



Federal Ministry for Economic Affairs and Energy

Directive

on the funding of research-intensive business start-ups (EXIST Transfer of Research) in conjunction with the programme “University-Based Business Start-Ups”

- Amended Version -

19 September 2016

1 Objectives of the Grant and Legal Basis for Funding

1.1 Objectives of the Grant

The EXIST Transfer of Research is aimed at supporting start-up teams at universities and research institutions with the setting up of start-ups and the implementation of technologically high risk and complex development work. The results of such work provide the economic basis of a growth-oriented business start-up.

EXIST Transfer of Research is thereby contributing to the mobilization of young and rapidly growing business start-ups in the high-tech sector, to the implementation of the latest research results from academic research, and therefore to the realization of an especially effective form of knowledge and technology transfer. Preferred are technological areas involving relatively long development phases, such as energy, environmental, biological, and optical technologies; materials technology, micro-systems technology, and medical technology; and some areas of information and communication technologies.

EXIST Transfer of Research also has the following intermediate objectives:

- getting more scientific research employees interested in becoming entrepreneurs and qualifying them for this.
- qualifying individuals starting up businesses out of the funding programme to prepare economically feasible business plans and to obtain external financial funds for accelerating the setting up and launching of the business on the market.

1.2 Legal Basis

The Federal Ministry for Economic Affairs and Energy awards grants out of “Einzelplan 09” of the [German] Federal Budget and out of funds of the European Social Fund (ESF) according to the provisions of this Directive and the General Administration Regulations (VV) to Sections 23 and 44 of the [German] Federal Budgetary Regulation (BHO). An applicant has no legal right to be awarded a grant. The awarding authority (Number 6.1) makes its decision at its due discretion. The awarding of the grant is conditioned on the availability of Federal Budget funds and ESF funds.

ESF co-financing is made on the basis of the Operational Programme of the German Federal Government for the European Social Fund for the programming period 2014 - 2020 (CCI: 2014DE05SFOP002), and Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 (General Structural Fund Regulation), and Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 (ESF Regulation).

Every legal instrument or implementing provision associated with structural funds funding and enacted or to be enacted in association with it supplements the legal basis (e.g. Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014).

The funding provided pursuant to this Directive falls within investment priority (a) (iii): It is funding in support of “self-employment, entrepreneurship, and business creation” pursuant to Article 3(1) (a) (iii) of Regulation (EU) No 1304/2013.

2 Subject-Matter of the Funding

The funding comprises the following Funding Phases:

2.1 Funding Phase I: Project funding of the development work in preparation of the start-up (“Pre-Seed”)

2.1.1 Funding is provided in Funding Phase I to research teams at German universities and research institutions involved in development work aimed at clarifying basic issues surrounding the conversion of scientific results into technical products and processes. They are preparing a business plan from the business idea based on the foregoing and are resolutely preparing the planned business start-up.

2.1.2 Funding includes associated coaching of the start-up team done by the entrepreneurial network.

2.2 Funding Phase II: Project funding of the development work at the start of the business (“Seed”)

The funding in this phase is for further development work, for the measures needed to begin business activities in the newly formed technology undertaking, and for the creation of the conditions needed to obtain external corporate financing.

3 Grant Recipients

3.1 Eligible to apply for Funding Phase I are universities and research institutions in Germany that employ such research teams as defined in Number 2.1.

The applicants must be integrated in an entrepreneurial network (start-up network) that meets the following requirements:

- wide and interconnected range of support and coaching services for start-ups to which the applicant institution may resort.
- participation of several active and experienced partners from regionally located start-up supporters.
- central point of contact for the start-up individuals.
- assurance of the continuing existence of the start-up network.
- experience in supporting start-ups from the scientific sector.

3.2 Exclusively eligible to apply for Support Phase II are small, technologically oriented commercial undertakings in the legal form of a corporation (*Kapitalgesellschaft*) with a registered office in Germany that satisfy the European Commission criteria for micro enterprises at the time of grant authorization (definition pursuant to the Commission Recommendation of 6 May 2003 concerning the definition of micro enterprises; OJ L 124, 20/05/2003 P. 0036 - 0041) and that were formed during or as a result of Funding Phase I. Significantly more than 50 per cent of the business shares must be owned by the start-up individuals working in the undertaking, especially by the research team member with the know-how. At least one member of the research team must be a directing manager and must work exclusively for the undertaking. An undertaking that is still in the formation process may also apply for funding for Funding Phase II. The formation must be completed by the time the grant is received.

Because it qualifies as aid pursuant to Commission Regulation (EU) No 651/2014 of 17 June 2014 (General Block Exemption Regulation) and in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), the grant in Funding Phase II is exempted from the notification obligations of Article 108(3) TFEU. According to Article 1(4) GBER, an undertaking that fails to comply with a recovery order following a previous decision of the Commission declaring an aid illegal and incompatible with the internal market cannot be granted individual aid.

3.3 Funding is not granted to applicants against whom insolvency proceedings have been filed for or opened in relation to their assets. The same applies to an applicant and, if the applicant is a legal entity, to the owner of a legal entity who has made an affirmation in lieu of an oath pursuant to Section 807 of the [German] Civil Procedure Code (ZPO) or Section 284 of the [German] Tax Code (AO) or who is obligated to make such.

4 Grant Requirements

4.1 Funding Phase I

- The members of the research team must have an academic degree (at least a German “Diplom”, a master’s degree, or something comparable), in which case one member of the research team may be an engineer/technician or a laboratory assistant.

- The project manager must prove that he/she has experience in project management. Technological expertise and entrepreneurial potential are expected of the team members.
- The underlying work of the project to be implemented must stem from a research project or from another scientific work that was carried out with the involvement of one or several of the members of the research team and that exhibits sustainable potential for commercial exploitation. The starting point is always a basic technical innovation. The “proof of principle” must already have been furnished.
- The project must be directed at an innovative product- or process-idea of a technologically sophisticated nature whose development work alone will require at least one to one and a half years to realize. The project must entail substantial albeit calculable technical risks.
- The project is not being funded by other programmes of the German Federal Government, the German Länder, or the European Commission.
- The applicant university or research institution undertakes to provide the research team with the requisite working facilities (basic laboratory equipment and other infrastructure) and to support the research team in all ways.
- A basic agreement on the use of the intellectual property rights arising from Funding Phase I and from the underlying research idea must be made after the project begins.
- The applicant university or research institution must support the research team by providing a university professor or research team leader to guide the project as an expert mentor during the project period. It would be very good if the development project would also be overseen by a partner from the business sector or a partner with business experience.
- The research team undertakes—with the help of the start-up support network—to select a coach to oversee the start-up project and to support the research team in questions relating to the start-up. It also undertakes to agree on a coaching schedule that defines the important steps that must be taken during the project period to qualify the start up. The start-up coaching must begin within six months from the start of the project.
- The formation [of the undertaking] and the commencement of business activities are permitted during the funding period but they must not yet have occurred at the time the project begins.

4.2 Funding Phase II

- The theoretically technical feasibility of the innovation (“proof of concept”) must have been demonstrated. The development work for creating a prototype or for marketing a technological process are not yet complete and require further development work.
- A comprehensible business concept (business plan) exists.
- The undertaking must be incorporated as a corporation with its registered office in Germany no later than the commencement of Funding Phase II. Share capital of at least 25,000 euros must have been furnished as a capital contribution to the undertaking.
- The required rights arising from the underlying inventions from previous research activities and from Funding Phase I must be unrestrictedly available to the undertaking for commercial exploitation.
- With respect to protected proprietary rights (*Schutzrechte*) that were financed with funds from Funding Phase I, a corresponding contractual agreement between the university or the research institution and the start-up undertaking must be submitted to the project management. The contractual agreement—e.g. a sale, licensing, or participation agreement—must accord with customary market conditions. The individuals from Funding Phase I with the essential know-how must bring their knowledge and working capacity into the new undertaking, and at least one of them must be a managing director.
- The start-up project must not be funded by other programmes of the German Federal Government, the German Länder, or the European Commission. This does not apply to credit or investment programmes.

5 Type, Extent, and Amount of Grant

The grant is awarded as project funding in the form of non-reimbursable aid as percentage financing.

5.1 Funding Phase I

The assessment is based on the project-related expenditures eligible for funding (in the case of Helmholtz Centres (HGF) or institutions of the FraunhoferGesellschaft (FhG), the costs eligible for funding). Projects of the research institutions of the FhG, HGF, Max-Planck-Gesellschaft, and the Leibniz Association whose base financing is provided jointly by the German Federal Government and the German Länder may be funded up to 90 per cent, and those of universities and other research institutions up to 100 per cent. A full financing of universities and research institutions may only be authorized if the achieving of the project’s objectives to the extent required is only possible if the entire

eligible-for-funding expenditures are being financed. This must be substantiated in the application, which must be made in the prescribed form (see Number 6.2.1).

Funding is basically provided for a period of up to 18 months. In the case of highly innovative development projects that verifiably are of an especially time-consuming nature, a funding period of up to 36 months may be granted if the expert jury expressly agrees to it. In the case of unplanned delays in the development work, the funding period may be extended by up to six months with no increase of the amount of the funding.

Eligible for funding are:

a) According to number 2.1.1

- personnel expenditures/costs for a start-up team with maximum four members—consisting of the research team with three scientific employees (of which one may be an engineer/technician or laboratory assistant) and one person with expertise in business administration,
- personnel expenditures/costs for student research assistants,
- need-based planned material expenditures/costs of:
 - utility objects and capital equipment,
 - consumable materials,
 - awarding of contracts,
 - protected proprietary rights (Schutzrechte),
 - market research,
 - consulting services in relation to the project and the start-up,
 - business-related qualification and coaching, for which 10,000 euros are reserved,
 - other material administration expenditures/costs as per the grant-related directives of the Federal Ministry for Economic Affairs and Energy.

Expenditures/costs for student research assistants and for aforementioned material goods are basically eligible for funding up to a total of 250,000 euros.

b) According to number 2.1.2

Additionally for projects with an expenditures-based assessment a lump-sum of up to 20.000 Euro (in position 0842) can be paid for the business-related support of the entrepreneurial network (according to number 3.1.). This lump-sum must be summarily reported in the verification of use statement (Verwendungsnachweis) for documented consulting services of the entrepreneurial network.

In justified individual cases, this expenditure/cost ceiling of 250,000 euros may be exceeded if the funds are critical to the success of Funding Phase I—especially the demonstration of technical feasibility—and the expert jury expressly agrees to it.

Objects of utility, consumable materials, and capital equipment must not be allocable to the applicant's basic equipment. German VAT (*Umsatzsteuer*) on deliveries of goods and services of third parties are considered a part of the expenditures/costs eligible for funding if the applicant is not entitled to deduct input tax. Discounts must already be taken into account at the time of estimation.

5.2 Funding Phase II

The undertaking is provided with non-reimbursable start-up aid in Funding Phase II of maximum 180,000 euros in total. For financing Funding Phase II, the start-up undertaking must prove that it has its own funds in the form of equity capital of the start-up individuals and, if applicable, in the form of direct-investment capital in the ratio of 1:3 to the amount of the start-up aid. Funding Phase II must not exceed a period of 18 months.

Eligible for funding are:

- personnel costs in accordance with the respective salary classifications from Funding Phase I,
- depreciation of project-specific equipment/facilities,
- contracts awarded to third parties,
- material costs,
- costs of registering protected proprietary rights.

For payment of the remaining costs, a lump-sum of up to 90 per cent of the individual personnel costs is eligible for funding.

6 Procedures

6.1 Involvement of Project Management and Request for Documentation

The Federal Ministry for Economic Affairs and Energy has commissioned

Forschungszentrum Jülich GmbH
Project Management Jülich (PMJ)
Berlin Office
Zimmerstraße 26 – 27
10969 Berlin

(hereinafter referred to as the Project Management)

to manage the funding activities.

The Project Management must provide further information when requested and must help with the application procedures (email: ptj-existforschungstransfer@fz-juelich.de).

Forms for funding applications, directives, instruction leaflets, and ancillary provisions are available from the website <http://www.exist.de> and <https://foerderportal.bund.de> ("Formularschrank").

Complete application documents must be made via the electronic application system "easy-Online" (<https://foerderportal.bund.de>) and by sending original documents to the Project Management Jülich.

Information about the European Social Fund in Germany is available at <http://www.esf.de>.

6.2 Application, Selection, and Decision Procedures

Drafts/sketches or applications must include each of the documents listed in Schedule B.

6.2.1 Funding Phase I

The application for funding must be made to the commissioned Project Management in the form of credible and assessable project drafts/sketches:

- The Project Management assesses the project drafts/sketches in terms of the form and content requirements for development projects within the meaning of this Directive and in terms of the chances of success of the project and of the planned start-up activities. The assessment concludes with a recommendation as to further action. A negative recommendation means the selection process is at an end, a positive recommendation means it continues.
- The project drafts/sketches chosen are presented to an expert jury. The application procedure in the prescribed form takes place parallel to this. Funding presupposes that the review of the application results in a positive recommendation and that the expert jury arrives at a positive opinion of the start-up projects presented to it by the applicants.

Project drafts/sketches may be filed from 1 January to 31 January and from 1 July to 31 July of a calendar year.

6.2.2 Funding Phase II

The application for Funding Phase II may be submitted six months prior to the expiration of Funding Phase I if the start-up is being pursued further. If the research team sees no possibility of meeting the criteria for Funding Phase II by this time, an application may be made for an extension of Funding Phase I by up to six months with no increase of the amount of the funding.

It is not possible to apply directly for Funding Phase II.

6.2.3 Funding Decision

The drafts/sketches and applications received are assessed, if necessary using external experts, pursuant to the form and content requirements of this Directive. On the basis of the assessment and the opinion of the expert jury, the Federal Ministry for Economic Affairs and Energy makes its funding decision after a conclusive review of the application.

In the case of applications for Funding Phase II, the participation of the expert jury can be dispensed with if external financing approval already exists.

7 Miscellaneous Provisions

In the case of a funding, the grant recipient undertakes to observe "equality between men and women" and "non-discrimination" and "sustainable development" as cross-cutting objectives of the ESF (Articles 7 and 8 of Regulation (EU) No 1303/2013).

7.1 Grant Provisions in Funding Phase I

The General Ancillary Provisions for Grants for Project Funding (ANBest-P) and the Special Ancillary Provisions for Expenditure-Based Grants for Project Funding (BNBest-BMBF98) are integral components of grant approvals (*Zuwendungsbescheid*) on expenditure bases.

Applicable to HGF and FhG: The General Ancillary Provisions for Federal Ministry for Economic Affairs and Energy's Cost-Based Grants to Commercial Undertakings for R&D* Projects (NKBF 98) are integral components of grant approvals on cost bases under the restrictions stipulated in the grant approval.

Verification that the aid is being used in accordance with the funding objectives must be provided by the grant recipient within three months. The verification must be accompanied by a business plan and a performance assessment report; if the start-up project is not being continued, the verification must be accompanied by a final report.

7.2 Grant Provisions in Funding Phase II

The General Ancillary Provisions for Cost-Based Grants to Commercial Undertakings for R&D Projects (ANBest-P-Kosten) are integral components of grant approvals on cost bases in conjunction with the other ancillary provisions in Schedule A.

The parameters of the grant are determined by the costs incurred. After presentation of the estimation of the costs for a quarter calendar year, the grant provider in each case must pay its share normally six weeks prior to the end of the quarter calendar year concerned. Upon presentation of the estimate for the next quarter calendar year, the costs actually incurred in the preceding quarter calendar year must be accounted for. Overpayments and underpayments from the preceding quarter calendar year must be offset with the payment for the ongoing quarter calendar year. Even if requested funding proves unnecessary in a quarter calendar year, the grant recipient must still submit an accounting for the preceding quarter calendar year. In each case, the aid must be claimed proportionate to the designated own and other funds of the grant recipient.

7.3 Review Provisions, Duty to Cooperate

The authorization, disbursement, and accounting, the verification and review of use, any required setting aside of a grant approval, and the claim for repayment of a grant are governed by Sections 23 and 44 BHO, the General Administrative Regulations enacted on the basis of these, and Sections 48 to 49a of the Administrative Proceedings Act (VwVfG) unless something to the contrary is permitted by this Funding Directive.

Pursuant to Sections 91 and 100 BHO, the Bundesrechnungshof is entitled to audit. Also entitled to audit with respect to funds from the ESF is the European Commission including the European Anti-Fraud Office (OLAF), the European Court of Auditors, the certifying authorities of the German Federal Government, the audit authorities of the German Federal Government, and the ESF administration authorities of the German Federal Government.

Documentary proof (especially the application, funding approvals, verifications of use, original receipts, final reports) must be kept in safe keeping by the grant recipient for auditing purposes in the original forms or as certified copies for at least five years (commencing with 31 December of the year in which the last verification of use was presented) unless a longer period of safe keeping is prescribed by tax law, national law, or other EU law.

The grant recipient also consents, in accordance with Annex XII to Article 115 of Regulation (EU) No 1303/2013, to the publication of the following information in a list of projects: Name of the recipient, postal code and country, name of the project, begin and end of the funding, and the amount of funding with the co-financing percentage and the intervention category.

According to Annex XII to Article 115 of Regulation (EU) No 1303/2013, the ESF information and communication obligations must be complied with by all project participants. With the making of the application, the applicant undertakes to comply with the requirements of the information and communication obligations and to draw attention to the fact that the project is being funded by the ESF.

8 Subsidy-Relevant Facts

The subsidy-relevant facts within the meaning of Section 264 of the [German] Criminal Code (StGB) in conjunction with Section 2 of the [German] Subsidy Act (SubvG) are defined in the application documents.

The applicants confirm the notice of subsidy-relevant facts in writing.

9 Evaluation

For assessing the effectiveness of the funding programme, an accompanying evaluation is part of the programme. This requires that the institutions commissioned with this are given the necessary information during and after the period of the funding programme. The funded universities, research institutions, and companies are therefore obligated to work together with the offices commissioned with the evaluation of the programme, to supply the necessary information, to collect the necessary data, and to provide this promptly. The information will be used only for programme evaluation and will be treated confidentially.

* R&D = research and development.

10 Coming into Force

This Funding Directive comes into force with the publication of it in the Bundesanzeiger and remains in force up to and including 31 December 2022. It replaces the former Funding Directive of EXIST Transfer of Research of 27 November 2014 (BAnz AT 09.12.2014 B1). Funding applications for Funding Phase I may be made up to and including 31 January 2020.

Berlin, 19 September 2016

Federal Ministry
for Economic Affairs and Energy

At the direction of

Oliver Hunke

Additional Ancillary Provisions for Funding Phase II

1 Results and Use

Results within the meaning of these Ancillary Provisions means all knowledge, inventions, developed objects, processes, and computing programs that are created while implementing the project and that are customarily available in the trade in the form of recordings, experimental/test arrangements, models, and designs/patterns (prototypes) from all development and fabrication phases.

The results belong to the grant recipient (GR); he/she has the right to their exclusive use.

If, during the authorized period, the GR attains earnings from the exploitation of the results or parts of the results by transferring protected proprietary rights, granting licences, or by selling other knowledge and documents, the grant giver (GG) must be granted an interest in these proportionate to the grant to total expenditures up to the amount of the grant. If the amount is not remitted to the GG without undue delay, annual interest in the amount of eight percentage points above the base interest rate pursuant to Section 247 of the [German] Civil Code (BGB) must be paid on it commencing with receipt of payment of the earnings. The exploitation, transmission, or sale of R&D results during the authorized period require the prior consent of the GG.

Income earned by the GR after the authorized period through the concluding of contracts for the exploitation of the results or parts of the results—e.g. by transferring protected proprietary rights and/or know-how, granting of licences, transferring other knowledge or documents—is that of the GR.

The GR must comply with the provisions of the [German] Employee Inventions Act (ArbnErfG).

In all cases in which the GG has a special public interest in the results and in the parts of the results protected by copyright law, the GG has a non-exclusive, transferable right of use.

2 Subsequent Cost Reductions through Government Investment Subsidies

Supplementary provision to Point 2 ANBest-P-Kosten

If the GR claims government investment subsidies for objects that were procured or produced exclusively for the project and that are to be fully depreciated during the project period, the GR must remit the government investment subsidy to the GG proportionate to the funding quota. After receipt by the GR, the amount payable must be transferred promptly to the Bundeskasse Halle stating the transaction number (*Kassenzeichen*). If the amount is not remitted promptly to the GG, interest in the amount of eight percentage points above the base interest rate pursuant to Section 247 BGB must be paid on it commencing with the GR's receipt of the government investment subsidy. The preceding provisions also apply to government investment subsidies that are not received until the project has ended or its accounts have been settled.

3 Reporting Obligations

Supplementary to Point 4 ANBest-P-Kosten

For five years after the conclusion of the funding in Funding Phase II (or after Funding Phase I if Funding Phase II is not claimed), a short report on the commercial development of the undertaking must be given to the Project Management by the 31st of December of each year.

4 Residual-Value Compensation for Project-Exclusive Equipment

Supplementary to Number 5.6 ANBest-P-Kosten

At the end of the project, but no later than the proof of usage, the GR must declare what the project-exclusive equipment (*Sonderbetriebsmittel*) will continue to be used for. The GG may dispense with the compensation for the residual-value [of the project-exclusive equipment] if the project-exclusive equipment will continue to be used for innovations. Sale proceeds from the sale of project-exclusive equipment must be promptly paid back to the GG proportionate to the funding quota.

Development objects (test models, prototypes, and similar things) are results of the project and must be treated as such.

5 Lump-Sum Account Settlement

Provision in deviation to Number 6.1.4 ANBest-P-Kosten

Travelling expenses are not eligible for funding as individual costs; they must be financed out of the lump-sum allowance pursuant to Number 6.2.

Provision in deviation to Number 6.2 ANBest-P-Kosten

The remaining costs occasioned by the project are covered collectively by an allowance of up to 90 per cent of the individual personnel costs.

List of the Documents for the Application for EXIST Transfer of Research

All documents for the application are available for download at <http://www.exist.de/exist-forschungstransfer/antragstellung/index.php>.

The complete application forms "Sketch", "AZA" and "AZK" must be submitted to Project Management Jülich in electronic form via the portal easy-Online and in paper form (one original) by the end of the respective application deadline.

Funding Phase I, Step 1– project drafts/sketches–

- Project description according to schema (Schedule I.1)
- Work plan: detailed explanation and time schedule of the work packages (Schedule I.2)
- Information about the start-up team (Schedule I.3)
[Form per Schedule I.3 for each person, supplemented by a copy of the most recent academic certification]
- Declaration of the expert mentor (Schedule I.4)
- Declaration of the start-up network (Schedule I.5)
- Easy-sketch (<https://foerderportal.bund.de>) application system easy-Online

Funding Phase I, Step 2– complete application documents–

- Project application form "AZA" or "AZK" (<https://foerderportal.bund.de>) application system easy-Online
- Acknowledgement of subsidy-relevant facts (Schedule I.6)
- The project description and the work plan does not need to be submitted again unless the expert review requests additional content and the project management requests supplementations.

Funding Phase II – complete application documents–

- Project application form "AZK" (<https://foerderportal.bund.de>) application system easy-Online
- Detailed business plan (Schedule II.1)
- Presentation of the results of Funding Phase I (Schedule II.2)
- Project description and work plan for Funding Phase II (Schedule II.3)
- Articles of association of the start-up undertaking
- Proof of own share of financing
- If relevant, contractual agreements with the university or research institution on the acquisition of patents or licence rights.
- Acknowledgement of subsidy-relevant facts (Schedule II.4)