European X-Ray Free-Electron Laser Facility GmbH

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Guidelines for the allocation of interest in accordance with Article 15.3 of the Financial Rules

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Contents

1 Introduction

1.1 Regulations

The allocation of interest earned by the European XFEL Company is regulated in Article 15.3 of the Financial Rules (FR), which stipulates in particular

> *"The Company shall, on behalf of the Shareholders, prudently invest funds not immediately required to meet payments due. Interest earnings resulting from Shareholders' cash contributions belong to the Company and are recorded in the Company's Annual Profit and Loss Account (Gewinn- und Verlustrechnung). Unless the Council decides unanimously to allocate this interest partially or totally as income to the annual budget of the current financial year, the interest earnings shall, on a quarterly basis, be allocated to the future contributions of the Shareholders in proportion to their cash contribution due (or part thereof), that was received by the indicated deadline."*

This is complemented by Articles 29.2 and 29.3 of the Internal Financial Regulations (IFR), which stipulate in particular

> *"In accordance with the provisions of Art. 15.3 of the Financial Rules, the Finance group shall, at the end of each quarter, provide a statement on the amount of interest that is due to the Shareholders, calculated pro rata to that part of their contributions which is received on time.*
>
> *"The quarterly interest is assigned to the Shareholders according to specific arrangements agreed between the Management Board and individual Shareholders, unless the Council decides unanimously to allocate this interest partially or totally as income to the annual budget of the current financial year."*

1.2 Validity of regulations for prospective Shareholders

The provisions mentioned above are applicable only to those parties who have already obtained Shareholder status. Apart from the Articles of Association—which with the accession to the Company become automatically binding for new Shareholders—other bylaws, as far as their provisions potentially affect the prospective Shareholders' rights (such as Art. 15.3 FR), do not automatically become effective for them with their accession. Instead, those provisions first have to be formally approved by the new Shareholders.

For this reason, nothing is regulated in the Company's bylaws regarding how to proceed with prospective Shareholders' funds. Nevertheless, there is nothing to be said against an analogous implementation of the same interest allocation procedure—as currently practiced in line with Art. 15.3 FR—for prospective Shareholders, if these already contribute funds and subsequently have to receive a proportional share of the interest gained.

1.3 Two different types of funds

The provisions mentioned above do not take account of the fact that one can distinguish two different categories of funds present on the Company's bank accounts:

a) those that result from advance payments (or previous interest earnings) of specific Shareholders and are to be used for <u>future contributions</u>; these funds can unambiguously be assigned to the respective Shareholders; and

b) those originating from contributions to the annual budgets, transferred in response to the <u>call for funds</u>, which are indicated in the budget document and, once received by the Company, lose the specific "color" of their origin.

Some of the prospective Shareholders already transferred funds before the Company was founded. Obviously, no calls had preceded these transfers and the funds received were initially kept on DESY accounts. They clearly corresponded to the category (a) mentioned above. <u>Interest</u> earned by these funds has—separately for each (prospective) Shareholder—been added to these funds (intended to be used for future contributions).

For these clearly assignable funds, the described practice has been maintained also after the establishment of the European XFEL Company with its annual budgets, whereas the remaining interest has been allocated in accordance with the provisions of § 15.3 FR, i.e. in proportion to the cash contributions due (or parts thereof) that were received on time.

However, as mentioned above, the described distinction is not provided for by the current bylaws, but is applied in continuation of previous practice and the corresponding common-sense approach. Therefore the Management considers it necessary to report on the procedure in use and to expose it to discussion and comment. If agreed upon, this procedure might serve as the basis for the arrangements mentioned in Article 29.3 IFR.

2 Implementation of the allocation of interest

2.1 Interest earned

Interest earnings are reported to the Shareholders at the end of each quarter. The actual interest earnings are booked on the bank accounts of the Company at the end of an investment term, which might be beyond the end of the quarter in question. The amount of interest allotted to the quarter in question is calculated proportionally to the interest days in that quarter.

Example: Cash investment from 6 October 2010 through 6 January 2011:

Total interest earning (92 days):	62 892.22 €
Allocation of interest earnings to fourth quarter of 2010 (86 days):	58 790.55 €
Allocation of interest earnings to first quarter of 2011 (6 days):	4 101.67 €

2.2 Interest earned by funds due to advance payments

In accordance with Article 15.3 FR, the Company is investing funds, which are not immediately required to meet payments due, in low-risk investment models, such as long-term deposits with varying maturities. This kind of investment usually provides higher interest rates than obtained from giro accounts, repayable on demand, but is nevertheless very secure.

The funds of category (a), which comprise advance payments received before the respective call has been sent out, as well as interest earned previously and not yet used as part of current contributions, but being retained as part of future contributions, are slowly moving and therefore typically part of this kind of term deposits.

On a quarterly basis, the Finance group evaluates the share of the quarterly average of funds of category (a) in the total average of the funds on long-term deposits. This share determines which fraction of the interest earned by the long-term deposits during the quarter concerned will be allocated as directly earned interest to Shareholders with funds of category (a). Among them, the interest is allocated pro rata to the average of their specific funds taken over for the quarter in question.

2.3 Interest due to contributions received on time in response to call for funds

The interest earnings to be allocated to the Shareholders, pro rata to the cash contributions received in response to the call for funds by the indicated deadline, are calculated as follows:

Interest earnings to be allocated to the Shareholder =

On-time paid contribution of the Shareholder (in response to the quarterly call for funds),

divided by the total contributions called for in that quarter,

times the interest earnings the Company received in that quarter (after deducting the interest earned by funds due to advanced payments)

If a decision is taken to consider a certain amount of a Shareholder's funds for future contributions as cash contribution to the annual budget of the current financial year, this contribution is considered as paid on the due date of the corresponding call for funds.

2.4 Assignment of allocated interest to funds for future contributions

The interest earnings, allocated to the respective Shareholders according to the procedure outlined above, will be added to the funds for future contributions of the respective Shareholders on a quarterly basis.

2.5 Reporting

For each Shareholder, the Finance group keeps a record of the funds still available from advance payments made and of the interest earned, both to be used (at the behest of the respective Shareholder) for future contributions. In the context of the quarterly allocation of interest, a report on the amounts is produced by the Finance group and made available to the Shareholders concerned.