



Bundesrepublik Deutschland
Federal Republic of Germany
Bundesministerium des Innern
Federal Ministry of the Interior

Bonn, 26 October 1998

Subj.: Prevention of corruption

On 17 June 1998, the Federal Government adopted -a

***Federal Government Directive concerning the Prevention of
Corruption in the Federal Administration.***

This directive entered into force with its publication in the Federal Gazette on 14 July 1998.

The directive requires all federal agencies to take the anti-corruption measures provided in the directive.

On the following pages you will find the English translation of the directive.

**Federal Government Directive
concerning the Prevention of Corruption
in the Federal Administration**

of 17 June 1998

The present Directive is adopted under Article 86 sentence 1 of the Basic Law:

1. Scope

The measures taken by all government **offices** for the prevention of corruption are governed by the present Directive; deemed government offices for this purpose are the supreme federal authorities, authorities of direct and indirect federal administration., **the federal** courts; the federal special funds and institutional beneficiaries supported. predominantly by the Federation. Account shall be taken of **any special** characteristics of these offices connected with their organisation and specific **tasks**.

2. Identifying sensitive fields of activity; Risk analysis; Work routines

Sensitive and particularly sensitive fields of activities, that is fields that are vulnerable and particularly vulnerable to corruption, shall be identified in all **government offices**.

Whether to carry out risk analysis in particularly sensitive areas shall be carefully considered. Work routines shall be adapted in line with the risk analysis findings.

3. Greater scrutiny and transparency

Greater scrutiny shall be ensured in sensitive areas of activity through the involvement **of more** staff or organisational units in second checks. If this is not possible owing to legal provisions or **to insuperable practical** difficulties, the system of second checks' may be restricted to random checks or, by way of **compensation**, other precautionary measures (e.g. more intensive administrative and substantive supervision) shall be envisaged.

Additionally, transparent decision-making shall be ensured (e.g. by clearly assigning **competencies**, by a reporting system, IT-based monitoring **of transactions and operations**, complete and accurate documentation [minutes, notes, reports, proper records]).

4. **Rotation of staff**

The precautionary measure of staff rotation shall be the aim in particularly sensitive areas and in the channels overseeing these areas.

As a general rule, the term of office shall be specified. Where the term is extended for compelling reasons, these reasons shall be placed on record and other preventive action taken -by way of compensation.

5. **Contact person for the prevention of corruption**

Contact **persons** for the prevention **of** corruption shall be appointed, their number depending on the tasks and size of the offices concerned. One-such person may be responsible for several offices. Contact persons may be charged with the following tasks:

Acting **as** a point of contact, someone with whom staff, private individuals and **office management** can talk, without going through the official channels, if need **be**;

advising office management, and advising and informing staff (e.g. in seminars and presentations);

- looking out for **signs of** corruption;

submitting proposals **to office** management on internal investigations, on anti-collusion measures and on informing the public prosecutor's office upon suspicion of corruption warranted by facts;

assisting in public relations by publishing **sanctions** as imposed under civil service and criminal law, heeding the right to privacy of the persons concerned in doing so (preventive aspect).

If a contact person becomes aware of facts warranting the suspicion of a disciplinary **offence** by a civil servant (Section 26 (1) sentence 1 of the Federal

Disciplinary Code), they shall inform office management who shall initiate the investigations required to clear up the matter. No disciplinary powers according to Section 15 (1) of the Federal Disciplinary Code may be conferred on contact persons; they may not act as preliminary investigators, nor may they head investigations **in** any disciplinary proceedings on **account** of corruption. The given office shall provide the contact person promptly and comprehensively with the necessary information to enable them to carry out their duties, in particular in incidents in which corruption is **suspected**. Contact persons shall maintain silence about the personal circumstances of staff that have become known to them, even after completion of their term **of** office; this shall not apply in relation to office management and staff management when there is, any suspicion of corruption that is warranted by facts.

6. Internal review

Office management shall charge an organisational unit with carrying out internal reviews, for a limited period or on a permanent basis, whenever risk analysis findings or special occasions require such; the staff in such units shall be given suitable training for this task. The **object** of internal reviews is the random checking and monitoring of current **and** completed transactions and operations and of decisions taken. **In the event of** flaws in corruption prevention it shall recommend suitable changes to the organisation section and the organisational unit concerned.

Under internal reviews, office management and the contact person for corruption prevention shall be **informed** accordingly upon any suspicion of corruption.

7. Selection of staff.

Special care shall be taken in appointing staff to sensitive organisational units.

8. Alerting and informing staff

Staff shall be made aware of the risk of corruption when they take their oath of office or are placed under obligation, and instructed of the consequences of corrupt behaviour. In addition, staff shall be given a generally valid Code of Conduct enabling them to respond appropriately to any **incidents** in which corruption is suspected to have occurred.

9. Training

All basic and further training schemes shall, be examined with a view to **estab-**lishing whether participants have been adequately informed of corruption in all its manifestations, of risk situations, of corruption prevention measures and of the consequences - in terms of criminal law, civil **service** law and **labour** law - arising in cases of corruption.

10. **Systematic administrative and substantive supervision**

Superiors shall **be** systematic in the **exercise** of their administrative and substantive supervision and look out for any signs of corruption. They shall regularly alert their staff to the risk of corruption.

II. **Full-time investigators**

In order to accelerate disciplinary proceedings, the highest administrative authorities may appoint full-time investigators for one or more offices.

12. **Notification and action upon suspicion of corruption**

Where there is suspicion, warranted by facts, of a criminal **offence** involving corruption (most notably **Sections 331 to 338** of the Criminal Code), office **management** shall notify the public prosecutor's office and the highest administrative authority without delay; furthermore, internal **investigations** shall be started and preventive action taken against any collusion to conceal the facts;

13. Separation of planning, award and billing

In connection with the procurement of public works, supplies and services within the meaning of the German Code for Awarding Public Works Contracts (**VOB**), the German Code for Awarding **Public Services** Contracts (**VOL**) and the German Code for Awarding Contracts for Professional **Services** (**VOF**) preparation, planning and specification of requirements on the one hand and implementation of the award procedure on the other should be **entrusted in** principle to separate organisational units. Billing for construction work **performed** should be the **responsibility** of a third organisational unit.

14. Principle of public tender

The provisions of the German Codes for Awarding Public Works Contracts, **Public Services** Contracts and Contracts for Professional Services relating to contract award shall be strictly adhered to in the interest of preventing corruption.

The **office** concerned shall ensure that the reasons justifying any divergence from the norm of public tender or open **procedure are** placed **on record in** each given instance (Sections **3, 3 a** and **30** of the **VOB/A** and **VOL/A** respectively and Section 18 of the **VOF**); in respect of public contracts worth more than the amount set forth in Section 3 no **4** sub-paragraph p of the **VOL/A** the reasons shall be examined by a superior or **by an organisational** unit not taking part in the actual procurement.

Public procurement shall be regularly monitored for inadmissible influencing factors as part of supervisory and substantive supervision.

15. Exclusion of companies from participation in the competition

Offices shall investigate whether a bidder or candidate is guilty of any serious misconduct which compromises their reliability and which may **lead** to exclusion from participation in the competition (Section 8 of the **VOB/A**, Section 7 of the **VOL/A** and Section 11 of the **VOF**).

A bidder or candidate is **deemed guilty** of such serious misconduct most notably when they are proven to have offered, promised or granted an advantage to a member of staff of an office engaged in the preparation or implementation of the award procedure or to a third party. In their investigation, offices shall apply the federal government decision on the uniform application of the rules concerning the exclusion of unreliable companies from public contracts and on the introduction of a register for companies with proven unreliability.

16. Anti-corruption clause

In suitable cases, anti-corruption clauses shall be incorporated in contracts on the purchase of public works, services or other supplies and services which, in the event of **conduct** justifying the **exclusion** of the contractor from participation in the competition under **Section 7** no 5 sub-paragraph c of the **VOL/A**, **Section- 8** : no 5 **para 1** sub-paragraph c of the **VOB/A** or **Section 11** sub-paragraph c of the **VOF** and leading to a substantial disadvantage for the contracting **entity**, provide for payment. by the **contractor of a** reasonable contractual penalty according to **Section 11** of the **VOB/B** or **VOL/B**.

17. Placing contractors under an obligation as provided for by the Act on the Engagement of Persons placed tinder an Obligation

Where private companies (e.g. 'main contractors; architects' or engineering consultants' offices) assist in the discharge of public functions, the individual members of staff of these companies - where appropriate- - shall undertake in **accordance** with **Section 1 (1)** of the said **Act** to conscientiously perform the duties incumbent upon them arising from the contract. They shall **be given** a copy of the directive concerning **prohibition** of the acceptance of rewards or gifts **and** shall acknowledge receipt of **the** same.'

18. Gifts and hospitality for events and facilities; Sponsoring

The prior consent of the highest administrative authority shall be obtained for the **acceptance of any gifts or** hospitality from third parties outside the office **concerned** for staff events or facilities. This shall also apply to any voluntary material promotion (sponsoring) for the benefit of activities, events and facilities of the **office** concerned.

19. Special measures

If the particular circumstances of any office require **additional** arrangements for the prevention of corruption, it shall notify the highest administrative authority through the official channels of **all** measures taken.

20. Recipients of subsidies

Where government **offices** give subsidies to offices outside the federal administration for purposes of promoting these offices, they shall oblige the recipients to apply this Directive when they require the recipient to apply the **VOL/A** and, **VOB/A** in accordance with the provisional administrative rules pertaining to Section 44 of the federal budgetary regulations.

21. Entry into force

The present Directive shall enter into force on the day of its promulgation in the Federal Gazette.⁷

⁷) The Directive was promulgated in the Federal Gazette on 14 July 1998.