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Directive for the prevention and avoidance of corruption at Ulm University

This directive applies to all staff members at Ulm University. Its purpose is to raise awareness and promote a sensitised and responsible approach of all staff towards the topic of 'corruption', and prevent manipulations at the University. The University's actions must be transparent and traceable at all times. The context of higher education necessitates for public service law standards to be concretised and further developed for the University, particularly with regards to the acquisition and acceptance of third-party funds in a legal manner. This directive also aims to minimise the risk of criminal prosecution for our staff.

1. What is corruption?

The term 'corruption' is not reliably defined. As a preventative measure the legislator has enacted several penal provisions which generally denote instances of corruption. This includes, in particular, offences of bribery such as the granting and acceptance of benefits, corruption and corruptibility (§§ 331 et seq. of the German Criminal Code *StGB*), and accompanying offences such as fraud, breach of trust (§§ 263, 266 *StGB*) and forgery of documents (§ 267 *StGB*). In sum, this covers any conduct and practice by which staff members use their position and the authorisations conferred upon them to generate private or economic benefits for themselves or third persons to which they are not entitled. The following are translations of extracts of the law. Legal basis is always the German original.

§ 331 Acceptance of benefits (*Vorteilsannahme*)

- (1) Office holders or persons with special public service obligations who demand, allow themselves to be promised or accept benefits for themselves or a third person in return for their performing their public duty, shall be punished with imprisonment up to three years or a fine.
- (2) Is concerned with the criminal liability of judges and arbitrators.
- (3) The act is not liable to prosecution in accordance with paragraph 1 if the offenders accept or allow themselves to be promised benefits which they did not demand and the responsible authority had previously approved the acceptance within their legal powers, or if the offenders immediately report the incidence to the authority and they in turn approve it.

§ 332 Corruptibility (*Bestechlichkeit*)

(1) Office holders or persons with special public service obligations who demand, allow themselves to be promised or accept benefits for themselves or a third person in return for the fact that they performed or would in the future perform an official act and thereby violated or would violate their official duties, is punished with imprisonment from six months to five years. Minor (less serious) cases are punished with imprisonment up to three years or a fine. The attempt itself is also punishable.

(2) Is concerned with the criminal liability of judges and arbitrators.

(3) If the offenders demand, allow themselves to be promised or accept the benefits in return for a future action, paragraph 1 and 2 apply as soon as the offenders signalled towards the other person the willingness

1. to breach their duties with their action or,
2. given the act lies within their discretion, to be influenced by the benefits in exercising that discretion.

2. Prevention of corruption - preventative conduct

Respecting the following principles contributes to safeguarding one's own actions and to protect oneself against corruption:

Principle of separation (*Trennungsprinzip*):

The principle of separation commands that events which, in their combination, could lead to conflicts of interest and create opportunities for abuse, are to be kept strictly separate.

Therefore, for instance, gratuities from business partners are improper if these are directly connected to sales transactions/procurements. The potential exertion of influence on procurement decisions is to be prevented.

Principle of transparency/approval (*Transparenz-/Genehmigungsprinzip*): the principle of transparency demands the disclosure of all gratuities which a staff member of the University accepts in the course of their official duties. This applies in particular to gratuities that have to be reported to the supervisor and the University Administration (examples: reporting of third-party funds, obtaining approval for secondary employment, rewards and gifts). Any and each incident should be disclosed to the University.

Principle of documentation (*Dokumentationsprinzip*): the principle of documentation requests the written documentation of transactions, particularly of services and return services in cooperative relations as well as third-party gratuities. The documentation must provide comprehensibility and traceability of the facts of the transaction and the way it has been handled.

Principle of equivalence (*Äquivalenzprinzip*): the ratio of services to return services must be reasonably balanced in all cases of interrelation, for example in third-party cooperations.

Knowledge of and compliance with all relevant provisions

Supervisors are obliged to work towards compliance with current laws with regard to all service and business decisions and acts.

Control mechanisms and other organisational measures

In terms of preventing corruption and increasing legal certainty, the following measures, correlating with the level of risks involved, have proven particularly effective:

- supervisors identifying particular areas of work/tasks that are more prone to corruption;

- the 'four eyes principle', meaning that two or more persons have to be involved in a decision or task;
- written documentation of the decision-making process, a reporting system;
- separation of duties, meaning the assignment of designated tasks of a business transaction to different people;
- ensuring lawful procedures;
- targeted controls/follow-ups, e.g. to ensure that given instructions are put into practice;
- random inspections of completed actions;
- in-process monitoring, i.e. checking whenever previously defined 'milestones' of a transaction are achieved;
- limitation of periods of use (rotation) in areas that are particularly at risk.

3. General suggestions for personal conduct

Keep in mind that as a staff member of the University you are an **office holder** with obligations in accordance with the Obligations Act (*Verpflichtungsgesetz*) and therefore subject to higher standards than employees in the private sector. At the beginning of your appointment or employment you were explicitly pledged under the criminal law provisions on corruption (*Korruptionstatbestände*).

Demonstrate with your behaviour that you neither accept nor support corruption. Corrupt behaviour deserves neither solidarity nor collegiality. Be cautious in your own interest. Avert attempts of corruption and immediately inform your supervisors.

Keep work and private life separate!

Be vigilant about the separation of work and private affairs. Always check critically if private relations (interests) present a potential clash with your work duties.

Create transparency!

If you suspect that someone wants to ask you for preferential treatment that is in breach with your professional duty, it can be helpful to involve a colleague. In the event of attempted undue influence, inform your supervisor.

Carefully document all work-related decisions and file all documents that are relevant to your decision. It is in your best interest to place importance on correctness and transparency of your decisions. Report any secondary employment. Report any preferential treatments that you have received from a business partner to your superiors if you suspect that these were intended to influence your decision. Keep in mind that you might make yourself susceptible to blackmail by accepting minor preferential treatments or allowing yourself to be influenced by them.

Handling conflicts of interest

Work life can always present situations where service and private affairs overlap or affect each other. You should leave no doubts about your impartiality in order to avoid conflicts between work and private duties. When assessing potential conflicts of interest, you should always let yourself be guided by the following question: if necessary, how can I take a negative decision in an impartial way without feeling that I have done injustice to one side? Things like friendship, gratefulness, hostility, rivalry etc. can also influence an assessment of a conflict of interest.

Confidentiality

Despite all due transparency you are still obliged to maintain confidentiality regarding certain information. Staff at Ulm University have pledged themselves by taking their official oath at the beginning of their appointment (civil servants), or vow at the beginning of their employment (all other staff) to adhere to the duty of confidentiality and the protection of data privacy.

Do not pass on information or documents which are confidential or which external third parties could take advantage of.

4. Evidence of corruption

Evidence of corruption can be based on observed indications, socio-neutral indicators or alarm indicators. In any case, the definitive ascertainment requires a comprehensive assessment of the facts. For the indicators, please see Attachment 1.

While one should pay attention to these indicators, they are by themselves no proof. Only if they appear repeatedly or frequently are they suitable to substantiate a suspicion of corruption.

5. Conduct in the event of suspected corruption / Anti-Corruption Officer

It is the general responsibility of all staff to notify their supervisors immediately of any comprehensible indications of corrupt behaviour. The decision if these indications substantiate evidence of corruption lies with the supervisor. Facts that give rise to suspicion that supervisors or disciplinary superiors could be involved in criminal offences may be reported directly, without adhering to the official chain of command, to the disciplinary superior, any hierarchically superior authority or even the designated point of contact within the Ministry of Science, Research and the Arts. On request, the report will be treated confidentially as far as this is legally possible.

You can also contact one of the counsels-of-trust that have been appointed by the Ministry of Science, Research and the Arts. For further information, please see the leaflet on the introduction of the counsel-of-trust of the Ministry of Science, Research and the Arts in Attachment 2.

6. Consequences of offences of corruption

Not only can corruption result in criminal prosecution, it can also implicate disciplinary or labour law-related measures. These can go as far as termination of employment or revocation of pension entitlements. The offender will furthermore be made liable to recourse for any resulting damage.

7. Behavioural guidelines

Personal responsibility is the most essential element both regarding the handling of third-party funds, donations and gratuities of any kind as well as any secondary employment.

a) How to handle monetary and in-kind gifts as well as other benefits

General rules of public service employment

Public service employees must avoid any appearance of them being receptive to personal benefits in the context of their service and duty. Therefore, they must not request, accept or allow themselves to be promised any rewards, gifts or other benefits for themselves or others in relation to their service and duty (§ 42 *BeamtStG* - Civil Servant Status Act, § 3 para. 3 *TV-L* – the collective agreement of the federal states). Exceptions are allowed only in cases where there is no reason to fear for the staff to be influenced, and require the previous approval of the employer.

The terms 'rewards' (*Belohnungen*) or 'gifts' (*Geschenke*) refer not only to money or material assets but also any other gratuities, including services to which the public service employee has no legal claim and which benefit them in a way that leaves them better off. Such a benefit can be present particularly in:

- the ceding of vouchers (e.g. admission tickets), phone-, money- or credit cards, or objects

(e.g. construction site equipment, vehicles) for private use;
- the granting of special concessions in private business affairs (e.g. interest-free or low-interest loans, suretyships);
- the granting of discounts that are not generally granted to all members of public service, of professional or unionised organisations or other general professional groups to which the public service employee belongs;
- the ceding of travel tickets or the invitation to travels (e.g. holidays);
- catering or the provision of accommodation;
- benefits related to inheritance law (e.g. appointment as heir or making someone beneficiary of testamentary gifts);
- the private acceptance or redemption of 'payback points', gift vouchers etc. for purchases of goods;

Note: a benefit can also be present even though the public service employee is in fact entitled to a return service (e.g. from an approved private secondary employment). This is the case when the return service is disproportionate to the public service employee's service performance.

Approval is generally deemed granted regarding the acceptance of

- generally considered unobjectionable low-value gifts (e.g. mass promotional items such as calendars, pens, writing pads, as long as these are simple items);
- gifts from co-workers of the staff member (e.g. in the event of a birthday or anniversary), as long as these fall within the conventional scale;
- any other gifts up to a value of max. €10;
- benefits which facilitate or speed up the realisation of a business transaction (e.g. picking someone up with a car from the train station);
- common or appropriate event-related catering (meetings, inspection visits etc.), if it is based on general rules of courtesy and respect which cannot be evaded by a member of staff without offending social norms;
- common and appropriate catering at general events where the staff member participates in the context of their position, on official duty, or with regards to the social commitments that come with their position.

Approval of the acceptance of any other gratuities is the exception and can only be given subject to the application of strict criteria. Therefore, it is best to decline them as a general rule. If for some reason you are unable to decline, you categorically need to declare the reservation that you will return the gratuity in case the acceptance is disapproved. You also have no right of disposal until approval has been given.

Do not just rely on negligibility. If one or more of the following statements apply, it is highly advisable to decline the gratuity:

- Does the person who offers the gift want to influence me in relation to my service?
- Do I create the impression of being receptive to benefits?
- Do I jeopardise the trust in the lawful conduct of the University?
- Is the value of the gratuity unusually high even in the context of festivities?

Contact:

b) Explanatory notes on third-party funds

The University welcomes the collaboration with industry and public financiers. Their financial, in-kind and conceptual support of the functions of Ulm University are an important contribution to success and the transfer of the results into practice.

In accordance with the jurisdiction of the Federal Court of Justice (*Bundesgerichtshof, BGH*), the scope of when accepting benefits is deemed an offence is limited if the acquisition of third-party funding for research and teaching is part of the public official's service duty based on higher education law. If the staff member adheres to the procedure for the acquisition of funds (report and approval) as stipulated by the higher education law, the legally protected values of § 331 of the German Criminal Code *StGB* (trust in reasonableness and 'non-corrupibility' of the decision) are already accounted for in this context.

In accordance with §§ 13 and 41 of the Baden-Württemberg Federal State Higher Education Act (*Landeshochschulgesetz Baden-Württemberg*), the acquisition and use of third-party funds for research and teaching is an essential part of the service duties of primary employed academic staff at the University. Other staff members are eligible to acquire third-party funds only if they were authorised to do so as part of their official duties.

Third-party funds in this context are considered monetary and in-kind gratuities, contractual return services and any other cash-value benefits in return for tasks in research and teaching. However, third-party funds must not have the character of a 'reward' for unrelated service performances. The following applies in particular:

- The conclusion of a contract must not have any connection with orders or procurements that are unrelated to the project (package deals).
- The granting of third-party funds must not be a return service for work duties that are unrelated to the project, e.g. the supervision of theses.
- The third-party funded project must be clearly separated from any secondary employment (see also 'secondary employment').
- The relations with private third-party funding providers must be made transparent towards the University. The information provided must be complete and correct.
- Where third-party funds are granted as return service for a service performed by the University in the context of the University's economic activities, market prices or full costs are to be calculated as a matter of principle.
- Gratuities that are given to a member of the University not for professional but for private purposes are not considered third-party funds as defined above.
- Price deductions or any benefits that are tied to the volume of a transaction are not considered third-party funds as defined above, since these merely serve to reduce the procurement costs.
- Funds for illegal or unethical purposes must not be accepted.

When acquiring third-party funds staff members have to adhere to the procedure stipulated in §§ 13 and 41 of the Federal State Higher Education Act Baden-Württemberg (*LHG*) and in the official regulations for third-party funds (*Drittmittlerichtlinien, DMRL*) and implemented at the University. In order to create transparency and counteract the suspicion of corruption, please particularly heed the following:

1. There have to be written contracts / order forms / grant notifications for any and all gratuities. Contract partner is always the University. The agreements must be presented to the Chief

Financial Officer (*Kanzler*) via Division (*Dezernat*) I Research, Legal Affairs and Organisation.
The project is only allowed to commence when this signature is given.

2. Project managers are furthermore required to provide information about the project and their relations to the third-party funds provider. Please use the official form '*Erklärung bei Zuwendungen von Dritten*' (declaration for accepting gratuities from others).
3. Project managers are required to disclose the project costing for any economic activities. Please use the official form '*Vorkalkulationsschema*' (preliminary costing scheme).
4. The Board members do base their decision over the acceptance of the funds on these documents.
5. The Central University Administration department IV-2 Third-Party Funds Management is responsible for the financial processing of the project, including any potential procurements.

In the forms cabinet in the Research and Technology Transfer Office (department I-1) you can find the following and more documents:

- guidelines for third-party funds by the Ministry of Science, Research and the Arts from 16 April 2010 (*Drittmittelrichtlinien (DMRL) des MWK*, 16 April 2010);
- the declaration form for accepting gratuities from others (form *Erklärung bei Zuwendungen Dritter*);
- a full costing template (form *Vollkostenkalkulation*),
- several guides to support you with the preparation and processing of third-party funded projects.

<http://www.uni-ulm.de/einrichtungen/zuv/dez1/forschung-u-technologietransfer/vertragsmanagement/formularschrank-vertraege.html>

Contact:

Central University Administration,
Head of Division (*Dezernat*) I Research, Legal Affairs and Organisation

c) Explanatory notes on business travel and participation at events

When planning a business trip, remember that travel expenses are always accounted in accordance with the federal state act on travel expenses (*Landesreisekostengesetz LRKG*) and that the principle of parsimony has to be applied.

The supervisors/heads of the institution decide whether and to what extent the business trip is necessary and gets approved. When participating at scientific conferences, educational events, conventions and presentations, it has to be verified that these serve the transfer and dissemination of professionally relevant knowledge and prioritise the scientific information and propagation of knowledge in research and teaching or other professional matters.

The following has to be taken into consideration when supporting the participation of staff at conferences or informational and educational events and other business travel:

- Third-party funds can only be used to finance business travel if the regulations for acceptance were adhered to.
- It is only admissible to accept that a third party pays the costs of travel and educational events directly, if the following requirements are fulfilled:
 - the trip/event must be primarily in the interest of the University, meaning it must serve exclusively or at least predominantly science and research,
 - the costs paid for must be reasonable,
 - the procedure, which was stipulated by the Board in accordance with the guidelines for third-party funding, has to be adhered to:

<http://www.uni-ulm.de/einrichtungen/zuv/dezernat-3/personalservice/dienstreisen.html>

Remunerations for concrete services, e.g. presentations, must not be accepted privately if the participation is primarily in the interest of the University and happens in the context of the appointment/employment. Any appropriate in-kind compensation offered for the active participation can only be collected by the University. The regulations for the acceptance of third-party funds have to be adhered to (see notes under point b).

Contact:

Central University Administration,
Head of Division (*Dezernat*) III Human Resources

d) Explanatory notes on secondary employment

Any private secondary employment is to be strictly separated from public service duties. Reflect on your professional focus and whether a secondary employment could cause conflict:

- According to the case law of the Federal Court of Justice (*BGH*), the presence of an unlawful agreement as defined in § 333 para.1 of the German Criminal Code (*StGB*) can only be readily negated for such a private non-gratuitous secondary employment which is performed for an employer with whom the public service employee does and cannot have any contact points related to their public service position. It is therefore not allowed to take on a secondary employment with critical proximity to the public service duties.
- An entire third-party order may only be delivered unitarily, as either third-party funded project or as secondary employment. Splitting the project, e.g. by entering into an additional consultancy agreement, is not permitted (prohibition of splitting, or *Splittingverbot*).
- Service performance and return service must be reasonable and proportionate.
- In order to avoid the impression of influence it should be heeded to have an objective reason for the agreement when entering into a contract; the contract and the performed services and return services should be recorded in writing for the purpose of transparency and traceability.
- Remuneration offers for talks and presentations outside the public service duties (see point c) may only be accepted as approved secondary employment. It is to be decided well in advance if the task will be realised as part of the public service duties or as private secondary employment.

- Any secondary employment must be reported to and approved by the Central University Administration before committing to it. Failing to report or seek approval of a secondary employment can entail labour law-related consequences.

Forms and notes regarding secondary employment:

<http://www.uni-ulm.de/einrichtungen/zuv/dezernat-3/personalservice/nebentaetigkeit.html>

- Business travel requests in connection with secondary employment are inadmissible.

Contact:

Central University Administration,
Head of Division (*Dezernat*) III Human Resources

e) Explanatory notes on procurements

On principle, Ulm University is obliged to carry out procurements through competitive public tendering procedures in order to ensure both due transparency and economic efficiency. This obligation is formalised as part of the principles of economic viability and parsimony of § 7 federal state budget regulations (*Landeshaushaltsordnung, LHO*). The act against restraints on competition (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) and the tendering and contract regulations (*Vergabe- und Vertragsordnung für Leistungen, VOL/A*) are the essential legal basis for public procurements.

Procurements valued €500 or more are processed, with a few exceptions, by department IV-2 Economic Affairs and Third-Party Funds Management. The value of the procurement determines if a public tender is required. If an institution makes a low-value procurement on their own responsibility, they need to adhere to the principle of parsimony and necessity.

Ulm University has stipulated specific regulations regarding procurements in the procurement manual (*Handbuch für Beschaffungswesen*) and asks its staff to adhere to these.

(<http://www.uni-ulm.de/einrichtungen/zuv/dezernat-4/wirtschaftsangelegenheiten-und-drittmittelbewirtschaftung/beschaffungswesen-kopierwesen.html#c39619>)

Contact:

Central University Administration,
Head of Division (*Dezernat*) IV Finances

f) Explanatory notes on donations

In accordance with § 2 para. 1 of the Federal State Higher Education Act Baden-Württemberg (*LHG*), monetary or in-kind donations from third parties are considered third-party funds for tasks in research and teaching for which no return service is expected. The provisions specified in the guidelines for third-party funds apply, meaning:

- Any gratuity from a third party must be reported to the Board in line with the standard procedure (see notes under point b) and can only be accepted by way of this chain of command.
- Monetary donations are to be received and managed through an account of the University. In-kind donations have to be inventoried where applicable.

- Monetary and in-kind donations have to be independent from a procurement decision.
- Donations to or to the benefit of individual members of the University are not permitted.

If the requirements are met, a gratuity certificate can be issued for gratuities that have been given with the purpose of supporting the University with its responsibilities. This certificate can only be issued by department IV-2 Economic Affairs and Third-Party Funds Management.

Contact

Central University Administration,
Head of Division (*Dezernat*) IV Finances

g) Explanatory notes on sponsorships

According to the circulatory letter sent by the Federal Ministry of Education and Research (*BMBF*) on 13/11/2012, sponsorship ‘...usually is considered to be the granting of financial or in-kind contributions by companies in order to promote persons, groups and/or organisations in sportive, cultural, ecclesiastic, academic, social, ecological or similarly important socio-political areas through which the companies’ own goals of advertising or public relations are pursued on a regular basis.’

The provisions of the guidelines for third-party funds (*Drittmittelrichtlinie*) apply to proceeds resulting from sponsorships:

- Any appropriation of resources gained from sponsorships has to be reported to the Board by way of the standard procedure for third-party funds and can only be accepted in that way.
- In order to avoid conflicts of interest and create the necessary transparency, a written contract should be made where purpose, type and scope of the sponsorship and resulting obligations of the University are agreed upon. Sponsorship contracts are made by department IV-2 Economic Affairs and Third-Party Funds Management, so long as these serve the promotion of the University’s responsibilities in accordance with the Federal State Higher Education Act.

Contact:

Central University Administration,
Head of Division (*Dezernat*) IV Finances

Socio-neutral indicators are:

- excessive lifestyle that cannot be explained with the income;
- sudden lifestyle changes;
- inexplicable separation, secretiveness towards colleagues and supervisors;
- social and character-related problems;
- secondary employment with questionable proximity to the public service position;
- accepting invitations from external contacts which exceed the professionally occasioned, socially adequate framework;
- frequent private contacts with procurement business partners (contractors, tenderers, proposers);
- unusually favourable special conditions for procurements;
- offering free or low-priced services;
- extensive promotional gifts;
- generosity of companies;
- pretending to be indispensable, relinquishing leisure time and coming to work even when sick;
- taking work home;
- sudden, inexplicable change of heart;
- disobedience towards implementations, delegations and reassignments;
- unusually casual conversations between staff and company representatives;
- absence of usual complaints.

Alarming indicators are:

- inexplicable decisions which favour a particular tenderer or proposer;
- differing assessments of transactions or events with similar circumstances;
- abuse of discretionary powers;
- forgoing controls or check-ups even though they would be due or warranted;
- staff who have no functional business in the matter exerting influence on the process handling;
- ignoring or overlooking co-signing obligations;
- deliberate passing over of supervisors;
- repeated external appointments without plausible reasons;
- illegitimate expansion of delegation specifications;
- conclusion of a contract with unfavourable conditions which binds the University long-term;
- repeated favouring of particular tenderers;
- suspicious softness in contract negotiations;
- date stamps missing on correspondence with tenderers, proposers or contractors;
- inexplicable hastening of the process;
- negligence regarding legal concerns and other objections;
- a supervisor giving the order to process a transaction 'approvingly' without scrutiny.

Ministry of Science, Research and the Arts

Leaflet on the introduction of the counsel-of-trust

1. Objective

The reputation and integrity of the public administration is of fundamental importance for the functioning of a constitutional democracy. Corruption causes tremendous macroeconomic damages and compromises the faith in the state and its administration. It is therefore a fundamental objective of the state to fight and prevent corruption.

The public administrative provision for the prevention of and fight against corruption from 19 December 2005 (GABl. 2006, p. 125 f.), re-released on 15 January 2013 (GABl. 2013, p. 55), offers the option to appoint a counsel-of-trust as preventative measure in the fight against corruption. This counsel-of-trust is meant to be an independent point of contact outside the public administration in events that could potentially be linked to corruption. The Ministry of the Interior has entered a framework contract for the Federal State of Baden-Württemberg with a legal counsel, which the Ministry of Science, Research and the Arts has joined.

2. The term 'corruption' and particularity in the context of academia

The term 'corruption' is not reliably defined; it is outlined by statutory offences like offences of bribery (e.g. acceptance of benefits - § 331 *StGB* [German Criminal Code], corruptibility - § 332 *StGB*, granting of benefits - § 333 *StGB*) and their accompanying offences (e.g. obstruction of justice in office - § 258 a *StGB*, embezzlement - § 246 *StGB*, money laundering - § 261 *StGB*, fraud - § 263 *StGB*).

Areas that decide over contracts/funds and approvals in direct contact with citizens or entrepreneurs are considered particularly at risk.

Nowadays one has to take into account that science in the higher education sector benefits in multiple ways from third-party funding. According to the Baden-Württemberg Federal State Higher Education Act (*LHG*), the acquisition and utilisation of third-party funds for research and teaching is part of the main duties of primary employed academic staff at universities. Therefore, if the stipulated procedure for the acceptance of funds is adhered to and the acceptance of the funds is reported and approved, the acceptance of third-party funds by public service employees is not considered a criminal offence (see also the guidelines for third-party funds by the Ministry of Science). This usually ensures transparency of the process sufficiently.

3. Responsibilities of the counsel-of-trust

The counsel-of-trust is available to all citizens, employees and business partners of the federal state administration as an independent contact person. As contact point, they receive notifications regarding suspicious facts that indicate criminal offences of corruption and check their credibility and relevance under criminal law. The purpose of their work is to investigate and clarify the facts of incidents of corruption.

If there are sufficient suspicious facts indicating the misconduct of a staff member or third-parties at the expense of the federal state, the facts of the incident will be reported to the highest responsible federal state authority. They then coordinate the ensuing procedure

and can ask the counsel-of-trust to forward further enquiries to the person who reported the incidence, if necessary. The counsel-of-trust is an additional element in the federal state's catalogue of measures to fight corruption.

4. Legal position

The counsel-of-trust acts as unaffiliated and independent lawyer. They are not subject to instructions by the federal state as to how they handle the content of the case. They decide after due scrutiny if and to what extent they report the facts of the incident to the responsible federal state authority. They use the standards of the Code of Criminal Procedure (*Strafprozessordnung*) as guide for the existence of an initial suspicion. If their assessment confirms the existence of such a suspicion, the facts of the incident have to be reported to the federal state authorities.

The counsel-of-trust can covenant confidentiality to the informant if requested. In this case, due to the lawyer's duty of confidentiality, they are not allowed to disclose the identity of their informant to neither the federal state nor any third parties. If the counsel-of-trust is questioned as witness in the course of criminal or civil proceedings, they are only allowed to disclose their informant's identity if both the federal state and the informant give their permission.

5. Area of application

The federal state commissions the lawyer to take on the function of a counsel-of-trust with the purpose of prevention of corruption on the basis of the Ministry of the Interior's framework contract. Every department makes their own contract for themselves and their subordinate business area. The following institutions are included in the contract of the Ministry of Science and the Arts:

- the universities including the Medical Faculties (including the Medical Faculty of the University of Mannheim)
- the University Hospital of Freiburg
- the universities of education
- the universities of applied sciences
- the universities and academies of the arts
- the Baden-Württemberg Cooperative State University (Duale Hochschule Baden-Württemberg) with its individual academies
- the Landesarchiv Baden-Württemberg (federal state archive of Baden-Württemberg)
- the Württembergische Landesbibliothek (federal state library of Baden-Württemberg) in Karlsruhe and Stuttgart and the Bibliotheksservice-Zentrum Baden-Württemberg (BSZ) (Library Service Centre Baden-Wuerttemberg) in Konstanz
- the Badische Staatstheater Karlsruhe
- the Württembergische Staatstheater Stuttgart
- the Staatsgalerie Stuttgart (national gallery in Stuttgart)
- the Staatliche Kunsthallen Baden-Baden and Karlsruhe (national art galleries in Baden-Baden and Karsruhe)

- the Badische Landesmuseum Karlsruhe (museum for cultural, art and regional history in the Baden region of Baden-Württemberg)
- the Landesmuseum Württemberg Stuttgart (museum for cultural, art and regional history in the Württemberg region of Baden-Württemberg)
- the Staatliche Museen für Naturkunde Karlsruhe and Stuttgart (State Museums of Natural History in Karlsruhe and Stuttgart)
- the Linden-Museum Stuttgart
- the Archäologische Landesmuseum (state museum of archaeology)
- the Haus der Geschichte Stuttgart (House of History Baden-Württemberg)
- the Deutsche Volksliedarchiv Freiburg i. Br. (archive of German folk songs in Freiburg i. Br.)
- the Kommission für geschichtliche Landeskunde in Baden-Württemberg (commission for historical regional studies in Baden-Württemberg)
- the regional administrative authorities (Regierungspräsidien) for cultural affairs and the Landesamt für Ausbildungsförderung (federal state department for education assistance)
- the student union associations Bodensee, Freiburg, Heidelberg, Karlsruhe, Mannheim, Stuttgart, Tübingen-Hohenheim and Ulm
- the Evaluationsagentur Baden-Württemberg (evaluation and accreditation agency)
- the regional administrative authorities' specialist units for the public library system
- the TECHNOSEUM Landesmuseum für Technik und Arbeit in Mannheim (state museum for technology and

6. Contact details for the counsel-of-trust

Counsel-of-trust is:

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For further details, please see the counsel-of-trust's website at:

<http://www.bender-harrer.de>

7. The state authorities' responsibilities

In this context the state authorities have the same responsibilities as stated in the administrative regulation for the prevention and fight of corruption. If after initial action the counsel-of-trust passes on the facts of an incident to the state authority, the authority is obliged to contribute to the investigation and prosecution of the facts of the incident in

cooperation with the counsel-of-trust if necessary.

This does not affect the authority's, the executives' and the staff's innate duties regarding the investigation and handling of facts of incidences of corruption in accordance with the administrative regulation for the prevention and fight of corruption, which subsist independently of the institution of the counsel-of-trust.

According to no. 4.3 of the administrative regulation for the prevention and fight of corruption, on the conditions stated in paragraph 1 to 3 the authorities are obliged to **inform the law enforcement authorities**. This occurs particularly if concrete facts give reason to suspect an offence of bribery. According to point 3.1.1 of the administrative regulation the assessment and decision regarding the necessity in each individual case to inform the law enforcement authority lies with the management of the authority or the organisational unit specifically appointed by the management for this purpose.

Due to the duty of care under public service law the facts of an incident must be reviewed diligently to assess if concrete facts indicate the suspicion of an offence of bribery or an accompanying offence.

8. How this concerns you as an individual

We need your help in the prevention and investigation of corruption. In addition to improving internal control mechanisms we rely on the collaboration with the external counsel-of-trust as independent contact person.

Since corruption is a typical offence with a high number of unreported cases, it is of critical importance to use all means and opportunities for investigation. The authorities that are responsible for the prosecution of offences of corruption therefore depend on any information.

In your own best interest, we would therefore like to ask you to support us with the investigation of incidences of corruption.