

Charter of the “Deutsches Elektronen-Synchrotron DESY” Foundation

As of 08/12/2021, date of approval by the foundation regulators

Preamble

With its two branches in Hamburg and Zeuthen, the Deutsches Elektronen-Synchrotron DESY is one of the world's leading centers for research on and with particle accelerators. The center's mission is focused on decoding the fundamental links between the structure and function of matter and life, as the robust knowledge basis for solving the major questions and pressing challenges of science, society and the economy.

DESY develops, builds, and operates large, state-of-the-art accelerator systems for research with X-ray light and X-ray laser light of exceptionally high brilliance, and maintains long-term, strategic cooperations with major international research projects in particle and astroparticle physics and in photon science.

The combination of an ultra-modern research infrastructure, interdisciplinary research platforms, and an international network means DESY provides a highly attractive environment for researchers from all over the world, and for training highly qualified juniors in science, engineering, and administration.

In addition to fundamental and outstanding research, DESY also strives to promote the application of research findings to society and business, and thus facilitate innovations.

DESY advocates sustainability, equal opportunity, and diversity.

§ 1 Name, Registered Office, Fiscal Year

- (1) The name of the Foundation is "Deutsches Elektronen-Synchrotron DESY." It is a civil-law foundation.
- (2) Its registered office is in Hamburg. DESY has another location in Zeuthen.
- (3) The foundation is a member of the Helmholtz Association of German Research Centers (HGF).
- (4) Its fiscal year is the calendar year.

§ 2 Purpose of the Foundation

- (1) The purpose of the Foundation is the promotion of basic research in the natural sciences. The Foundation's purpose is realized, in particular, through the development, construction and operation of accelerators and their use in science, photon research and research in the areas of particle and astroparticle physics, as well as development projects connected therewith. As a member of the Helmholtz Association of German Research Centers, the Foundation pursues long-term research and educational goals for Germany and for society, and is integrated into the procedures for the financing of such goals.
- (2) The results of work carried out at the Foundation are published or otherwise made publicly available.

§ 3 Public-interest character

- (1) The Foundation exclusively and directly pursues purposes which are of benefit to the public within the meaning of the "tax-advantaged purposes" section of the German Tax Code. The Foundation pursues no purposes other than those specified in § 2.
- (2) The Foundation does not act on its own behalf; the purposes which it pursues are not primarily in its own financial interest. Foundation funds may only be employed for purposes sanctioned by the Charter.
- (3) No person may be benefitted by expenditures unrelated to the purpose of the Foundation or by unreasonably high compensation.
- (4) Upon dissolution or abolition of the Foundation or cessation of the tax-advantaged purposes, the assets of the Foundation, upon a resolution of the Foundation Council, shall pass to a public-sector legal entity or to another tax-advantaged corporation for use in the promotion of science and research.

§ 4 Foundation assets

- (1) The Foundation's assets consist of the contributed foundation capital and other assets brought in.
- (2) The Foundation's assets may be increased by additional contributions toward the endowment. If grants are not expressly earmarked as assets, they are to serve the purposes specified in § 2 exclusively, directly and in the near term.
- (3) The Foundation is not authorized to borrow or lend, nor may it accept or extend credit. It may not provide sureties or guarantees or assume similar liabilities.

§ 5 Foundation's governing bodies

The Foundation's governing bodies are:

- a) the Board of Directors
- b) the Foundation Council
- c) the Scientific Council.

§ 6 Board of Directors

- (1) The Board of Directors consists of a minimum of three and a maximum of six members. One member of the Board of Directors must possess commercial or administrative experience, with the others being scientists. Members of the Board of Directors are appointed and removed by the Foundation Council. They hold office for up to five years, and may be reappointed.
- (2) The Chairperson and the commercial member of the Board of Directors are appointed and

removed by the Foundation Council, on the advice of the Scientific Council. The Chairperson must be consulted before a commercial member can be appointed or removed. The other scientific members of the Board of Directors are appointed upon the proposal of the Scientific Council. This takes place in consultation with the Scientific Committee.

- (3) The members of the Board of Directors serve on a full-time basis and receive appropriate compensation. The highest-ranking member of the department with subject-matter responsibility who sits on the Foundation Council, and who has been delegated by the German Federal Government, is to enter into, amend and terminate contracts of employment with full-time members of the Board of Directors. If he/she is unable to fulfil this task, he/she shall be represented by the next highest-ranking member of the department with subject-matter responsibility who similarly sits on the Foundation Council and has been delegated by the German Federal Government.
- (4) The Chairperson of the Board of Directors is the staff's superior, as well as the scientific representative of the Foundation.
- (5) The Board of Directors creates its own rules of procedure, which require the approval of the Foundation Council. Members of the Board of Directors may not be members either of the Foundation Council or of the Scientific Council.
- (6) The Board of Directors decides by simple majority vote. It has a quorum if at least half its members are present. Decisions on matters of significant financial importance cannot be made without the consent of the Chairperson and the commercial member of the Board of Directors. The rules of procedure govern further details. They can particularly make the decisions on certain matters contingent upon the consent of individual members of the Board of Directors, and, as part of the assignment of business, allocate matters to certain members of the Board of Directors for independent decision-making.
- (7) Minutes of the resolutions of the Board of Directors are to be prepared, which are to be signed by the Chairperson or his/her deputy.

§ 7 Responsibilities of the Board of Directors

- (1) The Board of Directors conducts the affairs of the Foundation.
- (2) The Board of Directors is responsible for the scientific program and, in collaboration with the Scientific Council (§ 12 (1) (c)) and the Scientific Committee (§ 13 (1)), it seeks to ensure optimum use of the research facility.
- (3) The Board of Directors ensures all matters of significant financial importance are presented to it.
- (4) As part of multi-year financial planning, the Board of Directors prepares the annual business plan, forwards it to the Scientific Council and, after obtaining comments from the latter, submits it in a timely manner prior to the end of the current fiscal year to a resolution of the Foundation Council pursuant to § 10 (2).
- (5) The Board of Directors shall provide the Foundation Council, when the latter meets, with a

written report regarding the course of business and the state of the Foundation. In addition, when grave cause is present, it shall report in writing, without undue delay, to the Chairperson of the Foundation Council, the Vice Chairperson and the representatives of the Federal and State governments on the Foundation Council. Within the first six months of every fiscal year, it shall furnish the Foundation Council with a progress report on the Centers for the fiscal year gone by. The Board of Directors' reports must comply with the principles of scrupulous and fair accountability.

- (6) The Board of Directors is responsible for establishing a Commission for Ethics in Research and a Commission on Ensuring Sound Scientific Practice. The members of both commissions are appointed and removed by the Board of Directors based on the charter enacted by the Foundation Council for the respective commission.

§ 8 Management board for foundation-law purposes, representation of the Foundation

- (1) The Foundation's statutory management board is the Board of Directors.
- (2) The Foundation may be represented in and out of court by two members of the Board of Directors acting jointly, with one of the two generally being the Board's commercial member. This shall not affect the provisions of § 6 (3), sentence 2.

§ 9 Foundation Council

- (1) The Foundation Council shall consist of a maximum of eleven members. Of these members,
 - a) three are appointed by the Federal Republic of Germany,
 - b) two each are appointed by the Free and Hanseatic City of Hamburg and the State of Brandenburg
 - c) upon the proposal of the Board of Directors, the Scientific Council or the Foundation, up to four honorary members are to be co-opted onto the Foundation Council from science, business or public life.
- (2) The Foundation Council elects a Chairperson and a Vice Chairperson from among its members. Their election is valid for as long as the person elected holds office, but for not more than four years, and they are eligible for re-election.
- (3) Members under subsection 1 (c) are elected by the Foundation Council for a maximum of four years. They may be re-elected, and may also be voted out for cause. After their term of office has expired, members remain in office until new elections have been conducted. A vote to replace members who withdraw before the end of their term is to be held as soon as possible.
- (4) The President of the Helmholtz Association and the Chairmen of the Scientific Council and Scientific Committee have the right to attend meetings of the Foundation Council as guests.

§ 10 Responsibilities of the Foundation Council

- (1) The Foundation Council advises the Board of Directors and monitors the latter's management as well as the safeguarding of the Foundation's purpose. It has a right to comprehensive information, and may issue instructions to the Board of Directors regarding important research-related and financial matters. Such instructions are to be brought to the attention of the Scientific Council. In the event of an instruction, the Scientific Council is to be given an opportunity for prior comment. This is without prejudice to § 11 (3).
- (2) The Foundation Council approves the annual budget and multi-year financial plans, including the expansion and investment programs.
- (3) The Foundation Council passes resolutions regarding the annual financial statements and management report submitted by the Board of Directors, as well as the progress report of the Centers. It also decides on giving formal approval to the actions of the Board.
- (4) The Foundation Council appoints the members of the Board of Directors.
- (5) The Foundation Council appoints the members of the Scientific Council at the suggestion of the Board of Directors, having consulted the Chairpersons of the Scientific Council and the Scientific Committee.
- (6) The Foundation Council's consent is required to conclude, modify or abolish any extraordinary legal business extending beyond the ordinary course of business, as well as measures that may considerably impact the Foundation's situation and activities, particularly
 - a) the basic principles for utilization of the Foundation's research results and work products,
 - b) construction and procurement measures, insofar as these exceed a total volume established by the Foundation Council,
 - c) the foundation or acquisition of enterprises or equity interests in enterprises in accordance with the Foundation's purpose, as well as a corresponding increase or sale of such interest,
 - d) general compensation and employment relations rules, in particular the implementation of long-term employment relations measures and membership in and withdrawal from employer associations,
 - e) the addition or cessation of Foundation fields of activity, and the establishment or discontinuation of locations,
 - f) the conclusion, amendment or abolition of lease and tenancy agreements, insofar as these exceed a limit (deadline, value) set by the Foundation Council,
 - g) acquisition, sale or encumbrance of real estate and rights equivalent to real property,
 - h) the conclusion or amendment of employment contracts, the granting of other services, and the conclusion of fee agreements, insofar as a limit set by the Foundation Council or a notice period of one year has been exceeded, or if this results in deviation from the law applicable to the federal employees or from authorizations issued based on federal law,
 - i) the assumption of pension obligations and severance packages in the event an employee ceases their services, insofar as these exceed three gross monthly salaries,

- j) the introduction of particularly significant legal disputes, the conclusion of settlement agreements, and the issuing of claims, insofar as the discount granted in the settlement agreement or the nominal value of issued claims exceed an amount set by the Foundation Council, and
- k) significant legal business conducted by the Foundation with members of the Board of Directors and persons, companies, or associations personally affiliated with them.

The Foundation Council reserves the right to specify the individual consent provisos through relevant decisions, and may make additional transactions subject to its approval.

The Foundation Council may object to the commencement, extension and termination of strategic partnerships and agreements on joint appointments, insofar as these significantly impact the Foundation's situation and business. The Foundation Council must be given an opportunity to object before the legal business stated in clause 3 is concluded and measures are executed. The Foundation Council makes a decision on the exercising of its right to object as part of a regular report at the Foundation Council meeting. § 11 (3) sentence 4 of the charter remains unchanged.

- (7) The Foundation Council may appoint committees from among its members and give them particular assignments. To that end, it may create rules of procedure for itself, which may contain more specific provisions regarding the composition, areas of responsibility and procedures of the committees. A committee cannot replace the Foundation Council in making a decision.
- (8) It is the responsibility of the Foundation Council to assert claims of the Foundation against members of the Board of Directors; it represents the Foundation in and out of court in this regard.

§ 11 Meetings and resolutions of the Foundation Council

- (1) Meetings of the Foundation Council are convened by its Chairperson.
- (2) The Foundation Council shall meet in ordinary session at least once every six months. Extraordinary meetings are to be scheduled if at least two members of the Foundation Council or the Board of Directors so request. Meetings are to be called with three weeks' notice, with the agenda and associated documents being sent at the same time.
- (3) The Foundation Council shall possess a quorum if the meeting was properly convened and at least two representatives of the German Federal Government and one representative each from Hamburg and Brandenburg take part therein. A member who is prevented from participating in a meeting of the Foundation Council may have his or her written vote submitted by another member. In the event that Foundation Council members appointed pursuant to § 9 (1) a) and b) are prevented from participating, instead of casting their vote they may transfer it to a representative of their respective government bodies. In specific cases, the Chairperson – and in his/her absence his/her deputy – may also have resolutions of the Foundation Council taken by telephone, in writing, or electronically without holding a meeting, if no member of the Foundation Council objects to this procedure without delay. The members of the Foundation Council are to be immediately informed of the outcome, which must also be included in the minutes of the next meeting.

- (4) Resolutions of the Foundation Council are taken by a majority of the votes validly cast.
- (5) Resolutions of the Foundation Council under § 6 (2), § 9 (1) c), (2), (3), § 10 (1) sentence 2, (2), (3), (4), (6) and § 16 (1), sentence 1, and (2) may not be taken over the negative vote of the members appointed by the German Federal Government and the State pursuant to § 9 (1) a)-b). If the votes of these members diverge from one another, the deciding vote shall be cast by the representatives of the German Federal Government.
- (6) Minutes are to be prepared of every meeting. They are to be signed by the Chairperson and are to be sent to all members without undue delay.
- (7) The members of the Board of Directors and the Chairperson of the Scientific Council take part in meetings of the Foundation Council except as the latter may otherwise provide.

§ 12 Scientific Council

- (1) The Scientific Council, consisting of outside members, provides cooperation on scientific matters of fundamental importance. In particular, the Council's tasks are as follows:
 - a) It advises the Board of Directors and the Foundation Council on fundamental questions of the scientific program and on matters relating to the appointment of members,
 - b) it promotes collaboration between the Foundation and advanced educational institutions and other research establishments,
 - c) in cooperation with the Board of Directors and the Scientific Committee, it seeks to ensure optimal use of the research facilities (§ 7 (2)),
 - d) it collaborates on
 - aa) the appointment of the Board of Directors (§ 6 (2)),
 - bb) the appointment of senior scientists,
 - cc) the assumption by the Foundation of additional research responsibilities,
 - e) it must be consulted on expansion and extension measures of material importance.
 - f) it provides written comments on the draft annual budget (§ 7 (4)).
- (2) The Scientific Council consists of a minimum of 12 and a maximum of 15 members, Membership is for three years, with one-time extension possible. Members are appointed in accordance with § 10 (5) of this charter.
- (3) Upon proposal by a member of the Scientific Council, an individual who has rendered extraordinary services to DESY may be elected an honorary member of the Scientific Council for life. 3/4 of the members of the Scientific Council must participate in the election, which must take place with no dissenting votes and must be confirmed by the Supervisory Board. An honorary member is invited to the meetings, in which he or she participates by an advisory vote.
- (4) The Scientific Council elects a Chairperson from among its members. His/her term of office is three years.
- (5) Except as the Scientific Council may otherwise decide, the members of the Board of Directors and the Chairperson of the Scientific Committee shall, and the members of the Foundation Council may, take part in meetings of the Scientific Council.

- (6) The Scientific Council creates its own rules of procedure, which require the Foundation Council's approval.
- (7) Without prejudice to the reimbursement of necessary expenses and the allowance of attendance fees in keeping with the relevant guidelines, membership on the Scientific Council is on an unsalaried basis.

§ 13 Scientific Committee

- (1) In matters of fundamental scientific importance, the Board of Directors of the Foundation is advised by a Scientific Committee. The advice extends, in particular, to:
 - a) the scientific program,
 - b) expansion and extension measures of material importance,
 - c) basic questions relating to DESY's scientific structure,
 - d) questions relating to collaboration with advanced educational institutions, other research institutions and industry, as well as relating to international collaboration,
 - e) the optimal use of the research facility.
- (2) The Scientific Committee may make suggestions to the Foundation Council and the Scientific Council regarding the appointment of members of the Board of Directors and the appointment of senior scientists.
- (3) The Scientific Committee is made up of senior scientists not serving on the Board of Directors, scientific employees and representatives of external research groups. More detailed provisions can be found in the election regulations issued by the Board of Directors with the Foundation Council's approval. The Scientific Committee creates its own rules of procedure, which require Foundation Council approval.

§ 14 Budgeting and accounting, annual financial statements

- (1) The Foundation's funds are to be administered economically and sparingly, in accordance with the annual business plans and with management principles.
- (2) Following the end of every fiscal year, the Board of Directors is to prepare annual financial statements in the first three months of the following year, discussing them in a management report. The requirements of German Commercial Code Book 3 for large corporations, relating to the preparation and auditing of annual financial statements and the management report, are to be applied *mutatis mutandis*. Immediately upon its election, the expert auditor (*Abschlussprüfer/CPA*) to be designated by the Foundation Council is to be given the assignment of auditing the annual financial statements and the management report, and is to include the proper maintenance of the books (German Budgetary Principles Act (HGrG) § 53 (1) (1)) in this audit and supplement the report in accordance with HGrG § 53 (1) No. 2. The Board of Directors is to submit the annual financial statements and management report, along with the auditor's report, written comments and an indication of measures taken or planned to eliminate any deficiencies, to the Foundation Council within the first 6 months of the following fiscal year. The Foundation Council shall pass a resolution relating to the approval of the annual financial statements and formal approval of the actions of the Board of Directors by the end of the following fiscal year.

§ 15 Audit rights, compensation report

- (1) The German Federal Audit Court and the audit courts of the Free and Hanseatic City of Hamburg and the State of Brandenburg have the authority indicated in § 43 of the Budgetary Principles Act.
- (2) In a compensation report to be published annually, the Board of Directors is to present, in a generally comprehensible form, the total compensation of each member of the Board of Directors individually and broken down by individual components. The compensation report is to be presented to the Foundation Council for its information and is subsequently to be published in an appropriate form.
- (3) For members of the Board of Directors, there is also to be an indication of those payments promised or granted over the course of the fiscal year to a member or former member of the Board of Directors in the event of termination of his/her activities. For compensation of members of the Foundation Council, a separate indication is also to be made of compensation paid by the Foundation to the respective member or benefits granted for services personally rendered, in particular consulting and brokerage services.

§ 16 Amendments to the Charter and dissolution of the Foundation

- (1) The Charter may be amended by a resolution of the Foundation Council, § 12 only by agreement with the Scientific Council. Prior to any amendment to the Charter, the Board of Directors and the Scientific Council are to be consulted. The Foundation's purpose may only be amended with the consent of the appropriate German Tax and Revenue Office.
- (2) After consultation with the Board of Directors and the Scientific Council, the Foundation may be dissolved by a decision of the Foundation Council.
- (3) Resolutions under subsections 1 and 2 require consent by state foundation regulators.

§ 17 Effective date

The Charter goes into effect on the date of its approval.