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Abstract

Universities are designed to promote scientific research and teaching. Increasingly however, they are offering their services commercially. In many cases these services are closely connected to the basic functions of the university. Contract research and (commercial) technological transfer which take place within the field of research are of special mention. A trend towards commercialization is also to be seen in the teaching field. This is shown in courses in further education or teaching offers abroad which have to be paid for. To a lesser extent the universities also offer services which have no direct scientific connection such as the hiring out of rooms. Higher ranking law only partly accepts this development. In Art. 5 III GG hardly any reference at all is made to the commercial activity taking place on the universities. Primary European law places research in close connection to the commercial aspect. Furthermore commercial activity on the universities can be relevant as far as grants and cartels are concerned. Secondary law however, contains numerous alleviations. As of late, most of the higher

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education laws accept the commercialization of the universities. The relevant regulations however, routinely limit themselves to a few general points. The organizational independent forms of commercial activity that are included seldom occur in practice. Their admissibility is based on a few conditions. Furthermore there is a requirement that the activities have some reference to the functions of the university. The North Rhine Westphalian law is the only one that contains a subsidiary clause. Most of the university laws contain formal requirements such as obligatory publication and authorization regulations. All embracing and unrestrictedly clear regulations on the commercial activities of universities are not to be found in the present version of the state higher education act. The development of the university commercial law is as yet, in its early days. The existing regulations which stipulate a basic limitation of the commercial activities of the universities to areas in which they have a connection with scientific functions takes into account the commercial interests of the universities and furthermore contributes to their specific character as bodies of scientific research and learning. (HRK / Abstract übernommen)