

**The following recommendations are a
- non-binding – aid for implementing
the Federal Government Directive
Concerning the Prevention of Corruption
in the Federal Administration**

Recommendation on No. 1 of the Directive

If the Federation holds the majority of shares in a company, it shall seek to apply the regulations of the Directive as appropriate by means of contractual provisions.

Recommendation on No. 2 of the Directive

**Identifying and analysing areas of activity
especially vulnerable to corruption**

I.

An area of activity **vulnerable to corruption** is one where, by staff custom or decision, the following occurs:

1. Third parties (individuals, businesses, associations, companies, other institutions) receive material or non-material advantages or are preserved from disadvantages and
2. third parties are able to provide staff members with advantages to which they are not entitled by law or collective bargaining agreements.

II.

Furthermore, an area of activity associated with any of the following must be considered **especially vulnerable to corruption**:

1. frequent outside contacts – also in the course of checking and supervisory activities,
2. management of large budgets, awarding of public contracts or subsidies, including the awarding of grants or other funding,
3. imposing of conditions, granting of concessions, approvals, permits, and the like, setting and levying of fees,
4. processing of transactions and operations using internal information not intended for third parties.

This applies only insofar as

- a) the potential advantage has a significant material or non-material value for third parties
- b) or the potential disadvantage to third parties would result in punishment, a threat to their business or livelihood or a threat to the existence of the affected institution.

III.

The need for risk analysis in areas of activity considered especially vulnerable to corruption should in principle be evaluated every five years or following organizational or procedural changes or changes in the nature of assigned tasks. In order to identify individual areas vulnerable to corruption, the following two-step procedure is advisable:

1. a brief examination of vulnerability to corruption and of the effectiveness of existing safeguards (e.g. by examining organizational charts).
2. If a risk analysis is needed: Identify operations which are especially vulnerable to corruption as well as existing safeguards (e.g. by means of questionnaires and supplementary interviews).

If a need for action is determined, the risk analysis should conclude by recommending and/or ordering additional preventive measures.

IV.

In addition to the items noted in I and II, the following questions may be useful for the risk analysis:

1. Are there or have there been instances of corruption in the area of activity?
2. Have third parties tried to influence the decisions of a staff member in this area?
3. Have there been known cases of corruption in comparable areas of activity at other agencies?
4. Does the area of activity follow specifically defined work processes?
5. Is the post associated with special scope for action and discretionary powers?
6. Does the extent of decision-making authority vary depending on the size of contracts or other criteria?
7. Does the area of activity have final authority over processing and decision-making?
8. Is there adequate administrative and task-related supervision?
9. Is personal integrity the only barrier to corruption in the area of activity?
10. What in-house control mechanisms are in place?
11. Does the decision-making process provide for the “principle of greater scrutiny” by involving more than one responsible person?
12. Do other organizational units also have to sign off on decisions?
13. Does the decision-making process ensure transparency, e.g. by means of checking operations, reporting, explicitly designating responsibility, or supplying precise and complete documentation (minutes, notes, reports, orderly record-keeping)?
14. Is the decision-making process required to be transparent even if no consent is needed from a supervisor or another organizational unit entitled to participate?
15. Is there a requirement that a transparent, written record be kept of the decision-making process, which can be followed by an auditing authority?
16. Are there any known violations of regulations (e.g. budget law, law on public procurement)?
17. Are there any complaints by the Federal Court of Audit (BRH) or another supervisory authority, e.g. the independent organizational unit for overseeing corruption prevention as provided for in No. 6 of the Directive?

Recommendation on No. 4 of the Directive

Personnel

1. When staff are hired for positions especially vulnerable to corruption, the organizational unit responsible for personnel matters and supervisors involved in personnel decisions must 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.
 - a) investigations of criminal or disciplinary offences,
 - b) in-house investigations of suspected corruption,
 - c) excessive debt, disorderly financial situation,
 - d) social problems (alcohol or drug addiction, compulsive gambling),
 - e) behaviour which raises doubts about the person's reliability (private contacts with criminal offenders or the like).Any persons known to be associated with any of the above 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. The organizational unit responsible for personnel matters shall be responsible for overseeing staff rotation. That unit shall also maintain a central record of the areas requiring staff rotation and the length of service of the relevant staff members. 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 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).
3. 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. If the contact person for corruption prevention is to be responsible also for implementing the Directive, in particular for heading the independent organizational unit provided for in No. 6 of the Directive, the relevant agency may formally appoint the contact person to be its official.
2. Staff members with disbursement authority may also serve as contact persons.
3. Staff members belonging to the organizational unit responsible for carrying out security vetting of personnel may not serve as contact persons.
4. 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 corruption prevention.
5. The agency is to 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).

Recommendation on No. 6 of the Directive

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

Recommendation on No. 11 of the Directive

Guidelines for awarding contracts

1. Instead of having to check the individual 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 in the award process. The agencies shall decide whether and for which types and sizes of contract awards to keep such logs, and whether to use a form based on the attached sample, modified as necessary.
2. The agency shall 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.

Sample

Contract award log

1. Date of contract _____
2. Subject of contract _____
3. Estimated price _____ **euros**
4. Price as agreed (value of contract when awarded) _____ **euros**
5. Amount actually paid following acceptance of goods/services rendered _____ **euros**
6. Contractor _____
7. Names of persons acting on behalf of the contractor for this contract _____
8. Type of award process public invitation to tender limited invitation to tender free adjudication open closed negotiations
9. Who is the user of the goods/services **and when was the award process carried out?** _____
- 10.a) Who wrote the description of goods/services **and when?** _____
- 10.b) Did he/she have any assistance with planning or writing the invitation to tender? No
 Yes From whom? _____
11. Did the description of goods/services (overall or for individual components) specify products from a particular company? No
 Yes Which ones? Reasons? _____
12. Who evaluated the bids received **and when?** _____
13. Who awarded the contract **and when?** _____
14. Who oversaw production of the goods/services, if appropriate, **and when?** _____
15. Who accepted the goods/services received **and when?** _____
16. Were the goods/services accepted as being free of defects (**when**)? Yes
 No Rectification of defects _____
17. Date of delivery _____
18. Date of payment _____
19. Which staff members travelled in connection with the contract **and when?** _____
- 20.a) Have any prior contracts been awarded to the same contractor in connection with this contract (if so, **when**)?
 Yes Which ones? Reasons? _____
- 20.b) Have any subsequent contracts (e.g. follow-up contracts) been awarded to the same contractor in connection with this contract (if so, **when**)? No
 Yes Which ones? Reasons?
When? _____

Sample for No. 12.2 of the Directive

Obligation of contractors under the Obligations Act

Memorandum of formal obligation of contractors and their employees in accordance with Section 1, para. 1 of the Obligations Act

Mr. / Ms.

Contractor

hereby agrees to fulfil his/her obligations under Section 1, para. 1 of the Obligations Act (BGBl. 1974 I S. 469, 547) in the presence of

Mr. / Ms.

Representative of the contracting authority

The contractor is aware that any violation of these obligations may result in criminal prosecution and has been informed of the content and applicability of the following provisions of the Criminal Code:

Section 133, para. 3	Breach of official custody,
Section 201, para. 3	Violation of the confidentiality of the spoken word,
Section 203, paras. 2, 4, 5	Violation of private secrets,
Section 204	Making use of secrets of other persons,
Sections 331, 332	Accepting favours and bribes
Section 335	Especially serious cases of accepting and offering bribes,
Section 336	Neglect of official duties,
Section 338	Financial penalties and extended forfeiture,
Section 353 b	Breach of official secrets and of special obligations of secrecy,
Section 358	Secondary consequences,
Section 97 b, para. 2	Treason under the misapprehension of an illegal secret,
read together with Sections 94 - 97	
Section 120, para. 2	Releasing prisoners,
Section 355	Violation of tax secrecy.

The contractor has received a copy of this memorandum, of the Anti-Corruption Code of Conduct and its annexes, and a copy of the above-mentioned provisions, as well as a copy of the applicable regulations on accepting rewards and gifts.

Date:

Place:

(Signature of contractor)

(Signature of representative of contracting authority)