrees, designations of professions and functions, official addresses and official telecommunications numbers of desk officers shall not be excluded from the scope of access to information where they are an expression and consequence of official activities and no exceptional circumstances apply.

Section 6

Protection of intellectual property and business or trade secrets

No entitlement to access to information shall apply where such access compromises the protection of intellectual property. Access to business or trade secrets may only be granted subject to the data subject's consent.

Section 7

Application and procedure

- (1) The authority which is authorised to dispose of the requested information decides on the application for access to information. In the case of Section 1 (1), sentence 3 the application is to be filed with the authority which avails itself of the natural or legal person under private law in discharging its duties under public law. Pertinent reasons must be stated for applications concerning third parties within the meaning of Section 5 (1) and (2) or Section 6. In the case of uniform applications from more than 50 persons, Sections 17 to 19 of the Administrative Procedure Act shall apply *mutatis mutandis*.
- (2) Where an entitlement to partial access to information applies, the appurtenant application is to be granted to the extent to which information can be accessed without revealing information which is subject to confidentiality or without unreasonable administrative expenditure. The same shall apply where the applicant agrees to information concerning the interests of third parties being blanked out.
- (3) Information may be furnished verbally, in writing or in electronic form. The authority is not obliged to verify that the contents of the information are correct.
- (4) When examining official information, the applicant may take notes or arrange to have photocopies and print-outs produced. Section 6, sentence 1 shall remain unaffected.
- (5) The information is to be made accessible to the applicant forthwith, with due regard to his or her interests. Access to the information should be provided within one month. Section 8 shall remain unaffected

Section 8

Procedure when third parties are involved

- (1) The authority shall grant a third party whose interests are affected by the application for access to information opportunity to submit a written statement within one month when there are indications that the said third party may have an interest warranting exclusion of access to the information.
- (2) The decision pursuant to Section 7 (1), sentence 1 shall be provided in writing and shall also be notified to the third party. The information may only be accessed when the decision is final and absolute in relation to the third party or if immediate enforcement has been ordered and a period of two weeks has elapsed since notifying the third party of the order. Section 9 (4) shall apply *mutatis mutandis* (3).

Section 9

Rejection of the application: Legal remedies

- (1) Notification of a ruling rejecting the application in part or in its entirety is to be provided within the period stipulated in Section 7 (5), sentence 2.
- (2) In cases in which the authority rejects the application in part or in its entirety, it is to provide notification as to whether and when partial or full access to the information is likely to be possible at a later juncture.
- (3) The application may be rejected where the applicant is already in possession of the requested information or can reasonably be expected to obtain the information from generally accessible sources.
- (4) It is permissible to challenge the decision to reject the application by lodging an administrative appeal or bringing an action to compel performance of the requested administrative act.

Administrative appeal proceedings pursuant to the provisions of Part 8 of the Code of Administrative Court Procedure (VwGO) are also to be carried out when the decision has been reached by a supreme federal authority.

Section 10

Fees and expenses

- (1) Fees and expenses shall be charged for official acts pursuant to this Act. This shall not apply to the furnishing of basic items of information.
- (2) With due regard to the administrative expenditure involved, the fees shall be calculated such as to ensure that access to information pursuant to Section 1 can be claimed effectively.
- (3) The Federal Ministry of the Interior is authorised to assess the facts and circumstances determining the commensurate fee and to fix the scales of

fees for official acts pursuant to this Act by means of statutory instruments, without the approval of the Bundesrat. Section 15 (2) of the Administrative Costs Act (VwKG) shall not be applicable.

Section 11

Obligations to publish information

- (1) The authorities should keep directories identifying the available information resources and the purposes of the collected information.
- (2) Organisational and filing plans without any reference to personal data shall be made generally accessible in accordance with the provisions of this Act.
- (3) The authorities should make the plans and directories stated in sub-sections 1 and 2 and other appropriate information generally accessible in electronic form.

Section 12

Federal Commissioner for Freedom of Information

- (1) Anyone considering their right to access to information pursuant to this Act to have been violated may appeal to the Federal Commissioner for Freedom of Information.
- (2) The function of Federal Commissioner for Freedom of Information shall be performed by the Federal Commissioner for Data Protection.
- (3) The provisions of the Federal Data Protection Act on the monitoring tasks of the Federal Commissioner for Data Protection (Section 24 (1) and (3) to (5)), on complaints (Section 25 (1), sentence 1, nos. 1 and 4, sentence 2 and sub-sections 2 and 3) and on further tasks pursuant to Section 26 (1) to (3) shall apply *mutatis mutandis*.

Section 13

Amendments to other regulations

- (1) The Federal Data Protection Act, as promulgated on 14 January 2003 (Federal Law Gazette I, p. 66), shall be amended as follows:
In the information in the table of contents regarding Chapter III in Part II and Sections 21 to 26 and in Section 4c (2), sentence 2, Section 4d (1), (6), sentence 3, Section 6 (2), sentence 4, Section 10 (3), sentence 1, Section 19 (5), sentence 2, Section 6, sentence 1, in the title of Chapter III in Part II, in Sections 21 to 26, in Section 42 (1), sentence 1, 2nd clause, Section 4, sentence 3 and Section 44 (2), sentence 2, the words “for Data Protection” are to be replaced in each instance by the words “for Data Protection and Freedom of Information”.

- (2) The following sentence is to be added to Section 5 (4) of the Federal Records Office Act (BArchG) of 6 January 1988 (Federal Law Gazette I, p. 62), most recently amended by the Act of 5 June 2002 (Federal Law Gazette I, p. 1782):

“The same shall apply to archival materials, where access to the information was available in accordance with the Freedom of Information Act (IFG) prior to transfer to the Federal Archives or the archives of the legislative bodies.”

Section 14

Reporting and evaluation

The Federal Government shall report to the German Bundestag on application of this Act two years prior to its expiry. The German Bundestag shall evaluate the Act on a scientific basis one year prior to its expiry.

Section 15

Entry into force

This Act shall enter into force on 1 January 2006

10

Useful Web Links

Federal Ministry of the Interior - Prevention of Corruption and Sponsoring

www.bmi.bund.de/DE/Themen/Moderne-Verwaltung/Korruptionspraevention-Sponsoring-IR/korruptionspraevention-sponsoring-ir_node.html

Council of Europe (the GRECO Group of States)

www.coe.int/t/dghl/monitoring/greco/default_en.asp

European Anti-Fraud Office

ec.europa.eu/anti_fraud/index_de.htm

International Anti-Corruption Academy (Vienna)

www.iaca.int

United Nations Office against Corruption

www.unodc.org/unodc/en/treaties/CAC/

Organisation for Economic Cooperation and Development (OECD)

www.oecd.org/corruption/

Transparency International Deutschland e. V.

www.transparency.de/

Federal Ministry of Justice: Laws on the Internet

www.gesetze-im-internet.de/Teilliste_translations.html

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