



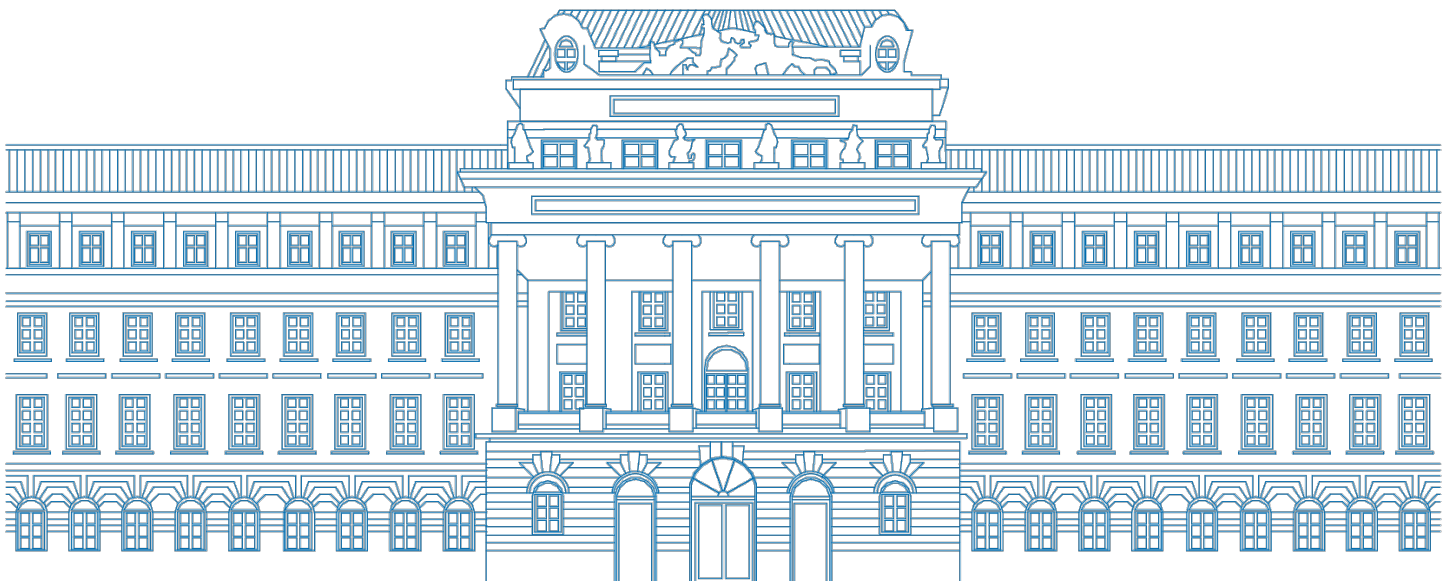
TECHNISCHE  
UNIVERSITÄT  
WIEN

# Power of attorney directive

Guideline of the Rectorate

on powers of attorney and research projects

[Sections 26, 27 and 28 of the Universities Act 2002  
(UG)]



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## Document information

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## 1 Area of application

With this guideline, the Rectorate makes the relevant clarifications for the Vienna University of Technology ("TU Wien") to the legal provisions of Sections 26, 27 and 28 of the Universities Act 2002 (UG). The granting of authority is directly linked to the corresponding appointment to a function resulting from the structure and governance of TU Wien<sup>1</sup>. For the management of each structural element (faculty, institute/department, research area/department, research group/specialist group), a corresponding functionary is provided. In addition, project managers receive a project power of attorney and heads of organizational units with teaching and research tasks ex lege a legal power of attorney in accordance with § 27 (1).

## 2 General powers of attorney

Powers of attorney may be granted by the Rector on the basis of these guidelines, with the exception of the legal power of attorney pursuant to § 27 (1).

The basis for the powers of attorney granted by the rector to project leaders is § 27 (2) or, for project leaders of ad personam FWF projects, § 28, for all other authorized representatives also § 28.

Powers of attorney

- are not transferable, and
- are not authorized to grant powers of attorney themselves, not even for the case of representation (sub-authorization), unless this is expressly permitted in point VII of this directive.

Powers of function holders of higher-level structural elements are not restricted by powers of function holders of lower-level structural elements. On the other hand, directives issued by immediate superiors under labor law must be observed.

Authorized representatives may only conclude legal transactions in the area of the global budget taking into account their function and the wording of the power of attorney granted.

Authorized representatives may only conclude legal transactions that are covered by the budget allocated to them and that relate exclusively to their own structural element (faculty, institute/department, research area/department or research group/department).

If a contract concerns several structural elements, this contract can only be signed with legal effect jointly by all authorized signatories of the respective structural elements concerned, whereby the amount applicable to the entire TU Wien is decisive for the signing authority of the individual persons in connection with the value limit (example: two research areas of different faculties carry out a contract research project for a client. Each research area receives EUR 75,000, resulting in a total amount of EUR 150,000. The two heads of research area are not authorized to sign, but the two heads of institute, as the total amount of the research project exceeds the research area heads' research authorization of EUR 100,000).

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<sup>1</sup> RL Structure and governance

The provision in the previous paragraph does not apply to Grant Agreements of the European Commission, where only a single signature is possible for electronic signatures. Grant Agreements that concern several structural elements can therefore only be signed with legal effect by the functionary of the jointly superordinate structure element. If structural elements of different faculties are involved, the member of the Rectorate responsible for research agendas in accordance with the Rectorate's Rules of Procedure shall sign.

The value limits for powers of attorney specified in this guideline also apply if the respective limit is not exceeded by the original legal transaction, but only by a subsequent legal transaction that is to be regarded as an extension or supplement to the contract (example: a research project contract with a project volume of EUR 380,000 is extended by EUR 40,000 by a subsequent contract supplement. The subsequent contract amendment is not covered by the research authorization of the dean or the head of the institute because it exceeds the limit of EUR 400,000).

Powers of attorney end

- upon termination of the employment relationship with the federal government or the employment relationship with TU Wien,
- with the loss of the function (this also includes the loss of the function as project manager as soon as the project ends on the contractually agreed date),
- automatically upon expiry, provided a time limit has been agreed,
- by revocation, which is possible at any time by the Rector.

In the event that the authorized function holder is prevented from attending, the regulations on representation apply<sup>2</sup>. Within the scope of special powers of attorney, no representation regulations - of any kind whatsoever - apply.

### 3 Misuse of the power of attorney and consequences

A misuse of a power of attorney exists, for example, in the case of:

- Exceeding the amount limit,
- Exceeding the material limit (e.g. signing a reserved legal transaction in accordance with point IV),
- Failure to comply with internal instructions or guidelines (e.g. instruction not to sign the contract in question or to sign it only under certain conditions; failure to submit the research contract to the Research and Transfer Support department; violation of the payment guidelines).

In all these cases, the rector or the rectorate (in the case of legal power of attorney) can withdraw the power of attorney from the authorized representative. In addition, conduct in breach of duty on the part of the authorized representative may result in liability for damages.

### 4 Excluded legal transactions and legal acts

Legal transactions that are not covered by powers of attorney are reserved for the Rectorate or the member of the Rectorate responsible in accordance with the rules of procedure ("**reserved legal transactions**"). If such legal transactions are to be concluded by other persons, a special power of attorney is required.

The reserved legal transactions include, for example:

- Conclusion of employment contracts,
- Assignments to tax consultants, lawyers or patent attorneys,

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<sup>2</sup> RL Structure and governance

- Conclusion of framework agreements that create an obligation for TU Wien, provided that no budget (without specifying remuneration) is defined,
- Conclusion of legal transactions in connection with construction projects, maintenance, relocations, space management and security,
- Conclusion of legal transactions that require the approval of a university body by law (e.g. establishment of and participation in companies and foundations, initiation of educational cooperations such as double degree programs),
- Conclusion of contracts for education and university management projects,
- Renting and letting of rooms, buildings, properties [unless they are a) hotel bookings for business trips, b) hotel bookings in Vienna for business partners of TU Wien, c) bookings of external premises for purely TU-internal team events such as institute celebrations or similar, d) bookings of external premises for events together with external partners such as project kick-off meetings or similar, or e) hotel bookings for excursions, e.g. as part of courses outside Vienna],
- Banking transactions of all kinds,
- Founding and joining associations,
- Investments of all kinds,
- Purchase, sale and leasing of motor vehicles,
- Patent license and patent sales agreements,
- Legal transactions where the monetary value of the service provided by TU Wien cannot be determined, e.g. due to interest regulations (e.g. loans, credits),
- Organization and implementation of university courses,
- Insurance contracts,
- Sale of equipment (e.g. telephone, notebook); these are items that are intended to be used permanently for business operations, and
- Acceptance of gifts subject to conditions; these are instructions from the gift giver as to how the gift is to be used by the gift recipient.

## 5 Authorization types

A distinction is made between powers of attorney

- a) for the awarding of contracts and procurements,
- b) for the conclusion of research contracts,
- c) for other (special powers of attorney), and
- d) the legal power of attorney pursuant to § 27 (1)

are distinguished. These powers of attorney (with the exception of the legal power of attorney according to § 27 (1)) are granted by the rector.

## 6 Power of attorney for the awarding of contracts and procurements incl. project authorization

Powers of attorney for the awarding of contracts and procurements that authorize the procurement of third-party services are limited to a certain EUR amount excluding VAT per business case. The corresponding EUR amount is linked to the respective function in the structure:

- Dean, Head of Institute/Head of Department, Head of Research Division/Head of Department  
EUR 50,000 excl. VAT each.
- Research group leader/specialist group leader, project leader  
EUR 10,000 excl. VAT each.

The awarding of contracts covered by this power of attorney also includes the awarding of research contracts to third parties.

If the EUR amount is exceeded, the authorized representative may not conclude (or sign) the contract. In this case, the contract/procurement is awarded by the persons responsible in accordance with the Rectorate's Rules of Procedure or by TU Wien Großgeräte Investitions- und Betriebs- GmbH.

If the EUR 10,000 limit is exceeded (but EUR 50,000 is not exceeded), the signature is made by a head of the research area/department or institute/department concerned or by the responsible dean or the responsible member of the rectorate.

The power of attorney for the awarding of contracts and procurements also includes the acceptance of donations, provided that no obligations ("**conditions**") beyond the mere acceptance of the donation are associated with this (see reserved legal transactions point IV).

Prior to any procurement (including the acceptance of donations), the authorized representative must coordinate the infrastructural measures (e.g. rooms, statics, building services) with the Buildings and Technology Department in good time and obtain the approval of the member of the Rectorate responsible for infrastructure in accordance with the Rectorate's rules of procedure.

The institute director must ensure that an orderly handover to another authorized representative is ensured in the event that the project manager resigns or the authorization is lost during the period of processing the subject matter of the contract or legal transaction.

## 7 Power of attorney for research contracts and powers of attorney for third parties under research contracts

Powers of attorney for the conclusion of research contracts authorize the conclusion of legal transactions with regard to financing and implementation as well as the preparation of research projects in the respective structural element. For the avoidance of doubt, the awarding of research contracts to third parties is not covered by this power of attorney, but only by the power of attorney for the awarding of contracts and procurements.

The following legal transactions are limited to a certain EUR amount per transaction, excluding any VAT. The corresponding EUR amount is linked to the respective function in the structure:

- Dean, Head of Institute: EUR 400,000 excl. any VAT.
- Head of Research EUR 100,000 excl. any VAT.

When calculating the value limit, the following amounts must be taken into account, which together form the TU Wien project volume:

- a) Amounts paid to TU Wien for carrying out the research work,
- b) any in-kind services provided by TU Wien,
- c) any funds to be administered in trust for other project partners.

The following contracts are covered by the power of attorney:

- Research funding agreements, consortium agreements, contract research agreements including related contract amendments and continuing project agreements
- Offers and funding applications including associated documents (e.g. letter of intent),
- Contracts for scientific services (e.g. measurements, examinations and findings),
- Exploitation agreements relating to research results (material transfer agreements, software license agreements and know-how license agreements; excluding patent license agreements and patent sale agreements),
- Non-disclosure agreements.

Other declarations to be made in connection with research contracts, such as

- Legal Entity Forms,
- State-Aid Declarations,
- Declarations of pre-financing and co-financing,

must be signed by the member of the Rectorate responsible in accordance with the applicable rules of procedure.

In the cases specified in these guidelines (see point 11), authorized representatives are obliged to submit the contracts listed above (with the exception of funding applications and non-binding offers) to the legal expert groups of the Department of Research and Transfer Support for review and approval in good time before signing (see point 11.1) and to enter them in the project database in good time (see point 10).

If the value limit (EUR amount excl. VAT) is exceeded, the relevant contract may only be concluded or signed by the head of a higher-level structural element, provided that he/she has the appropriate power of attorney. If the EUR 400,000 limit is exceeded, the contract shall be signed by the member of the rectorate responsible in accordance with the rectorate's rules of procedure, provided that the person in question has the appropriate power of attorney.

The member of the Rectorate responsible for research agendas in accordance with the Rectorate's Rules of Procedure is authorized to sign contracts for research projects that are to be carried out at a structural element of the central division (department, faculty, specialist group).

If a power of attorney is to be granted to a third party for contract amendments or further project contracts (e.g. non-disclosure agreements, collaboration agreements, etc.) within the framework of research contracts by the person authorized according to the value limit, a legal specialist group of the Department of Research and Transfer Support must be contacted to check and approve the necessity of this granting of power of attorney. In the case of EU Commission grant agreements that are concluded via the Funding and Tenders Portal, approval is not required to authorize the coordinators to sign amendments to the grant agreement.

The project leader is obliged to clarify decisions that may lead to a change in the content of the project contracts (all contracts related to the project), either through contract amendments or through resolutions in the consortium, in advance with the responsible legal specialist groups of the Department of Research and Transfer Support.

**Special regulation for projects of the WWTF (Vienna Science and Technology Fund):** Applications for WWTF projects may only be signed by the Rectorate member responsible for research agendas in accordance with the Rectorate's Rules of Procedure.

## 8 Special powers of attorney

Special powers of attorney are to be granted on a case-by-case basis upon application by the Rector in consultation with the member of the Rectorate responsible in accordance with the Rectorate's rules of procedure or with the Dean responsible and with the immediate superior. The special power of attorney is individually structured and may deviate from the amount limits specified under points 6 and 7 and, in exceptional cases, may also include the conclusion of reserved legal transactions in accordance with point 4. The applicant has no claim to the granting of the power of attorney. Special powers of attorney can be revoked by the rector at any time.

## 9 Legal power of attorney pursuant to § 27(1)

§ Section 27 (1) entitles any head of an organizational unit with teaching and research tasks to conclude the legal transactions specified therein on behalf of the University and in connection with its tasks. These are essentially contracts for the implementation of research projects and academic services.

The amount restrictions for deans and institute directors as well as other authorization restrictions specified in this guideline also apply to legal powers of attorney pursuant to § 27 (1).

Organizational units with teaching and research tasks at TU Wien are faculties and institutes according to the organizational chart.

The member of the Rectorate responsible for research agendas in accordance with the rules of procedure is authorized to sign contracts for research projects that are to be carried out at a structural element of the central division (department, faculty, specialist group).

## 10 Notification and entry of research projects in the project database

All research funding projects (including those pursuant to § 26) must be **entered in the project database<sup>3</sup> with their basic data before the application is submitted to the funding provider, regardless of their volume, and thus brought to the attention of the head of the structural element concerned who is authorized to release the project.** After the funding decision has been made, the detailed data must be added if the decision is positive or the project must be closed if the decision is negative.

Regardless of their volume, contract research projects (including those pursuant to § 26) must be entered in the project database at the latest before the contract is concluded with the client for the project and thus brought to the attention of the head of the relevant structural element who is authorized to release the project.

**Notification and review of research ethics aspects:** All projects in which research activities are to be carried out 1) on/with humans, 2) with sensitive personal data, or 3) in third countries (non-EU members) must be registered in the project database at least 2 weeks before submission to the funding body. This also applies 4) to projects that have dual use/misuse potential, either due to the research question, project partners or funding bodies. All these projects are subject to a research ethics review by persons appointed by the Rectorate.

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<sup>3</sup> Link to the project database: <http://tiss.tuwien.ac.at/pdb>



**Additions and extensions** must also be entered in the project database. For the question of whether a project extension or a new project exists, a possible connection in terms of content is irrelevant. If obligations have been completed, i.e. no more services are to be provided and the services provided have been accepted, a follow-up project is a new project and not an extension of the old project. There must be a legal connection between the obligations in order to be able to speak of an extension (e.g. overall acceptance of all services). In the case of FFG basic program projects, each research year must be created as a separate project.

## 11 Review and approval of research contracts

According to the UG, the University is the contractual partner of funding bodies, corporate partners, etc. and not the respective organizational unit or structural element. Even if the dean or the head of an institute or research area is authorized to sign, TU Wien is still the contractual partner. This means that TU Wien as a whole is liable externally (*vis-à-vis* the contractual partner of TU Wien) for the fulfillment of concluded legal transactions. For this reason, a central review and approval of R&D contracts (but not of funding applications and non-binding offers) is required in accordance with the following regulations.

### 11.1 Obligation to submit research contracts, approval procedure

#### a) Obligation to submit EU and international research funding agreements

EU research funding agreements, contract research agreements with public organizations assigned to the EU and international research funding agreements and related agreements must be submitted to the European and International Research Agreements Unit (Research and Transfer Support Division) by the future project leader or the head of the relevant structural element with clearance authorisation for review in good time before signing.

(Contact: <https://www.tuwien.at/tu-wien/organisation/zentrale-bereiche/forschungs-technologie-innovationssupport/fachgruppe-europaeische-und-internationale-forschungsvertraege/team>).

"Timely" means that the Section for European and International Research Agreements is involved in the negotiation process right from the start of the contract negotiations. Contracts must be submitted to the Section for European and International Research Contracts at least two weeks before the contract is concluded. The contract documents to be submitted include, for example, letters of intent, non-disclosure agreements, grant agreements, consortium agreements and subcontracts. The project contracts must be accompanied by a budget breakdown.

#### b) Obligation to submit national and other non-EU research contracts

All contracts for national and other research projects that do not fall under a) (including contract research projects with international private companies) must be submitted to the R&D Contracts and Procurement Section (Research and Transfer Support Department) in good time before the contract is signed and reviewed by the latter if a contract that deviates from a sample contract from TU Wien<sup>4</sup> is used for such a project and the total contract volume exceeds EUR 10,000.

(Contact: <https://www.tuwien.at/tu-wien/organisation/zentrale-bereiche/forschungs-technologie-innovationssupport/forschungstransfersupport/vertragservice>).

#### c) Approval by the Research and Transfer Support department in the project database

Although contracts only have to be submitted to the relevant specialist groups of the Research and Transfer Support Division for review under the conditions specified in a) and b), all contracts concluded for Section 27 projects require approval by the relevant specialist groups in the project database.

<sup>4</sup> See: <http://www.rt.tuwien.ac.at>

**d) Effect of testing and approval**

The release does not release the future project manager from the responsibility for the proper execution of the project and thus for the fulfillment of the concluded contracts. Once the project has been created by the future project manager and approved in the project database by the authorized approver, an internal project order is created in SAP. This internal order is blocked for revenue postings (creation of invoices) until the signed original contract(s) has/have been sent to the Data Protection and Document Management department (see point 16), the project costing for projects subject to full costs has/have been approved by the Project Controlling and Project Support department and the approval required by the European and International Research Contracts specialist group or the R&D Contracts and Procurement specialist group in accordance with c).

**11.2 Four-eyes principle for financial statements of EU projects**

The following procedure must be adhered to in order to comply with the principle of dual control and for internal documentation: The project manager works together with employees from the Project Controlling and Support department to compile the information required to complete the financial statement (formerly Form C) in the Funding and Tenders Portal or another location specified by the EU. The final financial statement is officially signed by an employee of the Project Controlling and Support department for the EU Commission.

This document must then be uploaded to the TISS project database.

**12 § Section 26 ad-personam - Contract research projects****(Projects pursuant to § 26 (1) with the exception of ad personam research projects within the framework of pure research funding)**

Pursuant to § 26 (4), all ad personam research projects must be reported to the rectorate by the project leaders before the intended takeover and implementation and must be prohibited by the rectorate in the event of a violation of the requirements set out in § 26 (2) and § 26 (4).

**12.1 Notification, review and prohibition of research contracts**

The rectorate authorizes the deans of those faculties to which the contractors of ad personam research contracts belong to receive the reports pursuant to § 26 (4) and to examine them pursuant to § 26 (2) as well as to decide on prohibition pursuant to § 26 (4).

The dean concerned is obliged to ensure the existence of and compliance with a corresponding agreement regarding full reimbursement of costs in accordance with § 26 (3) and (4) for each individual project in the event of non-disapproval. The amount of the reimbursement of costs must comply with the cost reimbursement guideline and the basis for project calculation, see also:

<https://www.tuwien.at/index.php?eID=dms&s=4&path=Richtlinien%20und%20Verordnungen/Kostenersatz%20Forschungsprojekte%20ParPar%2026%20und%2027.pdf>

## 12.2 Contractors

The contractors of ad personam research contracts are obliged to submit a written declaration that they will fully indemnify and hold TU Wien harmless with regard to all claims - by whomever - arising from or in connection with the project. In particular, the university member shall be liable for expenses which TU Wien has to incur for employees who are in an employment relationship with the university pursuant to § 26 (6) and which are not covered by reimbursement of costs. The same applies analogously to the use of material resources of TU Wien for the implementation of the project. Furthermore, the university member shall be liable in particular for damages incurred by TU Wien as a result of the project, e.g. for damages caused by employees pursuant to § 26 (6) in the performance of their duties arising from the project.

The declaration of liability must be confirmed by the project manager when the project is released in the project database.

If the dean him/herself acts as the contractor, this delegation is not applicable and the notification before the intended takeover and implementation of the project must be addressed to the member of the rectorate responsible for research agendas in accordance with the rectorate's rules of procedure, who is also responsible for the decision-making regulations in accordance with § 26 (4).

Since the submission of an offer can already have binding effects, agreement must be reached with the dean or the member of the rectorate responsible for research agendas in accordance with the rectorate's rules of procedure before submitting an offer!

## 12.3 Budgetary processing

The budget is processed exclusively via a § 26 trust current account created and managed centrally by TU Wien.

# 13 § Section 26 FWF projects and other funded ad- personam projects

**(Projects pursuant to § 26 (1) with the exception of ad personam research contracts)**

Pursuant to § 26 (4), all ad personam research projects must be reported to the Rectorate by the project leaders prior to the intended takeover and implementation and must be prohibited by the Rectorate in the event of a breach of the requirements set out in § 26 (2) and (4).

## 13.1 Notification, review and prohibition of pure research funding projects

The Rectorate authorizes the authorized representatives for research contracts (cf. point 7) to receive the notifications pursuant to § 26 (4) and to review them pursuant to § 26 (2) as well as to decide on prohibition pursuant to § 26 (4). This authorization applies insofar as the TU Wien project volume (see also point 7) of the research funding project does not exceed the value limit of the power of attorney for research contracts.

## 13.2 Budgetary processing

The budget is processed exclusively via a § 26 trust current account created and managed centrally by TU Wien.

## 14 Other duties

Due diligence obligations regarding legality, efficiency, expediency, economy and transparency must be observed when drawing up and executing the subject matter of the contract. Furthermore, it must be ensured that the structural element has the resources required to fulfill the contract (e.g. rooms) and sufficient funds to cover the expenses for the execution of the subject matter of the contract and any subsequent obligations (e.g. payment of reimbursement of costs in accordance with the current guideline, reimbursement of salary costs including equivalent values, in particular for unused vacation entitlements, payment of inventor remuneration, unless these are paid by the client).

The authorized representatives are obliged to involve the affected departments/divisions (e.g. Buildings and Technology, Project Controlling and Project Support, Information Technology Solutions) in investments that require accompanying measures.

## 15 Announcement of powers of attorney

Authorizations granted must be announced in the newsletter. This also includes project authorizations. The announcement is made by the Data Protection and Document Management department.

## 16 Archiving of original contracts

An original copy of all contracts must be sent to the Data Protection and Document Management Department for archiving by the project manager or the person authorized to approve them after they have been signed by all contractual partners.

## 17 Entry into force

This guideline comes into force upon publication in the Vienna University of Technology Gazette.