



Guidelines for Knowledge and Technology Transfer

- decided by Executive Committee at its meeting on 21 March 2013 -

Introduction

The Max-Planck-Gesellschaft (MPG) is a research organisation whose task is to support cutting-edge research particularly by funding institutes. In accordance with the Statutes of the MPG the institutes conduct "the scientific research independently and autonomously".

As a non-profit research organisation that is funded by grants from the Federal Government and the Federal States, the MPG's research produces an asset that should be used in the public interest. The exploitation of knowledge in the public interest also includes its transfer to industry. This transfer represents an important and increasingly important contribution to society which is being made by the MPG. Consequently, the MPG supports the transfer of knowledge and technology from Max Planck institutes in all its positive manifestations. Such transfer needs to comply with the legal boundaries in which the MPG operates due to its scope and its funding.

Commercial enterprises naturally pursue their own, economic objectives. Tensions arise from the opposing scopes - the MPG, on the one hand, whose main responsibility is to the common good, and commercial company, on the other, which operate according to economic objectives and interests – and these must be resolved in an appropriate way.

MPG scientists¹ are caught up in this tense relationship to varying degrees, e.g. when scientists enter into an advisory relationship with a commercial enterprise, when an institute wants to carry out a research project together with a commercial company (collaboration with industry), or when scientists want to perhaps participate in a spin-off and simultaneously continue their contract of employment with the MPG. Clashes of interest can come about when the pursuance of private interests has a direct effect on the actions of a staff member.

In order to avoid conflicts between the MPG's interests and those of the scientists participating in the knowledge and technology transfer, and to deal with conflicts which have arisen as appropriately as possible, the following GUIDELINES for KNOWLEDGE and TECHNOLOGY TRANSFER (TT GUIDELINES) have been drawn up. These Guidelines

- update the earlier version of 7 March 2002

¹ In all designations which refer to persons, the wording refers to both sexes regardless of the actual gender-specific designation used.



- supplement the recommendations presented in November 2000 by a working group of the MPG's Scientific Council regarding "RESPONSIBLE ACTION IN SCIENCE",
- serve to implement the BMBF "*Leitlinien zur Beteiligung von Forschungseinrichtungen an Ausgründungen zum Zwecke des Wissens- und Technologietransfers* (Guidelines of the Federal Ministry of Education and Research on the participation of research facilities in spin-off companies for the purpose of knowledge and technology transfer)" of 1 June 2012
- state the existing principles of conduct which MPG scientists must observe in a more precise way and
- are furthermore the material basis of the Rules of Procedure for the MPG's Clearing Committee for spin-off companies in their respective version

Scientists in managerial positions must ensure that their staff observe these provisions.

1. Consultancy agreements

MPG staff personally conclude consultancy agreements with third parties. The MPG is not a contractual party. Consultancy agreements may touch upon the justified interests of the MPG as the employer, however. Consultancy services are provided as ancillary activities, which may be subject to notification or authorisation according to the legal provisions to be observed by the MPG.

For employees with employment contracts similar to those under civil service legislation (Bundesbeamtenrecht), ancillary activities are subject to authorisation. Scientific Members of the MPG (Directors) and Leaders of Max Planck Research Groups (MPFG) apply to the President for the authorisation of ancillary activities; W-2 senior research scientists (FGL) and other staff with employment contracts similar to those under Bundesbeamtenrecht must apply to the Managing Director of the institute. The Board of Directors and the institute administration must be notified of the conclusion of consultancy agreements. Authorisation must be granted unless reasons for refusal oppose this entitlement. Authorisation must be refused if the consultancy work could have a detrimental effect on the interests of the MPG as the employer. This is usually the case when the time required for all ancillary activities exceeds one-fifth of the regular working hours, for staff below the level of Director the aggregate amount of the remuneration for one or more ancillary activities exceeds 40 percent of the final annual salary, or it has to be assumed that the consultancy relationship could make the research work at the institute heteronomous in an undesirable way.

The consultancy work must be undertaken outside of contractual working hours. Exceptions are possible under certain conditions. For staff whose employment contract makes no reference to the ancillary activity provisions of the Bundesbeamtenrecht, a planned ancillary activity is subject only to a duty of notification. The respective institute management shall be notified of the ancillary activity. This can prohibit the ancillary activity if it could interfere with staff fulfilling their duties according to their employment contract or with justified interests of the MPG. The duty of allegiance to the employer which is incumbent on salaried employees (whether Scientific Members, Leaders of MPFGs, W2



FGLs or other salaried employees) means they must ensure that the interests of the MPG are safeguarded within the framework of the consultancy service. For this reason, and in order to possibly establish reasons for refusal, the facts to be approved must be disclosed in their entirety. The areas to which the consultancy relates must be precisely defined and narrowly restricted. The disposition of intellectual property without involving the employer is not permissible. The employee must point whether they have a participation in the enterprise to be advised. This also applies to indirect participations if these may cause clashes of interest.

Agreements which would suppress, shorten or bring about an unwarranted delay of publications resulting from the full-time work at the institute are not permissible. A lack of objectivity exists whenever the action or inaction is done for the benefit of the commercial enterprise while accepting disadvantages for the MPG.

The use of institute resources as part of an ancillary activity must be agreed with the institute administration in writing and market prices must be paid. The extent of the use must be disclosed to the administration.

2. Cooperations with industry

In the MPG, research contracts with commercial enterprises, particularly cooperation agreements, are concluded on a voluntary basis and the institutes have extensive research autonomy. They are free to decide whether and with which commercial enterprise cooperations are to be carried out. However, the institutes must ensure that the selection of the industrial partner is not undertaken in a partial way and open to factual contest, i.e. would affect the competitive neutrality of the MPG under funding, subsidy and tax legislation. This could be the case if institutes were to cooperate exclusively with companies where the scientists involved in the cooperation hold shares in the capital, or the cooperation partner expects advantages which cannot be scientifically justified.

Administrative Headquarters supports the institutes in all issues relating to how the cooperation should be arranged. It conducts the contract negotiations, if requested, in coordination with the scientists involved in the cooperation. In order for this support to be provided efficiently, the institutes should involve Administrative Headquarters at an early point in time.

Cooperations with commercial enterprises are often associated with extensive commitments and possible financial follow-up costs. In order not to endanger other cooperations, the research areas to be dealt with must be precisely defined and their content limited. Contractual obligations and other commitments and favours towards third parties whose aim is to suppress or bring about the unwarranted shortening or delay of one's own publications or those of academic staff members are not permissible.

The disposition of intellectual property to which the MPG is entitled as the employer is not permissible. The economic exploitation of intellectual property is the exclusive concern of the employer. Participating interests in commercial enterprises with which institute



scientists intend to cooperate must be disclosed. This also applies to indirect participations if these may cause clashes of interest.

Consultancy relationships associated with research contracts are possible, but require authorisation or notification (cf. Section 1).

Research contracts with commercial enterprises must always be coordinated with Administrative Headquarters in order to ensure the legal framework conditions are adhered to. The Board of Directors of the institute must be informed about the planned research contract in advance.

3. Spin-off companies

Spin-off companies have become one of the main channels for the transfer of knowledge and technologies from the MPG to industry in recent years. With a spin-off company, a license is transferred to the newly established company in which MPG staff are participating. As a general rule, the possibility that a licence can be granted establishes the basis for the spin-off company. The financial participation in a spin-off company on its own does not amount to circumstances requiring authorisation. However, conflicts of interest can arise through future interactions between the inventor and company founder as staff of the MPG, on the one hand, and the spin-off company on the other.

The MPG allows spin-off companies and supports them as far as the legislation allows. Max-Planck-Innovation GmbH, the technology transfer agency of the MPG, advises spin-off company founders on all issues relevant to the foundation within the bounds of what is legally permissible.

When consultancy work is undertaken for the establishment of a spin-off company, this is a relevant fact in respect of ancillary activities and thus requires authorisation or notification. We refer you to the explanations in Section 1 – Consultancy agreements. It is not usually permissible to undertake tasks in the company management.

Employment contracts with the MPG and a spin-off company should not exist at the same time. An employment contract with the MPG – even on a part-time basis – must therefore not be concluded if the person concerned already has an employment contract with a spin-off company. If the person is employed by the MPG, they may be prohibited from carrying out an ancillary activity, or the approval of an ancillary activity in order to conclude an employment contract with the spin-off company may be refused, if a conflict of interest cannot be excluded due to the activities which have to be carried out in the contractual relationship in question.

In order to pre-empt problems in the planning stage of a spin-off company, the Board of Directors of the institute must be informed at an early stage. This shall provide the Board of Directors with the opportunity to ensure the interests of the institute are safeguarded when the spin-off company is planned. The Clearing Committee of the MPG must also be notified of a planned spin-off company.



Concerns about a spin-off voiced by the Board of Directors to the President or Administrative Headquarters shall be examined by Administrative Headquarters and Max-Planck-Innovation during the requisite licensing process and taken into account as far as is necessary. If there is a conflict, Administrative Headquarters will also forward the spin-off company concept to the Vice President responsible and obtain their opinion as to whether the spin-off company is compatible with the tasks of the institute and the MPG.

Research contracts between a Max Planck institute and a spin-off company are subject to the principles set down in Section 2 as a matter of principle. This means that there must be a clear separation between the spin-off company and the institute in all areas. After the Board of Directors of the institute has given its agreement, research contracts with a spin-off company can be approved. When purchasing services from the spin off, institutes must observe the *Vergabe- und Vertragsordnung von Leistungen* (Contracting rules for the award of public contracts, VOL).

The decision on fixed-term secondments of staff (maximum of two years) to the spin-off company and the granting of rights to return to the institute require the approval of Administrative Headquarters. The same also applies to the use of the institute's resources, which may only take place on a temporary basis, for a maximum of five years, and only when payment is made at market rates. Scientists in managerial positions must not become involved in matters which concern them themselves.