

# State aid – thematic areas (II):

## RDI

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.



## Legal Bases

- Communication from the Commission: Framework for State aid for research and development and innovation (2014/C 198/01)





## **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' (network)





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



## Non-economic activities (2.1.1 RDI FW)

- **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 (pt. 20 RDI FW)

- (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 **≤ 20 % of overall annual capacity (number of working hours/days; input-volumes; not revenues) (ex-ante estimations!)**

**If the annual monitoring reveals that the 20% ceiling is exceeded:**

- Claw-back
- Investment aid could be compatible under Article 26 GBER



# Effective collaboration by RO/RI and undertakings (2.2.2 RDI FW) (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 or research services by ROs/RIs (2.1.1)

- **Indirect State aid to undertakings is avoided if:**
  - a. Research services or contract research sold at **market price**, or
  - a. 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



Assessment principle	Assessment approach under the RDI Framework (Notified projects)
Contribution to increased R&D&I and need for State intervention (market failure)	<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.</p>
Appropriateness	<p>To be demonstrated (alternative policy instruments?; choice of aid instrument?)</p>
Incentive effect	<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>
Proportionality	<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 net extra costs 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>
Negative effects	<p>Analysis of distorting dynamic incentives, creation of market power and maintaining inefficient market structures; choice of location; manifest negative effects, in partic. violation of EU law (such as free movement of goods &amp;</p>



# 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%
• <i>Applied research – 'detailed assessment'</i>	60-70%	70-80%	80-90%
• Experimental development - 'GBER'	25-40%	35-50%	45-60%
• <i>Applied research - 'detailed assessment'</i>	60-70%	70-80%	80-90%
• Research infrastructure	50%	50%	50%
• <i>Research infrastructure - 'detailed assessment'</i>	60%	60%	60%





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

