

Rules of Procedure for Dealing with Scientific Misconduct at BfR (VerfOwF)

Please note, this English translation is provided by BfR to allow an easier access to the rules of procedure for non-German speaking persons. However, only the German version (= Verfahrensordnung zum Umgang mit wissenschaftlichem Fehlverhalten am BfR) is legally binding.

§ 1 Scope of application

The Rules of Procedure for Dealing with Scientific Misconduct at BfR (VerfOwF) regulate the procedure at the Federal Institute for Risk Assessment (BfR) in cases of suspected scientific misconduct within the meaning of the Principles for Safeguarding Good Scientific Practice at BfR.

§ 2 Definitions

(1) The person concerned is the person who is affected by the suspicion of scientific misconduct.

(2) Scientific misconduct shall be deemed to have occurred if, in the course of scientific work, false statements are deliberately or grossly negligently made, the intellectual property of others is infringed or their research activities are maliciously impaired.

(3) Misconduct shall include in particular:

1. False declarations

False declarations are

- the fabrication or falsification of data,
- inventing or falsifying evaluations,
- inventing or falsifying results,
- the falsifying manipulation of a representation or image,
- the incongruent presentation of image and associated statement,
- incorrect information in a letter of application or a funding application,
- fictitious information on publications or research reports.

2. Infringement of another's intellectual property

Another person's intellectual property is the copyrighted work created by another person or essential scientific knowledge, hypotheses, teachings or research approaches originating from another person. An infringement is committed in particular through

- the unauthorised exploitation under presumption of authorship (plagiarism),
- the exploitation of research approaches and ideas, especially as reviewers (Theft of ideas),
- presumption or unfounded assumption of scientific authorship or co-authorship,
- falsification of the content,
- maliciously delaying the publication of a scientific paper, in particular as an editor or reviewer, or
- unauthorised publication and unauthorised making available to third parties as long as the work, finding, hypothesis, teaching or research approach has not yet been published.

3. Claiming the (co-)authorship of another person on a publication without that person's consent.

4. Malicious interference with research activity (including damaging or tampering with experimental set-ups, equipment, records, hardware, software, chemicals, cell and microorganism cultures or other property required by another person to carry out his or her scientific activity).

5. The disposal of research data, research documents or their documentation, unless an obligation to do so arises from statutory provisions.

6. Carrying out research projects without first obtaining obviously required ethics votes, as well as misrepresenting the alleged existence of ethics votes in publications or to persons whose research projects depend on such votes.

7. The frivolous handling of accusations of scientific misconduct itself, in particular

- making false accusations frivolously or against one's better knowledge, or
- ignoring a suspicion that scientific misconduct may have occurred, or
- discouraging another person from reporting suspected scientific misconduct.

(4) There is joint responsibility for misconduct, inter alia:

- in the case of intentional participation (in the sense of instigation or aiding and abetting) in the misconduct of others,
- in the event of intentional or grossly negligent co-authorship of publications that are knowingly falsified,
- in the event of wilful or grossly negligent neglect of the duty of supervision, if the misconduct would have been prevented or made considerably more difficult by the necessary and reasonable supervision

§ 3 Principles of the procedure

The procedure in cases of suspected scientific misconduct shall uphold the principles of a fair and confidential procedure. The principle of presumption of innocence applies.

§ 4 Preliminary examination

(1) If BfR staff members become aware of concrete suspicions of scientific misconduct in connection with their working duties, they must seek a clarifying discussion with the person concerned or inform the ombudsperson. The information must be provided without delay, i.e. without culpable hesitation.

(2) If the ombudsperson is actually prevented (absence) or legally prevented (concern of bias), the preliminary examination procedure shall be conducted by the deputy ombudsperson. In case of doubt, the deputy ombudsperson shall decide whether there is a concern of bias on the part of the ombudsperson.

(3) The ombudsperson examines the facts of the case within two weeks with regard to plausibility, concreteness and significance and with regard to possibilities of eliminating the suspicion and decides on the further course of action.

(4) It may remain with a counselling interview with the person making the allegation in which conceivable further steps of the person making the allegation are discussed, especially if he or she is directly concerned.

(5) In the case of sufficiently concrete suspicions of scientific misconduct, the person concerned will immediately be given the opportunity to make a written statement, stating the incriminating facts and evidence. If desired, there may also be an interview with the ombudsperson. The name of the person making the allegation must be disclosed if the person affected by the allegation would otherwise not be able to properly safeguard his or her interests. As a rule, the time limit for making a statement is four weeks. It may be extended depending on the circumstances of the individual case.

(6) After expiry of the deadline, the ombudsperson decides within two weeks whether further clarification measures are necessary within the framework of the preliminary examination. These are necessary if a decision is not yet possible taking into account all findings. The further measures must be initiated immediately and shall be completed within four weeks.

§ 5 Result of the preliminary examination

(1) After reviewing the statement or after the deadline has expired or further clarification measures have been carried out, the ombudsperson decides within two weeks whether the preliminary examination procedure can be discontinued either due to lack of sufficient suspicion of scientific misconduct or due to insignificance, informing both parties involved of the reasons. In the case of insignificance, the ombudsperson also has the option of conducting a conciliation procedure.

(2) If there is no sufficient suspicion of academic misconduct, the ombudsperson discontinues the proceedings.

(3) Discontinuation on grounds of insignificance is to be considered if there is evidence of at least minor scientific misconduct and the person concerned has contributed significantly to the clarification of the matter. Misconduct of minor importance shall be deemed to have occurred in particular if no or only minor damage has been caused. In particular, it is considered a contribution to clarification if the person concerned offers a measure according to § 7 (1), in particular the publication of an erratum, or has already taken measures to remedy damage that has already occurred.

(4) A conciliation procedure may be conducted orally or in writing if, due to the nature of the allegation, a conciliation procedure offers the prospect of a mutually agreeable solution. If the conciliation procedure fails, the ombudsman decides whether to discontinue the procedure or to hand it over to the investigation commission. The conciliation procedure shall be concluded within 4 weeks.

(5) The decision on discontinuation will be communicated to the person making the allegation and to the person concerned, indicating the possibility of appeals. If the person providing the information does not agree with the discontinuation of the examination procedure, the person providing the information may appeal in writing to the investigation commission (§ 6) within two weeks.

(6) If discontinuation of the proceedings is not an option, the preliminary examination procedure is to be transferred into the formal investigation procedure, i.e. the ombudsperson informs the Institute's management of the allegation and transfers the case to the investigation commission. The person giving the indication is to be informed that the decision taken is to be treated as strictly confidential.

(7) Insofar as further persons have been involved in the preliminary examination while maintaining confidentiality, the ombudsperson shall inform them in writing of the decision, stating the reasons, insofar as these persons are affected by the decision itself.

(8) The files from a procedure that is not transferred into the formal investigation procedure will be kept by the Ombudsman for one year and then destroyed.

§ 6 Formal procedure

(1) The Investigation commission consists of the head of the Research Strategy and Coordination o.V.i.A., the head of the legal department o.V.i.A., as well as three further scientific staff members of BfR. These other three members should hold a doctorate, work independently in science, publish and have at least five years of professional experience. One of the three scientific members should hold a position as head of unit, another member should be employed on a permanent basis and the third member should be employed on a temporary basis. The Investigation commission shall have equal representation. The Equal Opportunities Officer of the BfR o.V.i.A. participates in the meetings of the Investigation commission in an advisory capacity. The ombudsperson may be involved in the formal investigation in an advisory capacity.

(2) The three scientific members and three deputy members shall be appointed by the President for four years on the proposal of the head of Research Strategy and Coordination; a second term of office is possible.

(3) In the event that one or more members of the Investigation commission declare themselves to be biased or are rejected due to a justified presumption of bias, the alternate(s) will take their place in the Investigation commission according to their ranking. An alternate will take the place of the member for the remainder of the term of office if the member resigns before the end of the term of office.

(4) The commission decides by majority vote, unless otherwise provided. The commission constitutes a quorum if all members are present. The members of the commission have equal voting rights. If the Investigation commission is inquorate, the consultation must be restarted after the commission has been completed. The supplementation shall take place in accordance with the provisions of § 6 paragraph (3).

(5) The Investigation commission shall confer in non-public oral proceedings. It examines whether scientific misconduct has occurred without being given instructions and in free consideration of the evidence. The person providing the information is to be given again the opportunity to comment. The investigative commission may clarify the facts further if it deems this necessary. For this purpose, it may obtain the necessary information and statements, hear staff members and, in individual cases, also consult experts from the respective field of science or from experts for dealing with such cases. When expert opinions are obtained, the persons concerned are made anonymous. The procedure is to be opened within two weeks of the handover by the ombudsperson and is to proceed swiftly. It is to be concluded within two months. A longer duration is to be documented and justified.

(6) The person concerned is to be given the opportunity to comment in an appropriate manner. The person concerned is to be heard orally at his or her request; for this purpose, he or she may consult a member of the staff council as a person of his or her confidence. Severely disabled employees or employees of equal status may also consult the person of trust of the severely disabled persons in the BfR. This also applies to other persons to be heard.

(7) The information on the parties to the proceedings and the findings to date are to be treated as strictly confidential. In the hearing, the name of the person providing the information is to be disclosed if the person affected by the allegations would otherwise not be able to properly safeguard his or her interests. The Investigation commission decides on this.

(8) The consultations of the Investigation commission are to be chaired by the head of the Research Strategy and Coordination o.V.i.A.. Minutes are to be taken of each meeting of the Investigation commission which reflects the essential results of the deliberations and any decisions taken. The minutes is to be signed by the participants.

(9) If the Investigation commission considers serious misconduct to be sufficiently proven and a measure to be necessary, it submits the result of its investigation to the Institute's management with a proposal for a decision.

If the suspicion of scientific misconduct is not confirmed, the proceedings will be discontinued. Discontinuation of the proceedings is also possible if the misconduct is minor. In this case, the Investigation commission may also conduct a conciliation procedure. In this respect, the regulations of § 5 paragraph (3) and (4) apply accordingly. If the conciliation procedure fails, the Investigation commission decides whether the procedure is to be discontinued or if the case is to be submitted to the Institute's management with a proposal for a decision.

The decision of the commission of Inquiry is final.

(10) The Investigation commission informs the person concerned and the person providing the information of the result of its investigation and its decision (discontinuation of the proceedings or informing the Institute's management) in writing without delay, stating the essential reasons. The persons involved in the proceedings but indifferent will receive notification of the results, insofar as they themselves are affected. If a project financed by third-party funds is affected, the funding institution is to be informed. The files of the formal investigation must be kept for 10 years. The office in charge of the files is the Research Strategy and Coordination Unit. The respective members and deputy members of the investigative commission have the right to inspect the files. Persons affected by allegations may inspect the documents concerning them after the conclusion of the proceedings, regardless of whether scientific misconduct has been established or not.

(11) If a corresponding proceeding is already pending at another institution, the Investigation commission is free to suspend the proceeding until the other proceeding has been concluded with legal effect.

§ 7 Measures

(1) If scientific misconduct has been established, the Institute's management determines the further course of action, taking into account the commission's proposal, and will take the necessary measures. The following measures are conceivable, which may be taken individually or in parallel:

- issuing a written reprimand to be placed in the personnel file
- request to withdraw the incriminated publication or to correct incorrect data, in particular by publishing an erratum
- exclusion from current or future research projects for a period to be determined
- prohibition of supervision of dissertations and other theses for a period of up to two years

(2) Scientific misconduct may furthermore result in

- consequences under labour and employment law, e.g. warning, transfer, dismissal
- consequences under civil service law, e.g. reprimand, fine, reduction of remuneration, demotion or removal from civil service status
- civil law consequences, e.g. claims for damages
- criminal consequences, e.g. criminal charges for fraud, copyright offences, false certification in office, defamation and slander.

(3) If the withdrawal of an academic degree is a possible consequence of academic misconduct, the Institute's management shall inform the competent body. In doing so, it may only pass on information insofar as this does not violate the confidentiality obligations arising from the employment or service relationship. The examination and doctoral regulations of the respective higher education institution as well as the Administrative Procedure Act of the respective federal state determine whether the withdrawal of an academic degree is a possibility and which body is responsible.