

KRAUSE & KOLLEGEN

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Berlin, den 11.04.2022

Settlement with the Deutsche Forschungsgemeinschaft e.V. (German Research Foundation, registered association) dated 01.04.2022

Dear Professor Birbaumer,

in the aforementioned matter you have asked us to legally classify the settlement with the German Research Foundation (hereinafter: "DFG") of 01.04.2022.

As you know, you had filed a lawsuit against the decision of the DFG dated 19.09.2019, in which the DFG, due to alleged scientific misconduct in connection with the publications

- "Chaudhary U, Xia, B, Silvoni, S, Cohen, L G, & Birbaumer, N (2017) "Brain-computer inter-face-based communication in the completely locked-in state", PLoS Bio/, 15(1), e1002593"
- "Chaudhary U, Pathak S, and Birbaumer N (2019) Response to: "Questioning the evidence for BCI-based communication in the complete locked-in state." PLoS Bio/ 17(4): e3000063"

Which resulted in the following measures by DFG:

1. exclusion from eligibility to submit grant applications to DFG (five years);
2. ineligibility to serve as a reviewer at the DFG (five years);
3. request to withdraw the two publications;
4. reclaiming of the funds used for the two publications.

The DFG explicitly stated both in the decision of 19.09.2019 and in the accompanying press release that the results of your research, as set out in the two publications, are not called into question. The decision was based exclusively on alleged documentation deficiencies in the publications themselves.

The Regional Court Bonn, which was appointed to decide on the measures, held an oral proceeding on 09.11.2021. In this context, it discussed the legal issues raised with the parties and the party representatives. Due to the complexity of the facts of the case and the ensuing legal issues, the Regional Court Bonn suggested a settlement. Without such a settlement, the proceedings would have dragged on at least into 2023; possibly even longer.

In the minutes of the oral hearing of 09.11.2021, the Regional Court Bonn summarizes what would have to be reviewed from the perspective of the Chamber in the event of a lack of settlement:

"[It] will have to be examined whether the decision is based on due process and specifically designates the alleged violation of scientific misconduct. In making its assessments, the association must, in principle, adhere to the limits it has set itself and weigh the impairment of fundamental rights. The proportionality of the measure must also be taken into account. This must weight in the significance of defendant in the research landscape and the consideration of the mutual fundamental rights."

(original citation in German language; translated by us)

Against this background, the court submitted an initial settlement proposal of its own to the parties, the essential component of which was that the DFG issues an active press release stating that no scientific misconduct had been established by the court and that the measures decided upon would be lifted for the future. At the same time, the court's proposal stipulated that the journal PLOS Biology would also be informed with the same content.

On this basis, the DFG and you then agreed on the settlement of 01.04.2022. We would like to summarize the resulting content for you:

1. no scientific misconduct has been established by the court. The settlement respects your opinion that there was no scientific misconduct in connection with the two publications.
2. the DFG retracts its request in the decision that you must withdraw your two scientific publications from PLOS Biology. This applies immediately with the conclusion of the court settlement, i.e. already since 01.04.2022.
3. you drop the accusation that the DFG did not comply with its procedural rules (i.e. the formal requirements "on the way" to the decision) when making the decision.

The background to this was that the DFG had your publication reviewed only by one reviewer, although we had assumed that this should have been done by two reviewers using the "dual control"-principle. We also took the view that you had not been adequately heard on certain allegations and that you had therefore not been able to defend yourself properly against these allegations.

4. The suspensions imposed will be lifted as of 01.01.2023. As you will recall, we were able to agree to this point in view of the fact that a legal dispute would probably have taken longer than 01.01.2023. You would not have been able to submit any applications until the conclusion of the legal proceedings anyway.

5. the DFG abandons its demand that you return the research funds under the above-mentioned conditions.
6. With the conclusion of the settlement, these facts (i.e. the DFG's decision as well as the accompanying press release) will be completely "legally settled". All claims and demands in connection with this, both from your side and from the perspective of the DFG, are considered to be settled.
7. Finally, a settlement agreement is reached regarding the costs incurred. Both parties will bear their own costs.

Please do not hesitate to contact us if you have any questions.

With best regards

Dr. Philipp Gehrmann
Rechtsanwalt

Dr. Arne Klaas
Rechtsanwalt