

Guidelines on preventing, identifying and solving conflicts of interest and corruption-prone situations

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Introduction

The University of Tartu is a legal person in public law that performs public duties and proceeds in its everyday activities from the rules established to the agencies and institutions of the public sector. In the public sector, also the requirements of the [Anti-corruption Act](#) (also ‘ACA’) must be complied with, aiming to ensure the honest and impartial performance of public duties (ACA subsection 1 (2)). All employees of the university operating as officials must comply with the requirements of the Anti-corruption Act.

To prevent corruption-prone situations, the Anti-corruption Act imposes several restrictions also the university staff must observe in their activities, known as procedural restrictions. In the case of a procedural restriction, a university employee must not perform a particular act with a person connected to him/her, whether or not the employee derives an individual benefit from it. It is a preventive measure. A situation in which a university employee wishes or needs to take a particular decision or act concerning a person connected to him/her is referred to as a conflict of interest. Conflicts of interest are not corruption but can lead to corruption.

Under the Anti-corruption Act, the University of Tartu is obliged to ensure its employees’ awareness in the field of the prevention of corruption (Clause 3 (3) 1) of the ACA). These guidelines have been compiled to contribute to this objective.

Definitions

An official is a natural person who holds an official position for the performance of public duties regardless of whether he or she performs the duties imposed on him or her permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by election or appointment. (ACA subsection 2 (1))

Example: At the university, officials are members of the Rector's Office and heads of structural units, members of the council and the senate, as well as members of all decision-making bodies, financial account holders and all other staff members who can influence decisions taken at the university (e.g. by preparing a public procurement, drawing up the terms of competition for an academic position, etc.).

An official position means the rights and obligations arising from the legislation, transactions or work organisation of an agency upon the performance of public duties:

- to make a decision, including to participate in the making thereof or substantive directing thereof. A decision is the decision making directed at the creation, alteration or extinguishment of the rights and obligation of other persons, including agencies performing public duties, which regulates individual cases or an unlimited number of cases, including legislative acts, administrative acts within the meaning of the Administrative Procedure Act, judicial decisions, and internal legal instruments of an agency; (ACA clause 2 (2) 1))

Example: At the university, the official position is exercised both by the rector, who establishes in a decree measures to prevent, identify and eliminate conflicts of interest and incidents of corruption, and by the legal counsel, who has prepared the draft of this legislation.

- to perform an act, including to participate in it or substantive directing thereof. An act is an activity which causes legal and unavoidable factual consequences to other persons, including agencies performing public duties, and which is not the making of a decision. An act may also mean performing of any other procedural acts, omissions or delays. (ACA clause 2 (2) 2))

Example: An act is performed by a university employee who performs his duties by entering requests for research grants into the Estonian Research Information System (ETIS). Similarly, an act is performed by the academic secretary when assessing the adequacy of the documents submitted by a doctorate applicant.

For the purposes of the ACA, each of the following is a connected person:

- official's spouse, grandparent, official's or his or her spouse's parent and descendant of official's parent, including official's child and grandchild. For the purposes of the ACA, a parent is also deemed to include an adoptive parent, parent's spouse and foster parent, and a relative in descending line is also deemed to include an adopted child and spouse's child;
- legal person in which at least 1/10 of the holding or the right to acquire a holding belongs to an official or a person connected to him or her;

Example: If 1/10 of a private limited company is held by the father-in-law of a professor of the university, that company is deemed a person connected to the professor within the meaning of the Anti-corruption Act.

- legal person in which the official or any person specified in clause 1) or 4) of this subsection is a member of the management or controlling bodies for the purposes of the Income Tax Act;

Example: If the grandchild of the head of an institute is a member of a non-profit organisation's revision committee as an accounting officer, that non-profit organisation is a person connected to the head of the institute within the meaning of the Anti-corruption Act.

- person who has a shared household with an official, and any other person whose position or activities have a significant and direct impact on the official outside his or her official position or whom the position or activities of an official outside his or her official position significantly and directly influence or who is subordinate to the orders issued by an official outside his or her official position or who acts in the interests or on account of an official. (ACA subsection 7 (1))

Example: Under that provision, the connected persons surely include the partner of the university employee with whom, de facto, she lives and shares a household. In the case of many other persons (e.g. a doctoral student supervised by a professor, a direct superior of a university employee with another employer, a chair of a university employee's apartment association), it is not clear whether they are connected persons, so the nature of the relationship between the two and the possibility of exerting a significant influence on each other must be assessed on a case-by-case basis.

Procedural restrictions

An official is prohibited from performing an act or making a decision, if:

- the decision is made or the act is performed with respect to the official or a person connected to him or her;

Example: the professor does not take part in the decision making when the faculty council is called for a recommendation vote to elect him for the position; the head of the institute may not conclude a contract, on behalf of the university, with a company of which her son-in-law is one of the owners; a research fellow may not participate in the preparation of a public procurement if one of the expected tenderers is a company linked to his spouse; the financial account holder may not order services from a company with her brother on the management board.

- the official is aware of an economic or other interest of that official or a person connected to him or her and which may have an impact on the act or decision;
- the official is aware of a risk of corruption. (ACA subsection 11 (1))

An official is prohibited from assigning the task of performing the act or making the decision instead of the official to his or her subordinates. An official shall immediately inform his or her immediate superior or the person or body who has the right to appoint the official of the circumstances specified in subsection (1) of this section and the latter shall perform the act or make the decision or assign this task to another official. (ACA subsection 11 (2))

Example: The dean needs to conclude a contract on behalf of the university with the professional association of which he is a board member. The dean is not entitled to do so because the professional association is a connected person. Even if, as a general rule, the dean is entitled to delegate transactions to, for example, heads of institutes, he may not do that in respect of that transaction. The dean must inform the rector of the conflict of interest who will then conclude the contract himself or assign the task to a vice rector.

A legal person is not deemed to be a connected person if the connection of the official and the legal person arises exclusively from the official duties of the official. The competence of representation of a state or local government agency or a legal person in public law the management or controlling bodies thereof is deemed to be an official duty for the purposes of this Act. (ACA subsection 7 (2))

Example: If the vice rector belongs to the council of a foundation established by the university due to her duties, that foundation is not a person connected to the vice rector within the meaning of the Anti-corruption Act.

Procedural restrictions are not applied:

- to adoption of legislative acts and participation in the adoption or preparation thereof. The budget of state and local governments shall be deemed to be a legislative act;

Example: No procedural restrictions apply to senate members when the senate adopts job descriptions for academic staff, which also have a direct impact on many senate members.

- to a trustee in bankruptcy conducting bankruptcy proceedings, concerning the use of the services of the office through which he or she operates;
- in necessity and in the case of acts which cannot be postponed, upon threat of major damage;

Example: If there is a plumbing emergency in a university building that requires immediate action, the director of administration may order this work from the company belonging to his son if this company can do it the fastest.

- if replacement of the official is impossible due to lack of persons who comply with the requirements set for the substitute. A notice shall be immediately and permanently published on the web site of the agency performing public duties concerning non-application of the restrictions on activities based on the provisions of this clause;
- in the case of acts or decisions by which an agency performing public duties ensures the organisation of its work, except for service-related decisions. A notice shall be immediately and permanently published on the web site of the agency concerning the non-application of the restrictions on activities based on the provisions of this clause;
- if there is no risk of corruption upon routine making of a decision or performing of an act, including if an official makes a disposition or performs an act without having an opportunity to determine the circumstances thereof;

Example: The dean may award a scholarship to her son if it is awarded based on some formal characteristics (e.g. achievement) according to the legislation without a discretionary decision.

- in rural municipality or city agencies, if the application of restrictions on activities would be unreasonable from the point of view of public interest, taking account of the specific character of the local government unit. A notice shall be immediately and permanently published on the web site of the rural municipality or the city concerning non-application of the restrictions on activities based on the provisions of this clause;
- in the case of elections inside bodies. (ACA subsection 11 (3))

Example: When the university council is electing the chair of the council, the council members who are themselves candidates for the position are also entitled to participate in the decision making.

Conflict of interest in public procurement

According to the Public Procurement Act ('PPA'), a conflict of interest means a situation where the university as the contracting authority or the contracting entity's employee, official, management board member or another competent representative involved in the preparation or carrying out of public procurement or who may otherwise influence the outcome of the public procurement has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence.

Example: A university employee who prepares the technical specifications for public procurement has a company which participates in the same public procurement as a tenderer.

The university must provide for measures for the prevention, identification and remedying of a conflict of interest in public procurement. The rector has established the [measures for prevention, identification and elimination of conflicts of interest and incidents of corruption](#) at the University of Tartu.

When submitting the application to initiate a public procurement, the person who initiates the public procurement, members of the committee, the holder of financial account and the person responsible for the technical specifications supply a written declaration of absence of apparent or actual conflict of interests, or in the case of emergence of such conflict, of withdrawing themselves, a declaration of absence of any personal interests related to the procurement, with a confirmation that all through the procurement procedure, including in the course of reviewing tenders and making decisions, they ensure that there are no conflicts of interests. The person who makes the procurement contract and the person responsible for the performance of the contract must provide such a declaration before making the procurement contract. These declarations are registered in the document management system and stored together with other documentation concerning the procurement procedure.

An apparent conflict of interest refers to a situation where it appears that the private interests of a public official may unduly influence the performance of his duties, although this is not the case.

Conflict of interest in teaching and research

The senate of the University of Tartu has approved the Code of Conduct for Research Integrity which also deals with conflicts of interest in research and the ways of resolving them: <https://www.ut.ee/en/about-us/code-conduct-research-integrity>

According to the [Regulations for Recruitment of Teaching and Research Staff](#), appointments of experts must be made such that conflicts of interest are avoided.

According to the [Procedure for Awarding Doctorates](#), an internationally recognised researcher of the respective specialisation who holds a doctoral degree or a corresponding qualification and does not have a conflict of interest upon performing the task can be appointed as an opponent and reviewer of a dissertation.

In the above-mentioned legislation, conflict of interest may refer to many other cases than those mentioned in the Anti-corruption Act, e.g. connected persons are those who have published or submitted for publication joint papers, who participate or have participated in a joint research project, or who are or have been in a supervisor-supervisee relationship.

University employees are prohibited from providing or being involved in providing an expert opinion on themselves or their connected persons. If asked to provide such expert opinion, the employees must inform their immediate supervisor of the conflict of interest. The immediate supervisor is required to reorganise work so as to eliminate need and obligation for the person with the conflict of interest to provide the expert opinion.

If a student who is a person connected to a teaching staff member is taking a course, the teaching staff member has a right to withdraw from the assessment of that student's exam or pass-fail evaluation. In this case, the vice dean for academic affairs forms a three-member committee for assessing the exam or pass-fail evaluation of that student. The regulation is similar to that provided in the [Study Regulations](#): the vice dean for academic affairs must establish a three-member exam committee to administer the fourth resit in the same course on the basis of the reasoned request by the student.

Example: If a course of the teaching staff member is attended by his daughter and the teaching staff member feels that he cannot be impartial in the assessment, he can withdraw from the assessment of his daughter and the dean must set up a three-member committee to assess the work of that student.

The [regulations for secret votes](#) regulate the behaviour of the members of the university's decision-making bodies (the senate, faculty council, institute council, college council, council of an institution) in a situation the decision-making body must take a decision regarding its member or a person connected to its member. If the elections are held in a decision-making body and the secret vote decides a matter regarding a member of the decision-making body, the respective member of the decision-making body is removed and does not participate in the vote or the discussion of the matter. The quorum of the decision-making body is reduced by the removed member.

Example: If the faculty council is holding a recommendation vote on candidates for the professor's position and one candidate is a member of the same faculty council, the member is removed and the faculty council is deemed to have 24 members instead of the usual 25 for deciding on this matter. In this case, this member will not take part in the discussion on this agenda item either and will leave the room for that time.

If the elections are held in a decision-making body and the secret vote decides a matter regarding a person connected to a member of the decision-making body as defined in the Anti-corruption Act, the member of the decision-making body has a right to remove him- or herself from the vote and the discussion of the matter. The quorum of the decision-making body is reduced by the removed member.

Example: If the institute council is electing a research fellow and one of the candidates is the sister of a member of the same institute council or, for example, the supervisor of the member's doctoral dissertation, that member of the institute council is not automatically removed. However, the member has the right to withdraw himself, in which case the quorum of the council is reduced by one member for the time of that decision.

Different principles have been taken into account when setting up decision-making bodies of the university, the most important of which are the representation of academic staff, professional and scientific expertise and administrative responsibilities. If all persons who are connected to the person who is currently subject to a decision (e.g. election to a position) within the meaning of the Anti-corruption Act are excluded from the decision-making body, the decision-making body may lose its substantive competence to make that decision at all. Therefore, all parties involved are not automatically removed from the decision-making body but are given the right to be removed from the decision making if they feel unable to remain impartial when making a decision. Such an approach is supported by clause 11 (3) 4) of the Anti-corruption Act, according to which procedural restrictions (incl. the prohibition to participate in decision making related to a connected person) are not applied if the replacement of the official is impossible due to lack of persons who comply with the requirements set for the substitute.

Corruption

For the purposes of measures, corruption is the use of benefits resulting from the office or duties of a university employee for personal gain. Corrupt activities of a public official are most often characterised by corruptive benefit, which may not always be monetary. Corruptive behaviour is knowingly acting in the interest of oneself or someone else if it generates benefit (not only directly monetary), is not impartial and fails to treat other potential parties equally.

A university employee operating as official is prohibited from:

- receiving income derived from corrupt practices, i.e. proprietary or other benefits offered to the official or any third person due to his or her official duties or demanded by the official, and benefits received by violation of the obligations of the official. Benefits, which cannot be associated with official duties or which are unambiguously understood as common courtesy, shall not be deemed to be corruptive; (ACA subsection 4 (1))
- corrupt use of official position, i.e. the making of a decision or performing of an act in the competence of an official by such official in violation of his or her official duties in the interests of the official or any third persons, participation therein or substantive directing thereof, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest; (ACA subsection 5 (1))
- corrupt use of public resources, i.e. the use of material and other resources intended for the performance of public duties by such official in violation of his or her official duties in

the interests of such official or any third persons, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest; (ACA subsection 5 (2))

- corrupt use of influence, i.e. the use by an official of his or her actual or presumed influence in violation of his or her official duties with the objective of achieving commission of an act by another person or omission thereof in the interests of such official or any third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest; (ACA subsection 5 (3))
- corrupt use of inside information, i.e. the use by an official, in violation of his or her official duties, of undisclosed information which became known to the official in the course of exercise of public authority, which has or would probably have a significant effect on the rights of any third person, in the interests of such official or the third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest. (ACA subsection 5 (4))

Preventing, identifying and resolving conflicts of interest at the university

To implement the Anti-corruption Act, [measures for prevention, identification and elimination of conflicts of interest and incidents of corruption](#) have been established at the university by the rector's decree. The measures have been established to ensure that the decisions and transactions made on behalf of the university are lawful and to support university employees in making informed and honest choices, and understanding, timely recognition and avoidance of conflicts of interest and relationships involving a risk of corruption, also to determine the organisation of work at the university regarding the implementation of the Anti-corruption Act.

The measures specify the requirements of the ACA and state that university employees are prohibited from performing transactions in the name of the university with themselves or with connected persons, and from delegating the making of such transactions to other university employees or external persons. Such a prohibition is valid for any transactions made in the name of the university, including the use of a financial account. University employees are prohibited from receiving goods or services in the name of the university from themselves or persons connected to them and deliver goods or services to themselves or persons connected to them.

Example: As a financial account holder, a university employee may not order services from a non-profit organisation the revision committee of which she belongs to.

Example: If the university has a public contract with a company connected to a university employee within the meaning of the ACA, that employee may not receive goods from that company or sign an instrument of receipt on behalf of the university.

If a university employee cannot, due to a conflict of interest, make a decision or perform an act that is the employee's duty, the obligation to perform the duty will pass to the employee's immediate supervisor, who estimates the circumstances and makes the decision or performs the act, keeping the university's interests in mind. If also the employee's immediate supervisor has a conflict of interest in making this decision or performing the act, the obligation to make the decision or perform the act will pass to the supervisor's immediate supervisor.

Example: If the head of the institute is authorised to carry out certain transactions by delegation and, because of a conflict of interest, he may not carry out that transaction, he may not assign the task of carrying out that transaction to anyone else, but the obligation to decide on whether to carry out that transaction and, if necessary, carry out the transaction is transferred to his immediate supervisor (the dean).

At the university, connected persons may work in subordination to each other, but a university employee has no right to participate in making proposals on the terms and conditions of the employment contract of a connected person, or to negotiate or agree upon such terms and conditions with the connected person.

Example: The spouse of the head of the institute may work for the same institute in the subordination to the head of the institute, but in such a case the head of the institute may not negotiate with him the remuneration and other terms of the employment contract and enter into a corresponding agreement with him. This obligation is transferred to the dean.

University employees have the right to accept gifts and other benefits only in case they are convinced that no duties-related favours or gifts are expected from them in return and that the gift or benefit can be regarded as an act of common courtesy. In case of suspicion, the employee involves the immediate supervisor in the evaluation of the circumstances.

Example: If a student who just defended his doctoral thesis makes a gift to his supervisor, this is not deemed to be a gift made to obtain some kind of professional counter-service from the supervisor. If a student or a group of students makes a valuable gift to a lecturer shortly before the exam, the lecturer should carefully consider the actual reason for the gift and also the impression it may have on bystanders who become aware of the fact that the gift was made. The lecturer should not accept such a gift even if she is sure that the gift does not affect her impartiality in the assessment of the exam.

Organisation of work at the university to prevent, identify and resolve conflicts of interest and cases of corruption

If a university employee has a conflict of interest, the employee must notify the immediate supervisor of such conflict before starting to perform the duty, or if the employee has already started to perform the duty, immediately after finding out about the conflict of interest. The immediate supervisor must reorganise work so as to eliminate the conflict of interest for the employee.

Example: A university employee has been given his child's thesis for review. He must inform his immediate supervisor, who then arranges for the appointment of a new reviewer.

If a university employee has information or suspicion that another employee of the same structural unit has a conflict of interest or has committed an act of corruption or has otherwise damaged the interests of the university, the employee must notify the head of the structural unit. The head of the structural unit must ascertain the circumstances of the case and take measures to protect the interests of the university. If the information concerns an employee of another structural unit or the employee suspects that the head of the structural unit is involved, the employee must notify the legal counsel (phone 7375664, e-mail aliis.liin@ut.ee), who will ascertain the circumstances of the case and, if necessary, inform the rector.

Example: A university employee has become aware that his colleague, as a financial account holder, has purchased goods from his own company. The employee informs the head of his structural unit, who ascertains the circumstances of a possible corruption-prone case. If the transaction was made in the name of the university with a connected person, he informs the immediate supervisor and the rector. Depending on the circumstances of the case, the university management takes measures to minimise damage to the university that has already occurred or may occur.

Example: A university employee suspects that the head of the structural unit has influenced an employee under her authority to order a service from a company belonging to the sister of the head of the structural unit. The employee informs the legal counsel of this suspicion.

Information on cases in which the university does not apply the procedural restrictions provided in the Anti-corruption Act on the grounds stipulated in the act is published on the university's website (clauses 11 (3) 4) and 11 (3) 5) of the ACA).

Example: The university publishes on its website information on the provision of the regulations for secret votes, which gives the members of the decision-making body a choice whether or not to withdraw from the decision-making process in respect of connected persons, together with the reasons for which such arrangements have been established at the university. The university also informs the public on its website of companies associated with university staff who have become a contracting partner of the university through a public procurement procedure and from whom goods or services are purchased, the use of which on behalf of the university also involves a university employee connected to that company.

If, based on the information provided, the legal counsel has a reasonable suspicion that a university employee has committed an offence within the meaning of the Penal Code, he or she arranges for the reporting of the criminal offence or the reporting of the body conducting extra-judicial proceedings of the misdemeanour.

Criminal liability

Violations of the Anti-corruption Act may give rise to criminal liability for the misdemeanour or criminal offence committed, depending on its seriousness.

Misdemeanours

- Violation of procedural restrictions (ACA § 19). Knowing violation by an official of a procedural restriction or the terms and conditions of a procedural restriction is punishable by a fine of up to 200 fine units¹.
- Corrupt use of official position, public resources, influence or inside information (ACA § 17). Corrupt use of official position, public resources, influence or inside information by an official for the purpose of personal gain is punishable by a fine of up to 300 fine units.
- Violation of requirement relating to notification of receipt of income derived from corrupt practices and transfer thereof (ACA § 18). Violation of the requirement by an official to give notification of income derived from corrupt practices by him or her to the agency performing

¹ A fine unit is the base amount of a fine and is equal to 4 euros.

public duties or the person or body who has the right to appoint him or her, or the obligation to transfer the income derived from corrupt practices is punishable by a fine of up to 200 fine units.

Criminal offences

- Violation of procedural restrictions ([Penal Code](#) ('PC') § 300¹). Knowing violation of a procedural restriction established by the Anti-corruption Act to a large extent is punishable by a pecuniary punishment or up to one year's imprisonment. The same act, if committed on a particularly large-scale basis, is punishable by a pecuniary punishment or up to three years' imprisonment.
- Benefit fraud (PC § 210). Benefit means a payment made without charge or partly without charge out of the funds of the state budget or a local government or other public funds to a person engaging in economic activities, or a tax incentive for promoting economic activities. Receipt of a benefit by use of fraud or use of a benefit for purposes other than its intended purpose is punishable by a pecuniary punishment or up to five years' imprisonment.
- Accepting of bribe (PC subsection 294 (1)). Consent by an official to a promise of property or other advantages to him or her or third persons or acceptance thereof in exchange for using of his or her official position is punishable by a pecuniary punishment or up to five years' imprisonment.
- Influence peddling (PC § 298¹). Requesting, consenting to promising of property or other advantage by a person to himself or herself or third persons or accepting thereof in exchange for his or her actual or alleged influence peddling over an official with the intention of getting unequal or unjustified advantages from the point of view of public interest for the person giving the advantage or third persons, as well as promising of giving an advantage for the same purpose is punishable by a pecuniary punishment or up to three years' imprisonment.

Further information

Anti-corruption Act (ACA)

<https://www.riigiteataja.ee/en/eli/ee/501042019024/consolide/current>

A website on preventing corruption

<http://www.korruptsioon.ee/en>

Study on corruption risks in applying the resources of the European Union (in Estonian)

https://skytte.ut.ee/sites/default/files/ec/olafi_raport.pdf

Study about corruption and fraud in Estonian education system

http://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/hvk_aruanne_oiige.pdf

If you have any questions about these guidelines or suggestions on improving them, contact the Legal Counsel Aliis Liin, (phone 737 5664, e-mail aliis.liin@ut.ee)