

*This document is an unofficial English translation of the Danish binding guidelines on disqualification in respect of the practice of the funding function by the Danish Councils for Independent Research and the Danish Council for Strategic Research dated 15 June 2007 and laid down by the Danish Research Coordination Committee (- in Danish: **Koordinationsudvalget for Forsknings (KUF)** **Bindende retningslinjer vedrørende inhabilitet for Det Frie Forskningsråds og Det Strategiske Forskningsråds udøvelse af fondsfunktionen af 15. juli 2007**). In the event of any inconsistency between the two language versions of the guidelines, the Danish version shall prevail.*

## **Binding guidelines on disqualification in respect of the practice of the funding function by the Danish Councils for Independent Research and the Danish Council for Strategic Research**

Pursuant to Section 25(4) of Act no. 405 of 28 May 2003 on research consultancy etc., as amended, and pursuant to Section 6(2) of Executive Order no. 274 of 20 April 2004 on the funding function of the Danish Councils for Independent Research, the Danish Council for Strategic Research and the Danish Research Coordination Committee, the Danish Research Coordination Committee at its meeting on 7 June 2007 discussed and in a subsequent written procedure laid down the binding guidelines stated below relating to disqualification in respect of the practice of the funding function by the Danish Councils for Independent Research and the Danish Council for Strategic Research pursuant to Sections 7 and 17 of the Act.

The guidelines have been determined on the basis of the chapters on disqualification in the report on the Research Councils' procedure (Report no. 1317, 1996).

The guidelines replace the guidelines previously laid down by the Danish Research Coordination Committee of 14 September 2004 on disqualification in respect of the practice of the funding function by the Danish Councils for Independent Research and the Danish Council for Strategic Research.

### **Guidelines on disqualification**

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For the legal decisionmaking of the Councils, the provisions on disqualification in the Danish Public Administration Act (*forvaltningsloven*) apply. In respect of the councils' other activities in connection with the funding function, corresponding disqualification requirements apply on an unwritten basis. Furthermore, the Danish Research Coordination Committee has determined that disqualification is relevant in certain cases where the

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Danish Public Administration Act and unwritten rules cannot with certainty be deemed to involve disqualification but where there are strong arguments for specifying applicable rules on disqualification.

The guidelines specified below are relevant for both council and programme committee members and committees in relation thereto and for persons appointed to participate in the consideration of a case. In the following, any person included in the mentioned circle of persons will be referred to as "the person concerned".

No person disqualified in respect of any specific case will be allowed to decide, to take part in the decision-making or to otherwise assist in the consideration of the case in question. The relevant person must leave the conference room during the consideration of the case and may not extend any consultancy services to the persons participating in the consideration of the case or parts of the consideration of the case.

Danish Agency for Science,  
Technology and Innovation

Corresponding disqualification requirements apply to secretariat staff. A disqualified secretariat employee may only participate in processes that in no way influence the outcome of the case.

The disqualification requirements stated below may only in very special cases be modified pursuant to Section 4 of the Danish Public Administration Act. However, it should be noted that Section 4 is a somewhat narrow exception. Sections 3 and 4 of the Danish Public Administration Act are quoted at the end of this document.

Close family relations to a person that would be disqualified under the rules stated below lead to disqualification. Close family means: Parents, children, spouse, sisters-in-law, brothers-in-law, nephews and nieces, parents-in-law, sons-in-law and daughters-in-law. Other family members are considered close family if such members are regularly in contact with the person concerned. Permanent non-marital cohabitation will be compared to marriage.

**Pursuant to Section 3(1) of the Danish Public Administration Act, disqualification exists where**

1. The person concerned has a particular personal or financial interest in the outcome of the case or is currently representing or has previously represented someone in the same case with such an interest,
2. The spouse, relative or person-in-law of the person concerned in the direct line of ascent or descent or in the collateral branch as close as nephews and nieces or any other closely related persons have a special personal or financial interest in the outcome of the case or represent any person with such an interest.

3. The person concerned participates in the management of or is closely related to a company, an association or another private legal person who has a special interest in the outcome of the case.
4. The case relates to a complaint of or the exercise of control or supervision of another public authority and the person concerned has previously participated in the decision with the relevant authority or in the carrying out of measures relating to the case, or
5. Other circumstances exist that are likely to lead to any doubt about such person's impartiality.

**The Danish Research Coordination Committee has furthermore laid down the following restraints and clarifications:**

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Technology and Innovation**

Disqualification exists where:

6. The person concerned is employed in a public institution, a faculty, an academic unit or an institute etc., the place of employment is an applicant and the case is of particular importance to the place of employment.
7. The person concerned is a manager or a member of a managing body in a public institution, a faculty, an academic unit, a PhD school, an institute etc., and the relevant public institution etc. is an applicant.

Examples relating to universities:

A principal is disqualified if a faculty, an academic unit, a PhD school or an institute etc. at the relevant university is an applicant. On the other hand, members of an academic council, the dean, the manager of the academic unit, the sector manager, the PhD school manager and the institute are not disqualified, as the university as such is the applicant unless the case is of very significant importance, cf. item 6 above.

A member of the managing body in a centre or similar is disqualified, irrespective of whether the relevant person is appointed to represent the council.

The person concerned is disqualified in cases where the person concerned is a member of the university board and the applicant is the university, a faculty, an academic unit, a PhD school or an institute at the university.

In addition, disqualification will exist in cases where the person concerned is a member of the university representative council and the applicant is the university, i.e. that the proposal is submitted by the principal. Disqualification does not exist in proposals from faculties, academic units, institutes or employees, as the considerable distance to these means that the representative council's typically weak sense of loyalty to the university does not justify disqualification.

8. The person concerned is the manager of a public institution, a faculty, an academic unit, a PhD school or an institute etc. at which the applicant is employed.

Example: Disqualification only exists if the applicant is "subordinate" to the person concerned.

**Danish Agency for Science,  
Technology and Innovation**

9. The person concerned is a member of a managing body at a public institution, a faculty, an academic unit, a PhD school, an institute etc. and an employee is the applicant and the proposal is of significant importance to the place of employment.

Examples relating to universities:

A person concerned who is a member of the university board will be disqualified if the proposal is submitted by a university employee, and the proposal is of very significant importance to the university. If a proposal from a university employee is not of very significant importance to the university, disqualification does not exist, as the person concerned does not have staff management functions by virtue of his or her membership of the board.

The person concerned who is a member of an academic council will be disqualified when the applicant is employed in the relevant faculty or the academic unit and the proposal is of very significant importance to the faculty or the academic unit. If a proposal from a university or academic unit employee is not of very significant importance to the faculty or the academic unit, disqualification does not exist, as the person concerned does not have staff management functions by virtue of his or her membership of an academic council.

10. The person concerned is employed in a public institution, a faculty, an academic unit or an institute etc. at which the applicant is a manager.

Example: Disqualification exists where the principal, dean, manager, sector manager or institute manager of the person concerned is an applicant but not if the applicant is an ordinary member of a managing body.

11. The person concerned is an employee (but not a manager) at the same public institution, faculty, academic unit or institute etc. as the applicant (who is not a member of the institution etc.) and the case is of very significant importance to the place of employment of the person concerned or for the person concerned or a research group in which the person concerned has recently or until recently participated.
12. The person concerned is or has until recently been a participant in a research group where the research group or a participant in the research group is an applicant. However, this is only relevant for continuation of projects in which the person concerned has participated.
13. The person concerned is presently a counsellor for or has accepted to be the future counsellor for or until recently has been the counsellor for or is listed as a guarantor for the applicant.
14. The person concerned is an employee, a manager or a board member etc. of a private unit in which the applicant is employed, a manager or a board member, etc. However, this only applies where the proposal is of importance to the private unit.

Danish Agency for Science,  
Technology and Innovation

Example: If a proposal is submitted for funding for a project to be carried out by the applicant after he or she has retired from his or her position in the private unit, disqualification does not exist.

**The Danish Research Coordination Committee has furthermore laid down the following rules in respect of disqualification in the event of obvious competition between proposals:**

15. A person who is disqualified in respect of a proposal is also disqualified in respect of other proposals when 10 applicants or less compete. A person who is disqualified in respect of one of the 10 applicants will therefore not be able to participate in the consideration of all 10 proposals. If a final decision is made in respect of the proposal to which the disqualification of the person concerned relates and this proposal is subsequently removed from further consideration, the person concerned may participate in the consideration of the remaining proposals.

**Duty to inform:** The person concerned has a duty to inform the council or the secretariat if he or she is aware of personal aspects that may lead to

disqualification. Such information must be disclosed to the secretariat before the relevant meeting is held.

When considering general cases, the person concerned who is not disqualified but may have a particular interest in the case or is related to other persons who have a possible interest in the case, must inform the council, the programme committee or the committee thereof.

**Consideration of any disqualification:** The consideration by the council, the programme committee or the committee of a question of disqualification must be stated in the minutes from the meeting of the relevant forum. The person concerned may not participate in the consideration of and decision-making in respect of the question of his or her disqualification and must leave the conference room during negotiation and voting procedures.

Danish Agency for Science,  
Technology and Innovation

**Extract from the Danish Public Administration Act (act no. 571 of 19 December 1985, as amended)**

§ 3. Any person acting within the public administration shall be disqualified relative to any specific case if

- The person concerned has a particular personal or financial interest in the outcome of the case or is currently representing or has previously represented someone in the same case with such an interest,
- 2) The spouse, relative or person-in-law of the person concerned in the direct line of ascent or descent or in the collateral branch as close as nephews and nieces or other closely related parties have a special personal or financial interest in the outcome of the case or represent any person with such an interest.
- 3) The person concerned participates in the management of or is closely related to a company, an association or another private legal person who has a special interest in the outcome of the case.
- 4) The case relates to a complaint of or the exercise of control or supervision of another public authority and the person concerned has previously participated in the decision with the relevant authority or in the carrying out of measures relating to the case, or
- 5) Other circumstances exist that are likely to lead to any doubt about such person's impartiality.

§ However, disqualification shall not exist where, as a consequence of the nature or strength of his or her interest, of the nature of the case, or of his or her functions in connection with the consideration of the case, no risk may be assumed to exist that the decision to be made may be affected by irrelevant considerations.

3. No person disqualified in respect of any specific case shall be allowed to decide, to take part in the decision-making or to otherwise assist in the consideration of the case in question.

§ 4. The provisions of Section 3 of this Act shall not apply if it would be impossible or associated with substantial difficulties or misgivings to arrange for another person to act in his or her stead in considering the case.

2. The provisions of Section 3 of this Act shall apply to members of a collegiate administration authority even where a substitute cannot be called in. However, this provision shall not apply if members of the authority would not form a quorum or if substantial misgivings about the authority's composition would result if the member could not attend its meetings, and if consideration of the case cannot be stayed without material damage to public or private interests.

3. Regardless of the provisions of Section 3 of this Act, any member of a collegiate administration authority may take part in seconding of members to specific duties, even if his or her own name is put forward. The provisions of Section 3 of this Act shall not apply to decision-making by regional or municipal councils on remuneration etc. of their own members.

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