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Funding Industry Collaborations: Conflicts of Interest

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# Funding Industry Collaborations – Conflicts of Interest

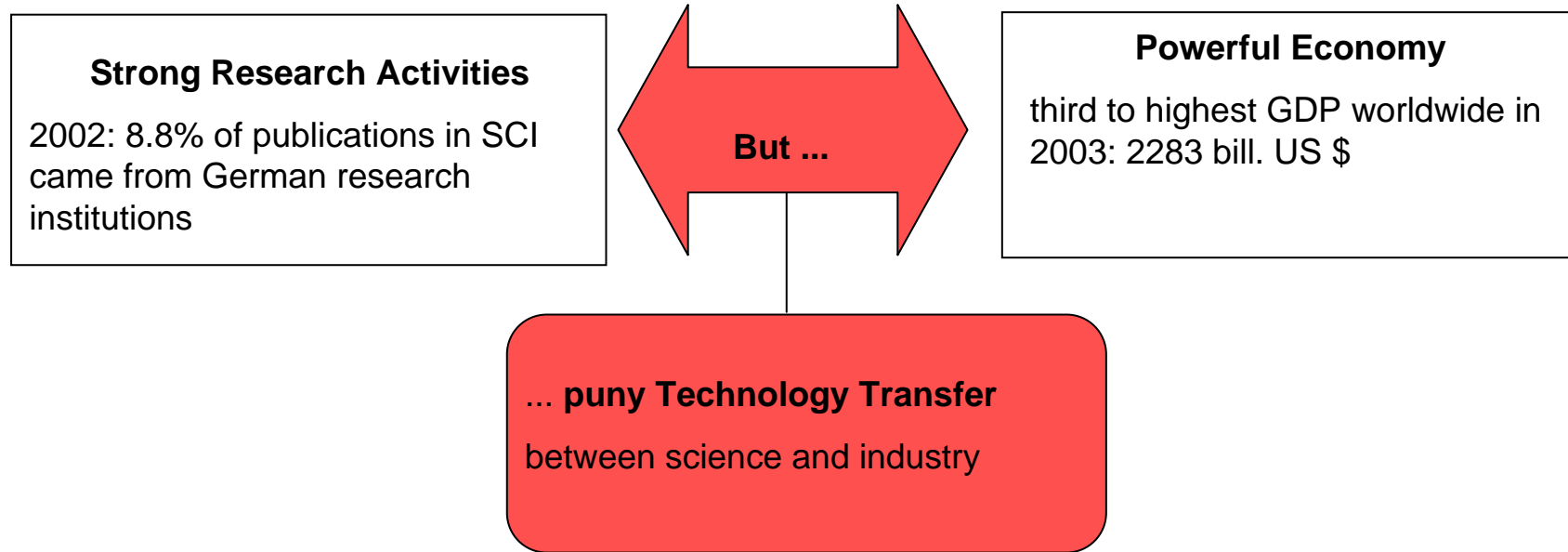
## Overview

- Public Funding of Industry Collaborations – Why?
- Funding Technology Transfer – The DFG's Approach
- Legals Restrictons
  - Law of Tax-Exempt Organizations
  - Budgetary Law
- Contractual Framework – Finding the Balance

# Public Funding of Technology Transfer: Why?

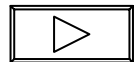
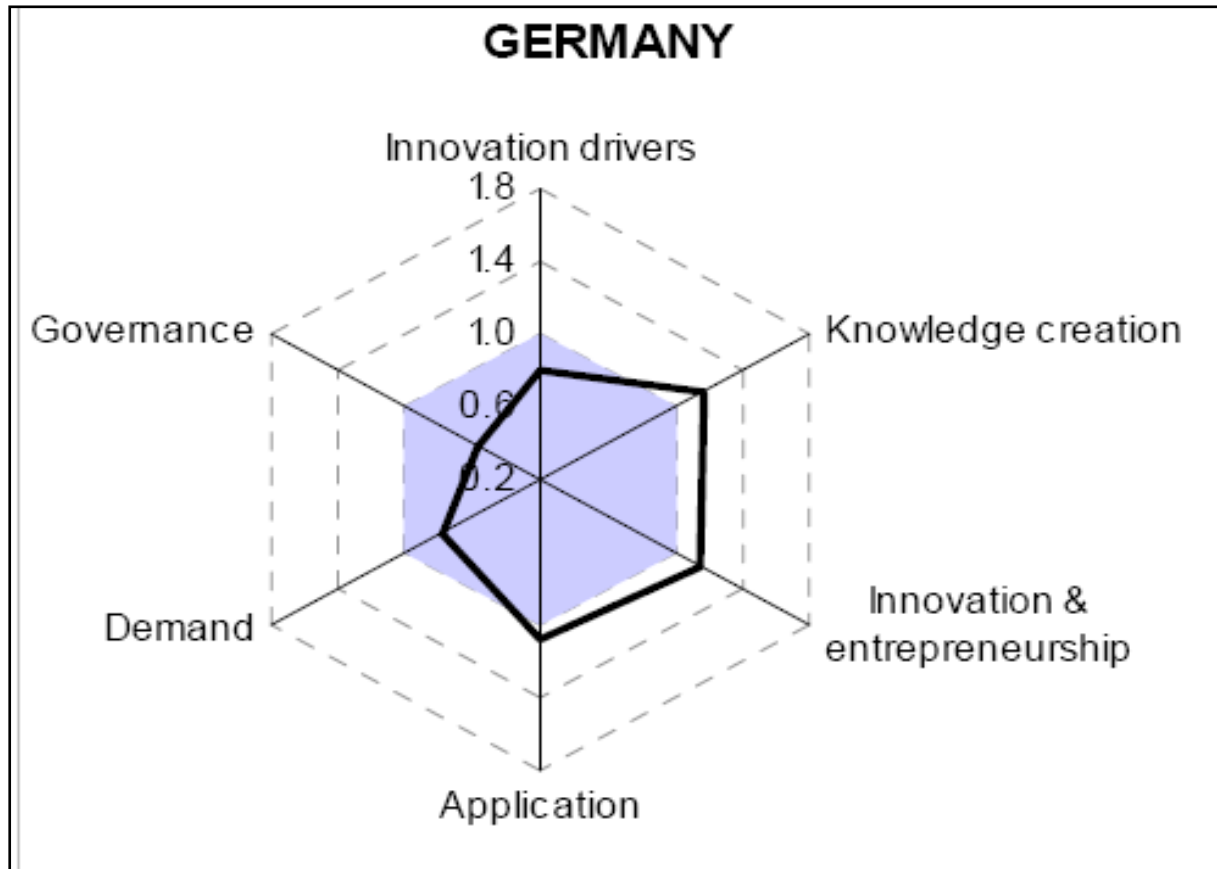
## The “European Paradoxon” or: “The German Disease”

Strong research activities, powerful economy. But: Transforming innovation assets into innovation results is still a severe problem.



Due to its high labour costs Germany highly depends on its technological lead.  
This lead is endangered...

## Strengths and Weaknesses of German Firm's Innovative Capabilities I



# Public Funding of Technology Transfer: Why?

## Strengths and Weaknesses of German Firm's Innovative Capabilities II

German firms have a strong position concerning the output factors (knowledge creation, patent applications etc.), but are rather below European average in terms of innovation drivers and industrial demand.

The factors to be strengthened are crucial for the future development of the – still strong – output factors.

Strengths	Weaknesses
<ul style="list-style-type: none"><li>• knowledge creation</li><li>• innovation&amp;entrenpreneurship</li><li>• applications</li><li>• IPR</li></ul> <p>→ strong position concerning innovation outcomes</p>	<ul style="list-style-type: none"><li>• innovation drivers</li><li>• innovation demand from industry</li><li>• governance</li></ul> <p>→ these factors will influence future performance</p>

# Public Funding of Technology Transfer: What to do

## Promotion of Technology Transfer

Industrial demand and innovation drivers need to be strengthened ...

... e.g. by enhancing technology transfer from universities/research institutions to industry and vice versa.

By enhancing technology transfer

- young scientists are offered the chance to collect practical knowledge about application prospects and industrial work in general.
- scientific results from basic research can be validated in the realm of practical application.
- new ideas and concepts for basic research are developed on both parts.
- university-industry networks are initiated.



# Public Funding of Technology Transfer: What to do

## Promotion of Technology Transfer

Technology and knowledge transfer is a transfer of concepts and ideas. Hence, the best way to make such transfer work, is to bring together academics and business.



Lambert Review of Business-University Collaboration (2003):

“The best form of knowledge transfer comes when a talented researcher moves out of the university and into business, or vice versa. The most exciting collaborations arise as a result of like-minded people getting together ... to address a problem. Encouraging academics and business people to spend more time together should be a high priority.”

# Public Funding of Technology Transfer – The DFG’s Approach

## DFG’s Approach towards the Promotion of Technology Transfer

The DFG funds research projects that involve industrial partners in different funding schemes:

Individual Grants Programmes	Coordinated Programmes
<ul style="list-style-type: none"><li>• Research Grants</li><li>• Priority Programmes</li></ul> <p>top-down call for proposals on a subject, which is specified by the DFG’s senate; nationwide cooperation between participating researchers; funding period of six years.</p> <ul style="list-style-type: none"><li>• Research Units</li></ul> <p>bottom-up; team of researchers working together on a research project which, in terms of thematic focus, duration and finances, extends beyond the funding options available under the Individual Grants Programme; funding period usually six years.</p> <p>→ Transfer Projects</p>	<p>Specified form of a Collaborative Research Centre; universities and scientists have to file a joint application for funding; funding period 1-3 years.</p> <p>→ Transfer Units</p>

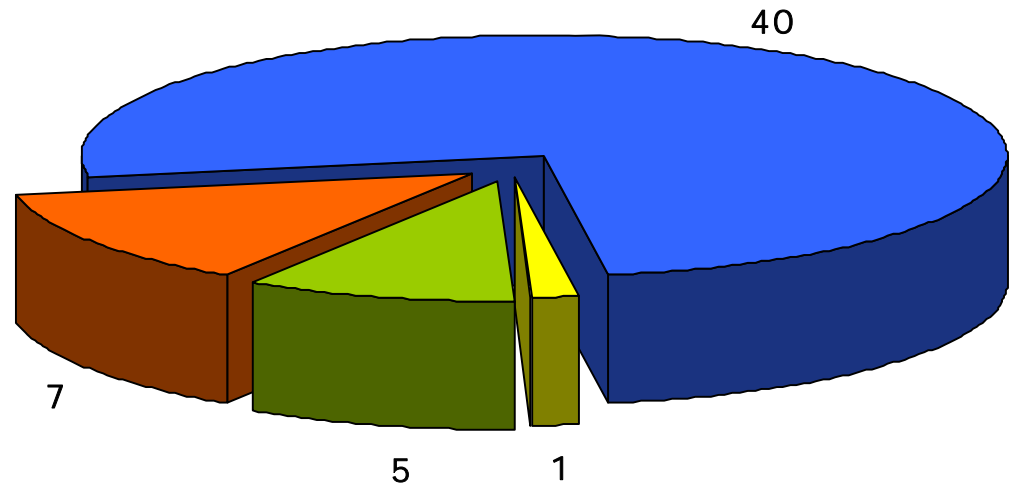


# Public Funding of Technology Transfer – The DFG's Approach

## Transfer Units: Figures

### History:

- Programme established in 1996.
- Since then 53 transfer units have been funded, mostly in the area of engineering sciences.
- Each Transfer Units consists of 1-10 projects (average: 2.5/TU)



### Volume:

- At present: 15 Transfer Units funded
- Each Transfer Unit receives about 100.000-400.000 €/year

■ Engineering

■ Natural Sciences

■ Humanities

■ Life Sciences

## Transfer Projects and Transfer Units: Principles

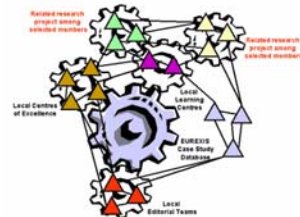
- DFG-funded projects in the area of technology transfer have to comply with general criteria for DFG-funding (scientific excellence, basic research etc.)
- Industrial partner’s contribution to transfer project/transfer unit has to be disclosed; industrial partner has to take active part in project.
- Transfer project/transfer unit has to generate benefit both for the university involved and the industrial partner (“joint research project”, “extended workbench”)

# Public Funding of Technology Transfer – The DFG's Approach

## Transfer Projects and Transfer Units: The Industrial Partner's Part

### ■ Contribution

- Industrial Partners bears 30-50% of the project's total costs
- Contribution can be provided as money, staff, research equipment etc..



### ■ Partners in Transfer Projects

- Small Enterprises, spin-off companies
- Medium-sized Businesses (Mittelstand)
- Multi-national Enterprises, such as Siemens, Volkswagen, DaimlerChrysler, ThyssenKrupp etc.

## Legal Restrictions

- **Law of Tax-Exempt Organisations**

- applies to DFG due to tax-exempt status.
- DFG does not actually need the tax-exemption, but the connected right to receive charitable contributions.
- means, that the DFG is not allowed to pursue or fund other than charitable purposes.

- **Public Budgetary Law**

- 99% of the DFG 's budget is made up by funding from the federal state and the Bundesländer.
- The federal state and the Bundesländer provide the DFG with money under the condition that these funds are forwarded – for research purposes – according to the public budgetary law.

# Promoting Technology Transfer – Legal Restrictions for Funding Organisations

## Restrictions due to DFG's Tax-Exempt Status I

Law of Tax-Exempt Organisations requires the pursuit of nothing but charitable purposes as stated in the respective organisation's statutes.

→ neither direct nor indirect promotion of commercial purposes

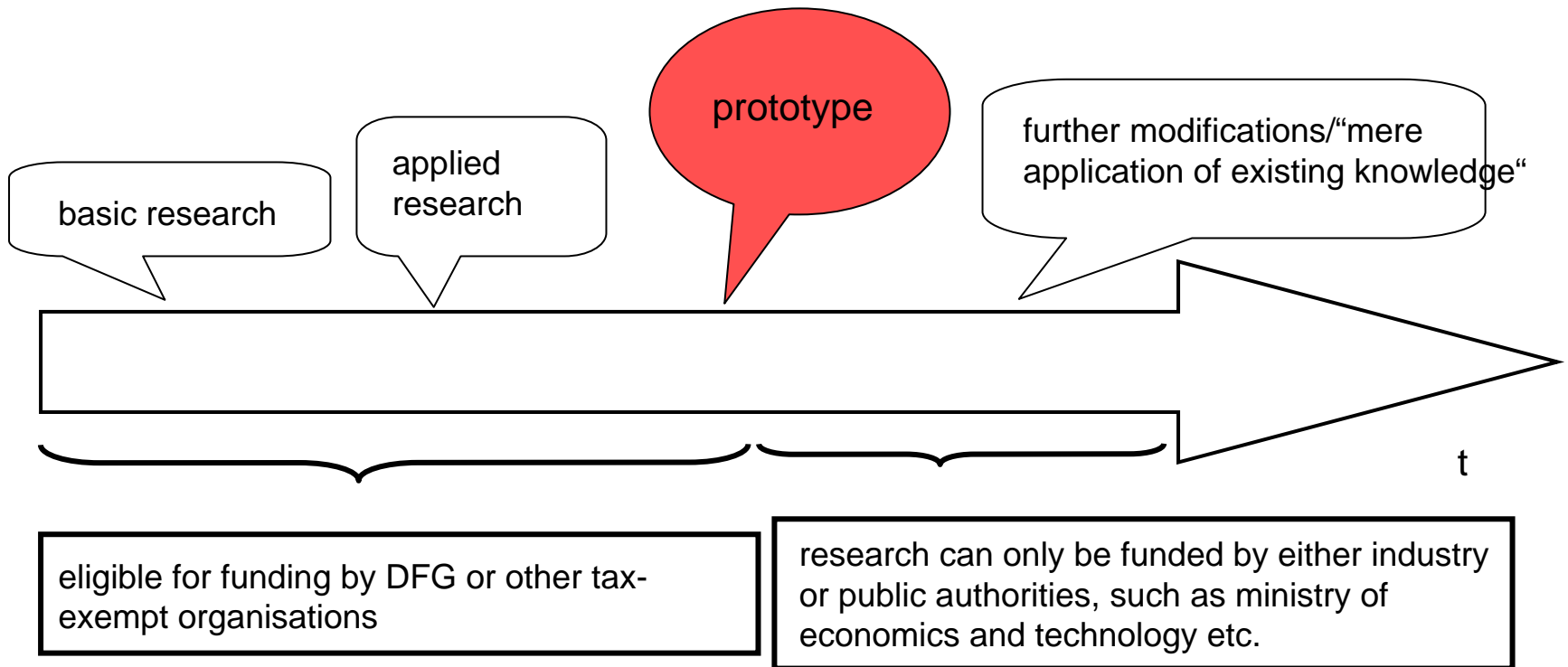
Any funding of technology transfer projects that offers the co-operating industrial partner the chance to acquire scientific results for a price that does not correlate to its own contribution, constitutes a promotion of commercial purposes.

→ only promotion of science as stated in the DFG's statutes

Transfer projects funded by the DFG need to deal with scientific topics. The mere application of existing knowledge is not considered "science" and hence not a charitable purpose. The German tax authorities draw the line between science and "mere application" at the prototype.

# Promoting Technology Transfer – Legal Restrictions for Funding Organisations

## Restrictions due to DFG's Tax-Exempt Status II



## Restrictions due to Public Funding

Art. 63 Public Budgetary Law (Bundeshaushaltsordnung) stipulates that

- objects, that have been created or acquired with public means, may only be sold at full market-value (so-called requirement of full market-value realisation).
  - The same applies to usage rights, which also can only be granted at full market-value.
- Findings from transfer projects can only be claimed by the industrial partner as far as his share of the project's results correlates to his own contribution. Beyond this correlation, the respective firm has to pay for receiving IPR or usage rights from the project.

# Promoting Technology Transfer – Legal Restrictions for Funding Organisations

## In a nutshell ...

Prior to funding projects that involve industry collaboration, the following matters have to be checked for legal reasons:

- Subject of research project ranging from basic research to prototype?
  - ➔ If not: Funding such project would result in infringement of regulations for tax-exempt organisations.
  
- Industrial partner's share in project findings does not exceed value of his contribution (money, staff etc.) to the project?
  - ➔ If not: Funding such project would offer the industrial partner the chance to acquire scientific results, know-how or even IPR at a below-market price.
  - ➔ Funding would lead to – at least indirect – promotion of the industrial partner's commercial purposes.

On the part of the DFG such funding would constitute an infringement of

- regulations for tax-exempt organisations (“*no promotion of commercial purposes*”)
- public budgetary law (“*requirement of full market-value realisation*”).

- Scientific partner's right to publish not unduly restricted?
  - ➔ Freedom to publish one's own scientific results is part of the constitutionally guaranteed freedom of science. If the DFG tolerated an unduly restriction of this right, this would result into a promotion of the industrial partner's commercial purposes.



# Funding Industry Collaborations – Contractual Framework

## Crucial Points in Cooperation Agreements – The Industrial Partners Interests

The cooperation agreements to be drawn between the scientific partner (university etc.) and the industrial partner have to be approved by DFG. In order to make sure, that the beforementioned legal restrictions for the project's DFG-funding are kept, there are certain crucial points to be regarded with special attention:

### Usage Rights

Industrial Partners usually wish to secure exclusive, transferrable usage rights on any scientific results (own findings, joint findings and/or results solely achieved by the scientific partner) derived from cooperation project.



→ Industrial partner wants to acquire publicly funded scientific results at “cheap” price

### Publication Policy

Oftentimes industrial partners want a right to veto the scientific partner's publications.

→ According to German law IPRs can only be applied for if the scientific result concerned is “new”. Any publication of scientific results spoils their character as “new” and prohibits IPR-application.



→ Industrial partner wants to protect the knowledge he has contributed to the project against becoming public.

# Funding Industry Collaborations – Contractual Framework

## Crucial Points in Cooperation Agreements – Balancing Interests I

### Usage Rights

Industrial Partners usually wish to secure exclusive, transferrable usage rights on any findings derived from cooperation project.

- ➔ Both partners get the right to file IPRs on own inventions resulting from the project. If the industrial partner later on wishes to acquire results that were solely achieved by the scientific partner, the parties have to agree upon the conditions of this transfer in a separate agreement.
- ➔ The parties agree on a case-by-case procedure for handling joint inventions (i.e. any invention which involves employees of both parties and which cannot be assigned proportionately to one party or the other for the purposes of registering industrial property rights).  
Note: The case-by-case procedure can result in gratuitous transfer of scientific results, if both parties come to the conclusion that the results have no measurable market-value.
- ➔ For the time and for purposes of the project, both parties grant straightforward, non-transferable, irrevocable, indefinite, and gratuitous licences on IPRs derived from the project.

## Crucial Points in Cooperation Agreements – Balancing Interests II

### **Publication Policy**

Oftentimes industrial partners want a right to veto the scientific partner's publications.

- ➔ Both parties are entitled to publish the results obtained during the course of project work. However, in doing so, the interests of both parties must be respected.
- ➔ The date of publication may at the request of either party be postponed for a limited period of up to six months, to allow time and opportunity to register industrial property rights.

**Thank you for your attention!**

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