

Guidelines

on the Participation of Commercial Enterprises in Research Projects



Disclaimer: The English translation of this document is provided for informational purposes. In the event of a discrepancy between the English and the German versions, the German text takes precedence

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In accordance with the DFG's rules of procedure, commercial enterprises (hereinafter referred to as "companies") are defined as those whose objective is to generate profits.¹

Companies can be involved in various ways, both in connection with the submission of DFG proposals and in ongoing DFG projects. Specific aspects must be taken into account depending on the constellation in question and the respective funding programme.

1. Framework conditions

Union Framework and award regulations:

Grant recipients are responsible for complying with the applicable legal regulations when implementing DFG projects, in other words the researchers and/or their institutions, depending on the type of funding. Among other things, this applies to compliance with the European Union's "Framework for State aid for research and development and innovation" (2022/C 414/01), or Union Framework for short.

The applicable rules for awarding contracts to companies must be observed by the grant recipients awarding the contracts.

Publication of results:

Under all funding programmes, the DFG requires its grant recipients to make the results of projects financed by DFG funds publicly available in a suitable manner. Regardless of the role of the company in the project, the decision of the researchers² regarding the content and form of the publication of their project results obtained with the funding must not be restricted or inappropriately influenced by the participation of a company or its exercise of authority.

The participating company is entitled to review a publication by researchers prior to publication to ensure that it does not contain any confidential information, trade secrets or company work results that have not been approved for publication.

A delay in the publication of project results is permissible in exceptional cases if this is required for the registration of industrial property rights on the part of the participating company. The duration of such a delay may be no longer than five months.

¹ A distinction is thus primarily drawn with regard to research or research-related institutions that, although possibly organised as entities under private law (e.g. GmbH), are primarily engaged in the pursuit of non-profit (research) objectives and are recognised as non-profit by the tax authorities in Germany under the provisions of the German Fiscal Code (*AO – Abgabenordnung*).

² In this DFG form, the term "researchers" always refers to the principal investigator(s) of a DFG-funded project and the individuals employed in the project who are funded by the DFG. "Researchers" in this sense are to be distinguished from the scientific staff employed by a participating company, for example.

2. General principles concerning the participation of companies in DFG projects

The participation of companies in DFG projects is permitted in principle under the DFG's funding programmes. A company is always considered to be participating in a project if it makes a relevant contribution to the project. Relevance in this connection does not refer to commercial value but rather to the fact that the contribution is essential to the feasibility or success of the project; it may even be a necessary prerequisite.

Due to the legal framework underlying the DFG's funding activities as a recipient of federal and state funding, in particular the legal provisions relating to non-profit organisations and the Union Framework, the following principles must be met when a company participates in a DFG-funded project:

- The project is managed by the researchers.
- The objective and approach are defined by the researchers (it is not possible to take on a company research contract).
- The researchers are in charge of interpreting and publishing their own project results.
- The company's contribution to the collaborative work is not financially supported by the DFG.
- When the decision is made on whether to fund the project, the activities carried out by the company are not considered a scientific contribution on the part of the applicants.
- The proposal provides adequate details of the company's participation that goes beyond paid (service) assignments or commissions, and also of existing links to companies working in the research area in question.
- The project must not benefit any company; the European Union's Framework for State Aid for Research and Development and Innovation (2022/C 414/01) must be observed.

3. Forms of participation by companies in DFG projects

Companies can participate in DFG projects in a variety of ways. A distinction is drawn between the following forms of participation³:

- a) **scientific cooperation** in the sense of joint work on a project⁴,
- b) unilateral support for a project on the part of a company which is free of charge/not remunerated (**in-kind contribution**),

³ The constellations listed here are to be understood as examples and do not constitute an exhaustive list of possible links between DFG projects and companies. In case of doubt, the DFG Head Office should be contacted early on.

⁴ More specific rules apply to knowledge transfer projects under the DFG's funding programmes. The programme contacts will provide you with details of these rules during the proposal submission process. For general information on so-called knowledge transfer projects, see: www.dfg.de/knowledge_transfer.

and other links between DFG projects and companies:

- c) **association or activity** on the part of applicants or project participants **with or for a company** operating in a field that could be relevant to the proposed project.
- d) the **commissioning** of a company to perform a paid (service) assignment.

In cases where a company's involvement goes beyond commissioning (scenario d)), it is advisable to contact the DFG Head Office (specifically the programme contact responsible for the project) at an early stage so as to ensure that the nature of the participation and any action that may need to be taken can be coordinated with applicants.

a) Joint work on the project (scientific cooperation)

Scientific cooperation between researchers and companies essentially involves joint work on research projects, with each side being responsible for its own share and providing the necessary funding for this purpose.

The contributions of the company or companies to the work programme must be outlined in the proposal in the same way as for contributions by academic project partners who do not receive DFG funding.

If researchers planning a scientific cooperation with a company seek DFG funding for a project, the following must be taken into account in addition to the principles listed under 2:

If scientific cooperation with a company is planned, the research institution at which the project is to be carried out is obliged to conclude a written agreement with the company before the project work begins. The rights and obligations of the project partners must be set out in the cooperation agreement. The DFG provides a model cooperation agreement (DFG form 41.026): this is recommended for use in such cases. The agreement must be concluded before the DFG makes its decision on whether to fund the proposal. It does not normally have to be submitted to the DFG. However, the DFG expressly reserves the right to review the agreement. Such a review may be carried out before the funding decision is made regarding the proposal, but it would usually be carried out at a later date.

www.dfg.de/formulare/41_026

All cooperation agreements must cover the following points, among others:

- Contribution to the cooperation on the part of the company:
binding description of the contribution to the cooperation to be provided by the company.

- Publications:
The work results obtained through the project by the applicants and the employees at their research institution may be freely published by them without the company having any influence on the content or a right of approval.⁵
- Work results/rights of use:
 - The parties may grant each other a non-exclusive, non-transferable, non-sublicensable⁶ and royalty-free right to use the work results obtained through the project, limited to the duration and purposes of the project.
 - Any further disclosure of work results obtained through the project by the applicants or employees of their research institution or work results obtained by the company *for purposes outside the DFG project or after completion of the DFG project* is only possible after the conclusion of a written licence agreement between the research institution and the company.
 - The cooperation agreements and the licence agreements must comply with the requirements of the Union Framework, i.e. they must regularly provide for a compensation equivalent to the market price for the rights of use to the work results obtained by the applicants and the employees of their research institutions to be granted to the company *for purposes outside of the DFG project or after completion of the DFG project*.

In the case of applicants who wish to cooperate with a company in connection with a project and who will be carrying out their project at a private non-profit institution that does not receive institutional funding from the federal government and/or state government such as a private non-profit university or clinic, such applicants are required to submit a declaration of commitment to the DFG stating that the cooperation with the company will comply with the legal framework underlying the DFG's funding activities. This declaration of commitment is to be signed by the administrative head of their institution and by themselves (DFG form 41.029). In the event of a positive decision regarding the proposal, funding will only be granted once the declaration has been submitted to the DFG and the result of the formal assessment is positive.

www.dfg.de/formulare/41_029

⁵If necessary, the company may review the planned publication before its submission/publication to ensure that it does not contain any results or confidential information pertaining to the company for which no publication authorisation has been granted. Publication may be delayed for a maximum of five months so as to enable industrial property rights to be registered.

⁶ Affiliated companies within the meaning of Section 15 of the German Stock Corporation Act (*AktG*) may be exempted.

In the case of knowledge transfer projects⁷, the cooperation agreement is to be approved in connection with the processing of the proposal by the DFG Head Office. In such cases, applicants should make use of the model cooperation agreement (DFG form 41.026). Deviations must be approved by the DFG. A declaration of commitment is not required in such cases.

www.dfg.de/formulare/41_026

b) A company supports the project unilaterally (in-kind contribution)

A company can make a relevant in-kind contribution to a DFG project: an “in-kind contribution” is defined as a contribution that is free of charge, not subject to any form of compensation, and does not involve scientific cooperation on a joint work programme. The in-kind contribution is therefore unilateral on the part of the company in consultation with the researchers in order to support the project. The in-kind contribution must not give rise to any restrictions on the project; in particular, it must not result in other obligations being imposed on researchers.

If a company is to make an in-kind contribution to the planned research project, a written contract must be concluded between the institution at which the project is to be carried out and the company before the project work begins. This contract must address the following points, among others:

- In-kind contribution on the part of the company:
binding description of the in-kind contribution to be provided by the company.
- Publications:
The work results obtained through the project by the applicants and the employees at their research institution may be freely published by them without the company having any influence on the content or a right of approval.⁸
- Work results/rights of use:
 - In utilising the work results they have obtained with the help of the in-kind contribution provided by the commercial enterprise – whether such utilisation is for the purpose of the proposed DFG project or for other research purposes of their own – the applicants and their institutions are free and not subject to any restrictions; this also includes any possible exploitation of their own results and the right to publish and licence these to third parties.

⁷ See the DFG homepage: www.dfg.de/knowledge_transfer.

⁸If necessary, the company may review the planned publication before its submission/publication to ensure that it does not contain any results or confidential information pertaining to the company for which no publication authorisation has been granted. Publication may be delayed for a maximum of five months so as to enable industrial property rights to be registered.

- If and to the extent that work results obtained by the applicants and the employees at their research institution are absolutely necessary for the fulfilment of the pledged service (in-kind contribution) within the scope of the project applied for, the company shall receive a non-exclusive, non-transferable, non-sublicensable⁹ and free right of use – limited to the duration and purpose of the project – to the work results obtained through the project by the applicant or their research institution.
- Any further disclosure of work results obtained through the project by the applicants or the employees of their research institution *for purposes outside the DFG project or after completion of the DFG project* is only possible after the conclusion of a written licence agreement between the research institution and the company.
- The agreements and licence agreements must comply with the requirements of the Union Framework, i.e. they must regularly provide for a compensation equivalent to the market price for the rights of use to the work results obtained by the applicants and the employees of their research institutions to be granted to the company *for purposes outside of the DFG project or after completion of the DFG project*.

As a rule, the agreement does not have to be submitted to the DFG. However, the DFG expressly reserves the right to review the agreement. Such a review may be carried out before the funding decision is made regarding the proposal, but it would usually be carried out at a later date.

In the case of applicants who anticipate in-kind contributions from a company to a project and who wish to carry out their project at a private non-profit institution that does not receive institutional funding from the federal government and/or state government such as a private non-profit university or clinic, such applicants are required to submit a declaration of commitment to the DFG stating that the cooperation with the company will comply with the legal framework underlying the DFG's funding activities. This declaration of commitment is to be signed by the administrative head of their institution and by themselves (DFG form 41.028). In the event of a positive decision regarding the proposal, funding will only be granted once the declaration has been submitted to the DFG and the result of the formal assessment is positive.

⁹ Affiliated companies within the meaning of Section 15 of the German Stock Corporation Act (*AktG*) may be exempted.

c) Association with or activity for a company

An existing (financial) association¹⁰ with a company (e.g. as a shareholder, director, employee, major investor, or member of the supervisory board/advisory board, etc.) on the part of applicants or persons named in the proposal as being involved in a project, over and above their work at a public or non-profit research institution, does not necessarily constitute a criterion for exclusion from the proposal submission process. If the project is relevant to the company, however, such an association must be described in reasonable detail in the proposal. The information provided should relate to the proximity and alignment of the company with regard to the research area relevant to the proposal. The same applies to consulting or other activities carried out on behalf of a company.

If one of the aforementioned types of association with a company applies, compliance with the requirements for the utilisation of the work results arising from the project must be ensured (see DFG form 4.03 “Information on Work Results and Usage Rights in the Event of an Association with a Company”).

www.dfg.de/formulare/4_03

d) Commissioning a company in connection with a DFG project

A company acts as the supplier of such items as goods, equipment, software, data and services in connection with a DFG project. If a company is commissioned to carry out work in return for payment, the services rendered by the company are remunerated; as a rule, the company is not granted rights of use to the researchers' work results.

If there is a special link between the company and the researchers or their institution(s), whether through personal connections (e.g. a spin-off of the research institution, a start-up involving an individual participating in the project) or specific agreements (e.g. discounts for reference customers), this must always be disclosed in the proposal and the procedure for awarding the contract must be documented particularly carefully.

¹⁰ The term “association” within the meaning of this DFG form does not apply if the link with the company does not involve any influence over company affairs (e.g. holding a small block of shares in a private portfolio).