



# EU-rules for RDI State Aid

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# Summary

- I. Introduction/ Architecture of RDI Rules**
- II. RDI Framework**
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- IV. Synergies and simplification:  
Horizon Europe and RDI State Aid rules**



# State Aid Policy in the EU

- Aims at preventing undue distortions of competition that can result from the granting of State aid
- Is focused on market failures or sub-optimal investment conditions where the aid has maximum effects
- Contributes to quality use of scarce public resources by ensuring that the aid is proportional and does not duplicate/crowd-out private investment



# Architecture of RDI State aid rules (1)

## **General Block Exemption Regulation 2014-2020 (GBER)**

**Aid which does not need to be notified to the Commission!**

Commission Regulation (EU) N° 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (as amended in 2017)

## **2014 RDI Framework**

**Aid which needs to be notified and approved by the Commission before put in place by the MS!**

COMMUNICATION FROM THE COMMISSION Framework for State aid for research and development and innovation (2014/C 198/01)

## Architecture of RDI State aid rules (2)

### **General Block Exemption Regulation 2014-2020 (GBER)**

- Art 25-29: more automatic approval of R&D&I aid
- Evaluation requirement for big schemes (EUR 150 million p.a.)
- New aid objective 'Research Infrastructure'
- Innovation aid simplified

### **RDI Framework (2014)**

- More flexible aid ceilings
- Greater legal certainty
- More precise *criteria*

# RDI FRAMEWORK

## Guidance on application of State aid rules for RDI



# RDI actors

## Research organisations (RO)

- **Universities** or **research institutes**, technology transfer agencies, innovation intermediaries, research-oriented **physical** or **virtual** collaborative entities
- **Primary goal**: independent fundamental research, industrial research or experimental development
- Focus on **wide knowledge dissemination**
- **Independent** from industry

*Accreditation made internally by Member State on the basis of national legislation*



# RDI actors

## Research infrastructure (RI)

- Facilities, resources and related services that are used by the **scientific community** to conduct research in their respective fields
- Covers scientific equipment or set of instruments, knowledge-based
- Any other entity of a unique nature essential to **conduct research**
- 'Single-sited' or 'Distributed'



## Public funding of RO / RI activities

- Direct public funding for non-economic activities
- Direct public funding for economic activities
- Indirect State aid to industry
- Direct public funding to industry

# Public funding for non-economic activities of RO/RI

## Non-economic activities

- **Primary activities:** public education organised within the national educational system; independent R&D including 'collaborative R&D'; wide dissemination of research results on non-exclusive and non-discriminatory basis
- **Knowledge transfer** (scientific, technological, organisation innovation, management of IPRs) when all profits reinvested in primary activities:
  - ✓ *Process of acquiring, collecting & sharing explicit and tacit knowledge in both economic and non-economic activities*
  - ✓ ***Research collaborations, consultancy, licensing, spin-off creation, publication and mobility of researchers***

## Economic ancillary activities

- (Limited in scope) directly **related to** and **necessary** for the operation ***or*** **intrinsically** linked to main non-economic use
- Consume exactly the same inputs as non-economic activities and allocated capacity is  **$\leq 20\%$  of overall annual capacity (number of working hours/days; input-volumes; not revenues)**
- Claw-back of excessive aid resulting from a higher proportion of economic activities in comparison with ***ex-ante* estimations!**

**If the 20% ceiling is exceeded:** Full cost of economic activities (including pro rata depreciation costs of the infrastructure) must be covered solely by commercial revenues ('claw back'), OR assessment under State aid rules (e.g. Article 25 and 26 GBER)

## Effective collaboration (1)

- **Research in line with the institutional mission and no influence of the industry**
- Collaboration between at least two **independent** parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour
- **Joint definition** of the scope
- **Joint contribution** to its implementation
- Risk/Result **sharing**
- One or several parties may bear the full costs of the project

## Effective collaboration (2)

- **Indirect State aid to undertakings is avoided if ...**

## Effective collaboration (3)

- Undertakings bear the **full cost** of the project, **or**
- Resulting non-IPR may be widely disseminated and IPR generated by research organisations/ infrastructures fully allocated, **or**
- IPR and access rights are allocated to collaboration partners in a manner which adequately reflects work packages, contributions and respective interests, **or**
- **Compensation equivalent to market price** for transfer of/access to IPR generated by RO

## Effective collaboration (4)

- **'Compensation equivalent to the market price'** means that ROs/RIs enjoy the full economic benefit of IPR by assigning them; **therefore no indirect aid to collaborating undertaking!**
  - ✓ Through an open, transparent and non-discriminatory competitive procedure, or
  - ✓ Via an independent expert valuation, or
  - ✓ Following arm's length negotiations, or
  - ✓ By applying a mechanism where the private partner retains a right of first refusal following an open call for competing bids
  
- **If none of above conditions is met =>** full value of the contribution of the ROs/RIs is considered as an advantage for the collaborating undertakings => State aid rules apply at their level



# Public funding for economic activities of RO/RI

## If economic activities are undertaken by RO/RI?

- What are they? ... **Renting out equipment or laboratories to undertakings, R&D services/contract research for industry, construction of an infrastructure commercially exploited**
- ✓ separation of accounts for economic and non-economic activities (clear reporting in annual financial statements, Transparency Directive 2006/111/EC),
- ✓ no cross-subsidisation,
- ✓ self-sustainability of economic activities = use of "own resources"
- ✓ market prices charged for services (full cost plus margin, arm's length)
- State aid rules apply when public funding covers costs linked to economic activities
- If no clear separation of accounts, all the ROs/RIs' activities are subject to State aid rules

## Contract research and research services by ROs/RIs

- **Indirect State aid to undertakings is avoided if:**
  - a. Research services or contract research sold at **market price**, or
  - b. if **no reliable benchmark** for market price:
    - ✓ full costs + margin as commonly applied in the sector for the service concerned, **or**
    - ✓ arm's length negotiations where ROs/RIs negotiate to obtain maximum economic benefit and cover at least their marginal costs

## Investment according to MEOP\*

### **Two cumulative conditions:**

- Significant pari passu co-investments of commercial operators; and/or
- Presence (ex ante) of a sound business plan (preferably validated by external experts) : investment with a rate of return in line with market benchmarks

### **Doubtful in case of:**

- Accompanying or prior State aid for the same project
- Substantial capital investments that can only be recovered in the very long term (not be undertaken on the basis of purely economic considerations)

\*) Market Economy Operator Principle

# GBER

## Art.25 - Aid for R&D&I projects

- **3 research categories:**

- [EUR 40 M] **Fundamental research:** TRL 1 (100%)
- [EUR 20 M] **Industrial research:** TRL 2-4 (50% + SME + collaboration/dissemination bonus)
- [EUR 15 M] **Experimental development:** TRL 5-8 (25% + SME + collaboration/dissemination bonus)

### **NEW:**

- Industrial research **including laboratory-scale prototypes and small scale pilot lines**
- *Ex-post* deduction of commercial revenues generated by prototypes and pilots from eligible costs **no longer applicable**
- Notification thresholds doubled (if repayable advance increased by 50%)

## Art. 26 - Aid for Research Infrastructure

- Public financing for **economic activities**
- **Investment aid** for **construction** and **upgrade**
- Open, transparent and non-discriminatory access at market terms
- Preferential access for large private investors (>10%/per undertaking): proportional and transparent
- Aid intensity: up to 50% of eligible costs (tangible and intangible assets)

**Above EUR 20 M** → notification and assessment under the RDI Framework: public funds may cover all the "net extra costs" (up to a maximum 60% of the eligible costs)

# R&D&I project aid intensities

## Interplay between GBER and RDI-Framework

|  | Large enterprise | Medium-sized  | Small         |
|--|------------------|---------------|---------------|
| • Fundamental research                                   | 100%             | 100%          | 100%          |
| • Industrial research - 'GBER'                           | 50-65%           | 60-75%        | 70-80%        |
| • <b>Applied research – 'detailed assessment'</b>        | <b>60-70%</b>    | <b>70-80%</b> | <b>80-90%</b> |
| • Experimental development - 'GBER'                      | 25-40%           | 35-50%        | 45-60%        |
| • <b>Applied research - 'detailed assessment'</b>        | <b>60-70%</b>    | <b>70-80%</b> | <b>80-90%</b> |
| • Research infrastructure                                | 50%              | 50%           | 50%           |
| • <b>Research infrastructure - 'detailed assessment'</b> | <b>60%</b>       | <b>60%</b>    | <b>60%</b>    |





# INNOVATION AID



## Art. 27 – Innovation Cluster

- Aid can be granted only to the **legal entity operating** the cluster organisation
- **Open, transparent and non-discriminatory access at market terms**; preferential access for private investors (contributions >10%, proportional, transparent)
- **Investment aid @ 50%** (plus regional bonuses) of eligible costs: tangible and intangible assets
- **Operating aid @ 50%** for max 10Y: costs for animation, marketing and management of the cluster
- **Notification threshold: 7.5 million EUR/cluster**

*Addresses market failure stemming from coordination difficulties which hamper the construction, upgrade and development*



## Art. 28 – Innovation aid for SMEs

- **Innovation advisory services** in fields like knowledge transfer, IPR management, use of standards and regulations
- **Innovation support services** (provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification for the purposes of developing new products/services or processes)
- **Obtaining validating and defending IPRs**
- **Secondment of highly qualified personnel** from ROs or a Large Enterprise working on RDI activities in a newly created function
- **Aid intensity @ 50%**
- **Notification threshold: 5 million EUR/undertaking/project**

## Art. 29 – Aid for process and organisation innovation

- **New organisation method** in an undertakings' business practice
- **New or significantly improved production or delivery** method (incl. significant changes in techniques, equipment and software)
- **Eligible costs:** similar as for RDI projects
- **Aid intensity:** 50% for SMEs
- **Aid to Large enterprises:** 15% of aid intensity - only if effective collaboration with SMEs which incur min. 30% of total eligible costs
- **Notification threshold: EUR 7.5 million** per project/per undertaking

# Detailed assessment

## RDI State aid – When is it 'necessary'?

RDI activities often generate benefits for society in the form of **positive spill-over effects** (e.g. knowledge spill-over to competitors).

Industry may find

**RDI-investment unattractive if benefits cannot be sufficiently appropriated.**

**Imperfect information** on the risks and benefits of RDI activities; successful outcome often highly uncertain

May lead to

**Non-transparent markets – mismatch between supply and demand – little investment appetite**

Successful RDI often involves **multiple collaboration partners** and suppliers - diverging interests – contractual design is difficult, problems in designing contracts - difficulties in knowledge sharing.

Coordination and network failures

**may impair the ability of R&D-partners to interact.**

| Assessment principle   | Assessment approach under the RDI Framework (Notified projects)  |
|--|--|
| <p><b>Contribution to increased R&amp;D&amp;I and need for State intervention (market failure)</b></p> | <p>Systematic identification of objective of common interest</p> <p>Demonstration of general/specific market failure by MS for all notified cases, e.g. through sector-specific comparisons</p> <p>Presumption of absence of market failure where there are similar projects in the market. Presumption of presence of market failure for EU funded projects</p>   |
| <p><b>Appropriateness</b></p>  | <p>To be demonstrated (alternative policy instruments?; choice of aid instrument?); presumed for EU-funded project</p>   |
| <p><b>Incentive effect</b></p>   | <p>Aid application before start of works</p> <p>For large individual aid, MS to support counterfactual analysis of incentive effect with company- and industry-specific elements. Comparisons of NPV, IRR, risk exposure between the counterfactual and the nominal scenarios with and without aid. No counterfactual in the absence of an alternative project.</p>  |
| <p><b>Proportionality</b></p>  | <p>Aid must not exceed the minimum necessary to make the project sufficiently profitable. This is the case if the internal rate of return (IRR) is brought to a level that corresponds to sector or firm specific hurdle rates.</p> <p>Where a counterfactual project exists: Aid must not exceed the <b>net extra costs</b> established by comparing the expected net present values of both alternative investments.</p> <p>NB: All relevant expected costs and benefits must be considered over the lifetime of the project</p> |
| <p><b>Negative effects</b></p>   | <p>Analysis of distorting dynamic incentives, creation of market power and maintaining inefficient market structures. Analysis of choice of location.</p> <p>Analysis of manifest negative effects, in particular if violation of EU law (such as free movement of goods and services)</p>   |

## Existing case practice – RDI Framework (2014)

| <b><u>Approved cases</u></b>           |  | <b><u>Aid granted</u></b> |
|--|--|---------------------------|
| <b>SA.37178 (FR)</b>                   | Aide de l'ANR au projet de R&D « SuperGrid » dans le cadre du programme d'investissements d'avenir;          | EUR 86.6 million          |
| <b>SA. 39457 (UK)</b>                  | Reaction Engines Ltd, SABRE design project   | EUR 71 million            |
| <b>SA 37137 (FR):</b>                  | Avance récupérable pour le programme de recherche et développement TS 3000.                                  | EUR 70 million            |
| <b>SA. 45183 and SA. 45185 (FR/DE)</b> | Avance remboursable pour le programme de recherche et développement de l'hélicoptère X6 (Airbus Helicopters) | EUR 377 million           |
|  |  | <b>EUR 604.6 million</b>  |





# **Synergies and simplification Horizon Europe and RDI State Aid rules**

## 2017 GBER amendments

- **Amendment to Art 7:** The amounts of eligible costs may be calculated in accordance with the **simplified cost options** set out in Regulation (EU) No 1303/2013 (CPR Regulation), provided that the operation is **at least partly financed through ESIF** and that the category of costs is eligible according to the relevant exemption provision.
- **Recital 14:** Under the Horizon 2020 SME-instrument as referred in Article 22(2) of Regulation (EU) No 1291/2013 of the European Parliament and of the Council, projects can receive a Commission **Seal of Excellence** quality label. Such projects, given their limited aid amounts of **maximum EUR 2,5 million per project** and the fact that they are targeting **exclusively SMEs**, can be exempted from the notification requirement in accordance with the rules of the GBER Regulation (EU) No 651/2014.



# National (inc. ESIF) funding for RDI projects granted SoE under Horizon Europe

## Currently after 2017 amendments to the GBER:

- State aid financing for SoE projects awarded under H2020 SME instrument is not subject to a notification requirement and falls under art. 25 of the GBER
- If ESIF financing is involved, the amounts of eligible costs may be calculated in accordance with the H2020 simplified cost options

## Proposal for the future: streamlining and eliminating duplication

- Quality of RDI projects carried out by SMEs assessed under Horizon Europe as excellent and therefore fulfilling all EU programme eligibility requirements will **not** have to be re-assessed under State aid rules (aid intensity, nature of research activities, eligible costs and simplified cost methods of Horizon Europe can be applied)

## EU + national money (incl. ESIF) co-funded projects

### **Currently:**

- When H2020 and national funding (incl. ESIF) are combined ESIF/national public funding is subject to State aid assessment. Most favourable funding rates may not be exceeded for the combined financing

### **Proposal for the future:**

- Jointly funded RDI projects, under a Horizon Europe programme co-fund where at least three Member States participate, where the evaluation and selection is based on Horizon Europe rules could be implemented: without requiring notification, or additional State aid assessment and Horizon Europe funding rates and eligible costs can apply



***Thank you for your attention!***

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