

## Ministerial Order on Approved Technological Service (*Bekendtgørelse om Godkendt Teknologisk Service*)<sup>1</sup>

Under section 2(2), section 10(2) and section 16(1) of the Danish Technology and Innovation Act (*Lov om teknologi og innovation*), see Consolidated Act no. 366 of 10 April 2014, the following is stipulated pursuant to section 16, items 2 and 14, of Ministerial Order no. 1401 of 25 September 2020 on Delegation of the Powers of the Minister for Higher Education and Science to the Danish Agency for Higher Education and Science (*Bekendtgørelse om delegation af uddannelses- og forskningsministerens beføjelser til Uddannelses- og Forskningsstyrelsen*):

### Part 1

#### *Objectives etc.*

**1.** The objectives of approved technological service are to develop and disseminate new knowledge, technological competencies, facilities and services. Approved technological service is developed in an interaction between business and social needs, research and new technology. Approved technological service is primarily offered to enterprises throughout Denmark with a view to providing access to specialist competencies and to testing, development and demonstration facilities and thus strengthen technology development and innovation.

**2.-(1)** Approved technological service is primarily offered as commercial services on market terms. Knowledge dissemination activities may also be offered as non-commercial services.

(2) Approved technological services may be developed with aid from the Danish Agency for Higher Education and Science (the 'agency') only if similar services are not already offered by enterprises in the Danish market.

**3.** The ministerial order establishes the overall framework for approved technological service and approved technological service institutes (*Godkendte Teknologiske Serviceinstitutter (GTS)*), including aided activities, conditions for approval, application and grant conditions, supervision and sanctions.

### Part 2

#### *Approved technological service institutes*

**4.-(1)** The Minister for Higher Education and Science may upon application approve a non-profit independent institution or a non-profit public limited company as an approved technological service institute for up to three years.

(2) Non-profit or for public benefit means that an independent institution or a public limited company engages in the dissemination of knowledge and technology of broad interest to enterprises and has a non-exclusive customer base.

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<sup>1</sup> The original legal text in Danish is authoritative. This is a translation for information only.

**5.-(1)** To be approved as a technological service institute, a non-profit independent institution or a non-profit public limited company must engage in technological service activities on a financially, professionally and organisationally sound basis, including having

- 1) a sound organisation and management,
- 2) a high level of expertise and commercial relevance, and
- 3) a sound financial position.

(2) A non-profit public limited company approved as a technological service institute must be wholly owned by one or more legal entities operating on non-profit terms and for public benefit within research, technology and innovation.

**6.** To obtain approval as a technological service institute, a non-profit independent institution or a non-profit public limited company must be a research and knowledge dissemination organisation, see the definition in point 1.3(ee) of the communication from the European Commission on the framework for State aid for research and development and innovation (2014/C 198/01).

**7.-(1)** Upon application under section 4, the Danish Agency for Higher Education and Science must approve the statutes of the non-profit independent institution or the non-profit public limited company.

(2) The following must appear from the statutes:

- 1) Capital and accumulated profit must be utilised for the non-profit, public benefit purposes set out in the statutes.
- 2) Capital or assets must not be withdrawn for purposes other than those provided for in the objects of the statutes.
- 3) Sales proceeds from the divestment of activities and distributions from companies in which the approved technological service institute holds ownership interests or voting rights must be transferred back to the approved technological service institute and be reinvested in accordance with the objects of the statutes.

(3) If an approved technological service institute adopts amendments to its statutes, these must be approved by the agency before entering into force.

**8.** The board and the management of the approved technological service institute must not have or establish any particular personal and financial interest, including ownership interests, share options etc., in companies in which the approved technological service institute holds ownership interests or voting rights.

**9.-(1)** In the event of changes to the corporate form of an approved technological service institute of relevance to the approval of the institute, the institute must continue to comply with sections 5-8.

(2) The agency must be notified as soon as possible of any changes to the corporate form, see subsection (1).

**10.** Upon the discontinuation as an approved technological service institute, the institute must make efforts, in a dialogue with the Danish Agency for Higher Education and Science, to ensure that relevant competencies, facilities and services developed with aid from the Danish Agency for Higher Education and Science remain available to enterprises in the Danish market.

### Part 3

#### *Performance contract funds, application and grant conditions etc.*

**11.-(1)** The Danish Agency for Higher Education and Science awards grants or other forms of co-financing for the development of approved technological service to approved technological service institutes (performance contract funds).

(2) The award of performance contract funds under subsection (1) is made upon application in open competition on the basis of published criteria.

(3) The agency may require self-financing when awarding performance contract funds under subsection (1).

**12.-(1)** Approved technological service institutes may apply for performance contract funds for the following costs:

- 1) Pay and derived costs for scientific and technical non-administrative staff at approved technological service institutes, participating universities and other knowledge institutions.
- 2) Minor equipment purchases, transport expenses etc. directly related to the performance of the performance contract concluded.

(3) Performance contract funds may be used to fully or partly cover the self-financing of the approved technological service institute when the institute participates in other publicly funded development projects supporting a performance contract activity.

(4) Performance contract funds may be used for activities abroad if the competencies acquired and results achieved are embedded in the approved technological service institute and are translated into technological services provided by the institute in the Danish market.

**13.** Performance contract funds under section 11(1) must be kept financially separate from non-aided activities at the approved technological service institute.

**14.-(1)** Performance contract funds must not be used to develop technological services if similar services are already offered in the Danish market, or if the approved technological service institute knows or ought to know that similar services are being developed.

(2) The approved technological service institute must immediately inform the Danish Agency for Higher Education and Science if technological services are developed or offered in the market which may cause doubt as to whether the conditions set out in subsection (1) are still met.

**15.** The Danish Agency for Higher Education and Science lays down detailed terms and conditions for performance contract funds in calls, grant letters etc.

**16.** If an approved technological service institute wishes to have the grant of performance contract funds changed, the institute must obtain prior written approval from the Danish Agency for Higher Education and Science.

**17.** When an approved technological service institute carries out projects jointly with enterprises, other knowledge institutions etc., the institute's share of intellectual property rights must reflect the activities aided by performance contract funds in the collaboration project in accordance with point 28 of the communication from the European Commission on the framework for State aid for research and development and innovation (2014/C 198/01).

#### Part 4

##### *Supervision and notification etc.*

**18.-(1)** The Danish Agency for Higher Education and Science supervises the compliance of the approved technological service institutes with the rules and conditions for the institute's approval and use of performance contract funds.

(2) For the purposes of the agency's supervision under subsection (1), the approved technological service institutes must provide any and all information requested, including information about the complete activities of the approved technological service institutes and any companies in which the approved technological service institute holds ownership interests or voting rights.

**19.** Approved technological service institutes must inform the Danish Agency for Higher Education and Science as soon as possible if circumstances arise of relevance to the ability of the approved technological service institute to comply with the terms and conditions for approval, see sections 5-9, or to carry out activities aided by performance contract funds, see part 3.

**20.** Approved technological service institutes collect and provide information upon the agency's request for use in the agency's preparation of analyses and evaluations of activities aided by performance contract funds and the effect thereof.

#### Part 5

##### *Sanctions*

**21.-(1)** Approval as a technological service institute may be revoked with or without notice if the conditions on which the approval is based are no longer met.

(2) If an approved technological service institute does not comply with the rules and conditions for approval as a technological service institute or for performance contract funds awarded, the Danish Agency for Higher Education and Science may, following a specific assessment, withhold or reduce non-disbursed performance contract funds and claim full or partial repayment of already disbursed performance contract funds.

(3) Non-compliance, see subsection (2), means in particular:

- 1) Provision of incorrect or misleading information or nondisclosure of information of relevance to the application for approval, see sections 5-8, or the application for performance contract funds under section 11.
- 2) Amendment of statutes contrary to section 7(3).
- 3) Change to corporate form contrary to section 9(1) and (2).
- 4) Use of performance contract funds contrary to section 14.

- 5) Changed use of performance contract funds without prior approval, see section 16.
- 6) Provision of incomplete or incorrect information of relevance to the agency's supervision, see part 4.
- 7) Initiation of reconstruction proceedings, bankruptcy proceedings, liquidation, negotiations for a composition, attachment or execution.

#### Part 6

##### *Penalty provisions*

**22.-(1)** Unless a higher penalty is warranted under other legislation, a fine is imposed on anyone who

- 1) contravenes section 7(3),
- 2) contravenes section 13, or
- 3) contravenes section 14.

(2) Companies etc. (legal persons) may be held criminally liable under the rules in Part 5 of the Danish Criminal Code (*Straffeloven*).

#### Part 7

##### *Commencement and interim provisions*

**23.** This ministerial order enters into force on 1 January 2021.

*Danish Agency for Higher Education and Science, 30 November 2020*

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/David Grønbæk